

**AGREEMENT FOR DESTINATION MARKETING SERVICES
BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA,
AND
SILICON VALLEY/SANTA CLARA DMO, INC.**

PREAMBLE

This Agreement is entered into between the City of Santa Clara, California, a chartered California municipal corporation (City) and Silicon Valley/Santa Clara DMO, Inc., a California non-profit mutual benefit corporation (Contractor). City and Contractor may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

RECITALS

- A. City desires to sell, market and promote Santa Clara as a premier destination for visitors attending meetings, conventions, cultural events, hotels, retail, restaurants and athletic competitions;
- B. City owns the Santa Clara Convention Center (Convention Center) and desires to maximize the economic impact, financial results and community access by optimizing the use of the Center through sales and marketing of the public facility;
- C. City collects assessments from lodging businesses in the Santa Clara Tourism Improvement District (TID) to fund activities such as marketing campaigns to attract additional travelers, tourists, cultural groups, and conventions; tourism sales and marketing efforts, advertisements in travel publications; and related program administrative costs;
- D. Contractor acknowledges its designation by the City as the official destination marketing organization and that Contractor and its subcontractors, if any, shall have the professional experience, necessary licenses and desire to provide certain goods and/or required services of the quality and type which are reasonably necessary to render the Scope of Services specified in Exhibit A; and,
- E. The Parties understand that key stakeholders and the City will provide assistance and time needed to facilitate the process on the local level, as described in the Scope of Services, including some database work, conducting outreach meetings, and gathering support and signed petitions from lodging businesses; and
- F. The Parties have specified herein the terms and conditions under which such Scope of Services will be provided and paid for.

The Parties agree as follows:

AGREEMENT TERMS AND CONDITIONS

1. AGREEMENT DOCUMENTS

The documents forming the entire Agreement between City 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 – Performance Measures

Exhibit C – Reporting

Exhibit D – Insurance Requirements

Exhibit E – Convention Center Booking Policy Guidelines

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.

2. TERM OF AGREEMENT

- A. Initial Term. 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 November 13, 2020 ("Effective Date") and terminate on June 30, 2025. Notwithstanding the Effective Date, this Agreement shall be binding on the Parties upon full execution hereof.
- B. Option Terms. Upon expiration of the Initial Term, City has the option and sole discretion to extend this Agreement, according to all terms and conditions, for a subsequent term of five (5) years ("Option Term One") by serving notice to Contractor no later than 180 calendar days from the expiration of the Initial Term. Upon expiration of Option Term, City has the option and sole discretion to extend this Agreement, according to all terms and conditions, for a subsequent term of five (5) years ("Option Term Two") by serving notice to Contractor no later than 180 calendar days from the expiration of Option Term One. The Initial Term plus any such renewal terms is sometimes referred to herein as the "Term".

- C. No Automatic Renewals. There shall be no automatic renewal of this Agreement upon the expiration of the Initial Term or either Option Terms.
- D. Operating Year. An Operating Year shall mean each 12-month period of time during the Term beginning on July 1 and ending on June 30 ("Fiscal Year") including extension periods, if any, except the initial Operating Year shall commence on November 13, 2020 and end on June 30, 2021, as shown below.

Initial Term	
2020-2021 Operating Year	November 13, 2020 to June 30, 2021
2021-2022 Operating Year	July 1, 2021 to June 30, 2022
2022-2023 Operating Year	July 1, 2022 to June 30, 2023
2023-2024 Operating Year	July 1, 2023 to June 30, 2024
2024-2025 Operating Year	July 1, 2024 to June 30, 2025
2025-2026 Operating Year	July 1, 2025 to June 30, 2026
Option Term One	
2026-2027 Operating Year	July 1, 2026 to June 30, 2027
2027-2028 Operating Year	July 1, 2027 to June 30, 2028
2028-2029 Operating Year	July 1, 2028 to June 30, 2029
2029-2030 Operating Year	July 1, 2029 to June 30, 2030
2030-2031 Operating Year	July 1, 2030 to June 30, 2031
Option Term Two	
2031-2032 Operating Year	July 1, 2031 to June 30, 2032
2032-2033 Operating Year	July 1, 2032 to June 30, 2033
2033-2034 Operating Year	July 1, 2033 to June 30, 2034
2034-2035 Operating Year	July 1, 2034 to June 30, 2035
2035-2036 Operating Year	July 1, 2035 to June 30, 2036

3. SCOPE OF SERVICES & PERFORMANCE SCHEDULE

Contractor shall perform the services specified in the Scope of Services in Exhibit A (the Services) within the time stated in Exhibit A. Time is of the essence.

4. 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 City when defects are due to the negligence, errors or omissions of Contractor. If Contractor fails to promptly correct or replace materials or services, City may make corrections or replace materials or services and charge Contractor for the cost incurred by City.

5. QUALIFICATIONS OF CONTRACTOR - STANDARD OF CARE

Contractor represents and maintains that it has the professional skills, knowledge and experience necessary to perform the Services, and its duties and obligations, expressed and implied, contained herein, and City expressly relies upon Contractor's representations regarding its skills, knowledge and experience in entering into this Agreement with Contractor. Contractor shall perform the Services and its duties in a professional and workmanlike manner and in accordance with applicable industry standards.

6. FISCAL ARRANGEMENT

- A. TID assessment funds collected by the City shall be transferred to the Contractor, less applicable administrative fees to cover City costs of collection and administration, on a monthly basis no later than the last day of each month following the month during which such funds are collected.
- B. Expenditures and activities under this Agreement shall be funded by TID assessment funds and Contractor shall comply with the approved Annual Budget, as defined in Exhibit A, Section B, unless otherwise agreed by the Parties and approved by the City Council.
- C. Per Section 20, Contractor shall establish a separate Reserve Fund for any TID funds not allocated or budgeted. Any unused TID assessment funds in a given Fiscal Year shall be placed into the Contractor's Reserve Fund and can be proposed for allocation in the following Fiscal Year.
- D. Contractor shall monitor the Santa Clara hospitality industry and communicate to the City in a timely manner of any variance in industry performance that could reasonably be expected to negatively impact TID assessment funds to the City. In the event that, due to an actual or projected deficiency or short fall in TID assessment funds in a Fiscal Year during the Term of this Agreement, where there will be insufficient TID Assessment funds to fund the Approved Budget, City shall, by written notice to Contractor, provide Contractor with revised information on the amount of TID assessment funds to be provided by City under this Agreement. Any budget amendments may be prepared and proposed by Contractor and are subject to DMO Board and City Council approval.
- E. Neither the City's General Fund, nor any other fund, revenue source, or monies whatsoever of City, except for the actual collected TID assessment net revenue, shall be liable for payment of obligations arising from this Agreement. Said obligations are not a debt of City, not a legal or equitable pledge, charge, lien, or encumbrance upon any of its property or upon income, receipts, or revenues.
- F. This Agreement will terminate upon written notice from the City without penalty at any time within a Fiscal Year in the event that the TID

assessment funds are not available and are only appropriated for a portion of the Fiscal Year.

7. LIMITATIONS ON OPERATIONS

In performing the Services, Contractor shall not do the following with funds provided by City:

- A. Use TID assessment funds in a manner that conflicts with, is contrary to, or is inconsistent with the Sales and Marketing Plan, the Scope of Services, or the Approved Budget.
- B. Advertise, promote or publicize events, activities, facilities or establishments located outside of City, unless such advertising, promotion or publicity is directly related to, and designed to carry out, the goals and objectives set forth in this Agreement.
- C. Advertise, publicize or promote hotel and motel facilities outside City for any specific convention, trade show, conference or other event unless a meeting planner using the facilities determines that there are insufficient hotel and motel facilities within City to accommodate the required aggregate room block for such event.

8. PROCUREMENT OF GOODS AND SERVICES

Contractor shall follow best procurement practices in the purchase of goods and services that are paid for through this Agreement. The term “best procurement practices” shall entail Contractor acting in a commercially reasonable manner in: (i) implementing and maintaining responsible management and oversight so as to manage its procurement contracts fairly and effectively, (ii) considering factors such as the requirements of the business, alternatives, timing, supply strategy and total life cycle costs of the good or service when evaluating vendors’ submissions, (iii) providing all qualified vendors with fair access so as to avoid conflict of interest, and to choose the successful vendor through a fair and non-discriminatory process, (iv) assuring that it is receiving quality service and goods at the right place and time, and (v) otherwise promoting integrity, professionalism, accountability, transparency, compliance to internally articulated requirements, and continuous improvement.

To the maximum extent possible, Contractor shall provide economic opportunities to the City’s local businesses and vendors through the Contractor’s procurement of goods and services, and actively market, promote and disseminate information to City businesses and vendors with regard to the Contractor’s procurement policies (in an effort to provide increased competition and awareness to City businesses and vendors of future bids, proposals, and other procurement opportunities issued by the Contractor). Contractor shall report such efforts to City when reasonably requested by the City.

9. TERMINATION

- A. Termination for Convenience. City shall have the right to terminate this Agreement, without cause or penalty, by giving not less than sixty (60) days prior written notice to Contractor.
- B. Termination for Default. In the event Contractor defaults in its obligations under this Agreement and the default remains uncured for a period of ninety (90) days after the City gives written notice to Contractor specifying the default, then the City may terminate this Agreement effective immediately and may exercise any remedy at law or in equity that it deems necessary or desirable. In the event that Contractor commences to cure the default but the default is not capable of being cured within such ninety (90) days, the cure period shall be extended for such additional time as required for Contractor to complete the cure of the default, provided, however, that the cure period shall not in any event extend beyond two-hundred seventy (270) days from the date of the original notice of default subject to any extension of time for a Force Majeure Event as provided below. Contractor shall be deemed to be in default if it fails to: (i) render the Services as required by this Agreement; (ii) implement, or satisfactorily perform and meet the minimum combined Performance Metrics threshold of 85% as outlined in Exhibit B, execute the Sales and Marketing Plan; (iii) supply information or reports as required by this Agreement; or (iv) comply with any other provision of this Agreement.
- C. Effect of Termination. 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 City all City information or material that Contractor has in its possession, including all unexpended funds provide by the City hereunder. Upon termination, Contractor shall no longer use the “official destination marketing organization” designation.
- D. Force Majeure. Performance by either Party shall not be deemed to be in default where delays or failure to perform are the result of any of the following acts, events or conditions or any combination thereof (“Force Majeure Events”) that have had a direct, material, adverse effect on the rights or obligations of the Parties and are beyond the reasonable control of the Party relying thereon as justification for not performing an obligation or complying with any condition required of such Party under the terms of this Agreement: (i) an act of God, lightning, hurricanes, blizzards, earthquake, acts of a public enemy, war, terrorism, blockade, freight embargoes, pandemics, epidemics, insurrection, economic emergency, riot or civil disturbance, sabotage or similar occurrence; a landslide, fire, explosion, flood, nuclear radiation or similar occurrence not created by an

act or omission of either Party; (ii) the order, judgment, action and/or determination of any federal, State or local court, administrative agency or governmental authority with jurisdiction within the City, excepting decisions interpreting federal, State and local tax laws generally applicable to all business taxpayers, adversely affecting the operation or management of Contractor; provided, however, that such order, judgment, action and/or determination shall not be the result of the willful, intentional or negligent action or inaction of the Party relying thereon and that neither the contesting of any such order, judgments, action and/or determination, in good faith, nor the reasonable failure to so contest, shall constitute or be construed as a willful, intentional or negligent action or inaction by such Party; (iii) the suspension, termination, interruption, denial or failure of or delay in renewal or issuance of any Governmental Approval which is essential to the operation or management of Contractor (as evidenced by written notices from the governmental authority having jurisdiction over such matter), or a third party challenge to the approval of any Governmental Approval, with the term "Governmental Approval" excluding any Authority approval as contemplated under this Agreement; or (iv) strikes or similar labor actions.

10. ASSIGNMENT AND SUBCONTRACTING

City and Contractor bind themselves, their successors and assigns to all covenants of this Agreement. This Agreement or any portion of the outlined Scope of Services shall not be assigned or transferred. Contractor assumes responsibility for contracting for organizational support services as required and paying for all direct and indirect expenses as may be necessary implementing Contractor operations and activities. Contractor shall be as fully responsible to City for the acts and omissions of its subcontractors, and of persons either directly or indirectly employed by them, as Contractor is for the acts and omissions of persons directly employed by it.

11. 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.

12. 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 City. Contractor has full rights to manage its employees in their performance of Services under this Agreement.

13. CONFIDENTIALITY OF MATERIAL

Each Party acknowledged and agrees that all ideas, memoranda, specifications, plans, procedures, data, drawings, descriptions, documents, discussions and other information developed or received by or for either Party submitted to the other Party in connection with the performance of this Agreement and marked proprietary or confidential shall be held confidential by the receiving Party, and shall not, without the prior written consent of the disclosing Party, (i) be used for any purposes other than for the performance of the Services or for evaluating or otherwise monitoring the Services hereunder, or (ii) be disclosed to any person or entity not connected with performance of the Services. The foregoing obligations of confidentiality will not apply to any of the materials or other information described above that (I) is or becomes available to the public other than by the receiving Party's breach of the above confidentiality obligation; (II) was already known to the receiving Party at the time of its receipt from the disclosing Party; (III) the receiving Party received from a third party, unless the receiving Party knows that such third party owes an obligation of confidentiality to the disclosing Party with respect to such information; or (IV) is required to be disclosed to the public under applicable law including the California Public Records Act.

14. OWNERSHIP OF MATERIAL

All material and other information, 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 in connection with the performance of the Services under this Agreement shall be the property of City but Contractor may retain and use copies thereof for all purposes related to the performance of the Services under this Agreement. City shall not be limited in any way or at any time in its use of said material subject to the confidentiality obligations hereunder. Contractor shall not be responsible for damages resulting from the use of said material as permitted hereunder, including, but not limited to, the release of this material to third parties.

15. RIGHT OF CITY TO INSPECT RECORDS OF CONTRACTOR

City, 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 expenditures made by Contractor in connection with the Services rendered by Contractor under this Agreement. Contractor agrees to maintain sufficient books and records in accordance with generally accepted accounting principles to establish the correctness of all expenditures made by Contractor in connection with the Services rendered by Contractor. Any expenses not so recorded shall be

disallowed by the City. Contractor shall bear the cost of the audit if the audit determines that there has been a substantial non-recording of expenditures by Contractor.

Contractor shall submit to City any and all reports concerning its performance under this Agreement that may be requested by City in writing. Contractor agrees to assist City in meeting City's reporting requirements to the State and other agencies with respect to Contractor's Services hereunder. Contractor shall turn over to City all records which demonstrate performance under this Agreement upon termination or completion of this Agreement.

16. ANNUAL AUDITS

- A. Financial Statement Audit. Within ninety (90) days after the end of each Operating Year, Contractor agrees to provide to the City a certified Audited Financial Statements and Management's Reports on Internal Control over Financial Reporting on the accounts and records as kept by the Contractor. Costs associated with obtaining such certified audit report shall be a Contractor operating expense, which expense shall be permitted to be included in the Annual Budget. Such audit shall be performed by an external auditor approved by the City and shall be conducted in accordance with generally accepted auditing standards.
- B. Agreed Upon Procedure Report. An Agreed Upon Procedure Report to review TID collection process, calculation, and timely reporting to the City shall be submitted to the City with the Financial Statement Audit. Costs associated with obtaining such report shall be a Contractor operating expense, which expense shall be permitted to be included in the Annual Budget. Such report shall be performed by the external auditor approved by the City and shall be conducted in accordance with generally accepted auditing standards.
- C. Performance Audit. City (through its Director of Finance or other authorized officer or designee) may also cause, at its own expense, a Performance Audit to be conducted and completed by a Performance Auditor (the person or firm so selected referred to herein as the "Auditor") or by the City Auditor. The Performance Audit shall assess Contractor's performance during the previous Operating Year using the Key Performance Indicators (KPIs), as defined in Exhibit B, taking into account applicable funding levels under this Agreement. A draft report of the Performance Audit shall be made available for comment by City and Contractor prior to completion of the audit. The Performance Audit will include the Performance Measures agreed each year as part of the budget process.
- D. Sales Audit. City may also conduct a sales audit, at its own expense, at a frequency determined by the City, to validate the "status" and

documentation of client files. The frequency of the Sales Audit shall be agreed upon by both Parties. This audit is designed to confirm the accuracy of the numbers reported related to sales performance and data that is calculated to determine incentive plan expenditures.

17. HOLD HARMLESS/INDEMNIFICATION

- A. To the extent permitted by law, Contractor agrees to protect, defend, hold harmless and indemnify City, its City Council, commissions, officers, employees, volunteers and agents from and against any claim, injury, liability, loss, cost, and/or expense or damage, including all reasonable 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 City 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 City; the obligation to defend is not similarly limited. The City shall provide prompt notice to Contractor of any third-party claim or action for which it will seek indemnification from Contractor hereunder and provide Contractor with the opportunity to defend such claim or action with attorneys it selects. If Contractor does not exercise its right to defend such claim or action, then the City shall do so but the City shall not settle any claim or action for which it will seek to be indemnified by Contractor hereunder without first obtaining the written consent of Contractor, which consent will not be unreasonably withheld or delayed.
- B. Contractor's obligation to protect, defend, indemnify, and hold harmless in full City and City'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 City (either alone, or jointly with Contractor), regardless of venue/jurisdiction in which the claim is brought and the manner of relief sought.
- C. 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 City for any penalties, fines, adverse rulings, or tax payments associated with Contractor's responsibilities under the Act.

18. INSURANCE REQUIREMENTS

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

19. WAIVER

Contractor agrees that waiver by City 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 City'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.

20. RESERVE POLICY

Contractor shall establish a Reserve Fund of no less than six (6) months of operating expenses based on the most currently approved Annual Budget. The Reserve Fund may be used in the case actual TID revenues are less than forecasted. In the event Contractor needs to use the Reserve Fund, Contractor shall immediately notify the City. In no case shall expenditures exceed actual funds payable under the Annual Budget or otherwise payable under this Agreement. If actual TID collections are lower than projected, payment is due only up to the percentage owed of the actual amount collected. However, nothing in this section precludes Contractor using funds from sources other than the City in Contractor's complete and total discretion.

21. NOTICES

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

City of Santa Clara
Attention: City Manager's Office
1500 Warburton Avenue
Santa Clara, CA 95050
and by e-mail at rshikada@santaclaraca.gov, and
manager@santaclaraca.gov

And to Contractor addressed as follows:

Silicon Valley/Santa Clara DMO, Inc.
Attention: Chief Executive Officer/Board Chair
5001 Great America Parkway
Santa Clara, CA 95054

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.

22. 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. Additionally Contractor has read and agrees to comply with City's Ethical Standards (<http://santaclaraca.gov/home/showdocument?id=58299>).

23. BROWN ACT AND PUBLIC RECORDS ACT

As funds supporting Contractor are provided by the TID, when required by applicable law or by the City, Contractor shall comply with the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code), at all times when matters within the subject matter of the TID are heard, discussed, or deliberated, and with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code), for all records relating to activities of the TID.

24. CONFLICTS OF INTEREST

Contractor certifies that to the best of its knowledge, no City 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 City if any such conflict arises during the Term.

25. 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.

26. NO USE OF CITY NAME OR EMBLEM

Contractor shall not use City's name, insignia, or emblem, or distribute any information related to Services performed by Contractor under this Agreement in any magazine, trade paper, newspaper or other medium without express written consent of City.

27. CONTRACTOR NOT AGENT OF THE CITY

Neither Contractor nor any employees, agents, Board Members, or subcontractors of Contractor are or shall be considered to be agents of the City, nor shall Contractor be considered a legislative body, relative to the performance of Contractor's obligations under this Agreement or for any other purpose.

28. 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.

29. 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.

30. AMENDMENTS

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

31. RETURN OF PROPERTY AND TID ASSESSMENT FUNDS

Upon the expiration or earlier termination of this Agreement, Contractor shall promptly return to City all property of City and TID Assessment Funds in the possession of Contractor or utilized by Contractor. All such property shall be in at least as good as condition as when acquired by Contractor except for ordinary wear and tear.

32. 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.

CITY OF SANTA CLARA, CALIFORNIA
a chartered California municipal corporation

Approved as to Form:

Dated: _____

BRIAN DOYLE
City Attorney

DEANNA J. SANTANA
City Manager
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax: (408) 241-6771

"CITY"

SILICON VALLEY/SANTA CLARA DMO, INC.
a California nonprofit mutual benefit corporation

Dated: _____

By (Signature): _____

Name: Eron Hodges

Title: Board of Directors Chair

Principal Place of Business Address: 5001 Great America Parkway
Santa Clara, CA 95054

Email Address: Eron.hodges@hyatt.com

Telephone: (408) 510-6405

Fax: ()

"CONTRACTOR"

EXHIBIT A

SCOPE OF SERVICES

A. INTRODUCTION

Santa Clara, California is in the heart of the Silicon Valley, in “the Center of What’s Possible” and is an exciting destination for meetings, conventions, business and leisure travel.

The City has designated Contractor as the exclusive service provider and official destination marketing organization to market, sell and book the Santa Clara Convention Center (Convention Center) and market Santa Clara as the destination of choice to national, regional and local organizations and as a premium destination for conventions, meetings, trade shows, athletics, and group leisure events.

B. SERVICES

Contractor shall perform and provide such services as are appropriate and necessary in a first-class manner, consistent with the terms of this Agreement, and in collaboration with the City and community partners, which are engaged in, and support, the mission of the City.

1. Convention Sales, Incentives and Services

- 1.1. Engage in sales activity for the effective booking of the Convention Center, for increased room night sales to Convention Center attendees and commensurate revenue for the Convention Center.
- 1.2. Sell and coordinate the booking and reservation of convention, meeting and/or trade show space, hotel rooms and other off-site venues as necessary in connection with such convention, meeting, trade show or other group leisure events at the Convention Center and Santa Clara hotels in order to facilitate the seamless booking and servicing processes for space, food and beverage, audio/visual, and other group needs.
- 1.3. Conduct targeted sales calls to potential convention, tradeshow, and conference planners to generate prospects.
- 1.4. Host exhibits at various targeted conference shows and special events as deemed necessary by Contractor to promote economic development and the visitor industry.
- 1.5. Conduct familiarization tours and product development tours and activities for agreed upon prospective clients.
- 1.6. Host prospective meeting planners and other prospective clients in the City to promote business and industry development and the tourism industry.
- 1.7. Provide an incentive program in conjunction with the Convention Center and TID lodging businesses to generate new group or convention bookings.

2. Marketing and Communications

- 2.1. Promote and market the Convention Center and Santa Clara, as a premier destination for conventions, meetings and trade shows, including utilization of digital media, online presence and social networks.
- 2.2. Develop, produce, and distribute promotional convention sales materials specific to the Convention Center, Santa Clara lodging businesses, restaurants, entertainment and other amenities located in the City, and distribute said materials to event planners or coordinators.
- 2.3. Conduct coordinated advertising, publicity and promotion campaigns emphasizing attractions offered in the City for meetings and conventions groups.
- 2.4. Participate in appropriate convention and destination marketing association's events and trade shows so that favorable and targeted publicity about the City and the Convention Center is continued and expanded.
- 2.5. Solicit appropriate convention, tradeshow and meeting organizations to use the Convention Center and other venues throughout the City.
- 2.6. Support destination planning services to associations, businesses, organizations and groups convening or holding conventions, meetings or events in the City.
- 2.7. Maintain a master set of bookings and schedules (and other related books and records) for conventions, tradeshows and other events at the Convention Center.
- 2.8. Create and maintain strategic relationships for the coordination of sales and services with the City and its business partners, including but not limited to the TID lodging businesses, Convention Center operator, and food and beverage service provider among others.
- 2.9. Engage in such other sales, marketing and promotion activities as Contractor deems appropriate and necessary to increase sales activity for conventions, meetings, trade shows and other events at the Convention Center.
- 2.10. Maintain and continue to develop an appealing website that is designed to showcase the attributes of Santa Clara and market Santa Clara as a desirable destination.

3. Reporting

- 3.1. Contractor shall develop an approach to reporting results focused on the performance measures as outlined in Exhibit B. All reporting shall be proposed and approved by the City prior to implementation, which approval will not be unreasonably withheld. City retains the right to ask for any modifications it reasonably deems important in understanding the results of the Contractor's sales and marketing efforts and all KPI results.

4. Sales and Marketing Plan

- 4.1. Contractor shall develop a sales and marketing plan in collaboration with the TID lodging businesses, Convention Center operator, and food and beverage service provider. The sales and marketing plan will focus on the area of citywide convention sales and marketing and will include an outline of the agreed-upon key vertical markets, a collaborative approach to all marketing channels, and a deployment plan.

5. Annual Budget

- 5.1. Contractor shall develop an annual operating budget for the delivery of services as outlined in the Agreement, subject to the DMO Board and City Council approval
- 5.2. Assessments collected from the TID lodging businesses fund Contractor's operations. While actual revenues will fluctuate due to market conditions, the proportional allocations of the approved operating budget are expected to stay substantially the same.
- 5.3. Contractor's proposed annual budget for the future fiscal year, including any proposed changes to the key performance indicators shall be submitted with the annual report.
- 5.4. On or before March 1st of each Fiscal Year, Contractor shall deliver to the City a proposed budget, which has been reviewed and approved by the Contractor's Board of Directors and the TID hotels, for the following Fiscal Year in a form reasonably acceptable to the City, which Proposed Budget will include:
 - a. Detailed expenditures for marketing, personnel, and non-personnel expenditures for each service of Contractor for the following Fiscal Year;
 - b. Comparisons by category of the proposed budget for the next Fiscal Year to the estimated expenses for the then Fiscal Year and to the actual expenses for the previous Fiscal Year; and
 - c. Performance Measures that include actual performance for the previous Fiscal Year, projected performance for the current Fiscal Year, and targets for the next Fiscal Year.
- 5.5. Expenditures. Operating expenditures shall align with acceptable use of public funds and in compliance with established DMO policies as approved by its Board.
- 5.6. Repayment to City. Contractor shall reimburse City for any such costs, provided in the Annual Budget, incurred by City for contract services fees related to the continued formation of the DMO which includes but is not limited to the cost for legal, policy and organizational development services.

EXHIBIT B PERFORMANCE MEASURES

A. KEY PERFORMANCE INDICATORS (KPIs)

Contractor shall be responsible for performing sales and marketing activities that increase visitation, group activity at the Convention Center, room night consumption, and the economic impact associated with increased tourism activity in Santa Clara. This Exhibit B defines the KPIs to measure the Contractor's performance and the weighted percentage assigned to each KPI ("Weighted Percentage"). The development of specific goals to be assigned from year to year to each KPI shall be developed in alignment with the *Convention Center Booking Policy Guidelines* (Exhibit E), in good faith between the City and Contractor and may evolve and vary from what is described below. If the Parties do not agree on new goals, the previously agreed to goal shall remain in effect. The Contractor shall be responsible for reporting on and producing agreed upon results in the following areas:

1. Event Mix

- 1.1. A Center optimization exercise shall be completed to determine the target mix of convention/meeting types (P1, P2, P3, etc.) intended to maximize financial and economic results for the City. Optimization indicates how effectively the physical space at the Center is utilized.
- 1.2. Event Mix targets shall be established with the Contractor based on the output of the optimization exercise. Contractor shall develop a model for forecasting how many P1, P2, P3, etc. events are optimal for the Center annually and a multiyear approach to achieve the optimal business mix as determined by the optimization exercise.
- 1.3. Contractor shall be evaluated on its rate of success in meeting annual event mix targets. This is calculated by dividing the actual number of events with the target number of events, multiplied by 100, for a percentage success rate. This calculation shall be applied to each event type (P1, P2, P3, etc.) in the Event Mix. The average percentages of all the P1, P2, P3, etc., combined will determine the overall success rating.
- 1.4. The assigned Weighted Percentage for this category is 10%.

2. Number of Definite Events

- 1.1. A "definite" event is a future event confirmed with a signed executed contract between an authorized agent of the event organizer and the Convention Center and at least one TID lodging business for event room blocks.
- 1.2. A target number of definite P1 and P2 events shall be established with the Contractor. Per the *Convention Center Booking Policy Guidelines*, P1 and P2 events are defined as follows:

Priority	Peak Room Nights	Combined Building Spend	Economic Impact	Convention Center Impact	Community Impact	Booking Window
Priority 1 (full center user)	1,100 rooms on peak or greater	\$1,000,000+	High	High	Medium	18+ months
Priority 2	600-1,099 rooms on peak	\$750,000-\$1,000,000	High	Medium	Low	13-18 months

1.3. Contractor shall track all events P1 through P6; however, Contractor shall be evaluated on its rate of success in meeting the target number of definite P1 and P2 events. This is calculated by dividing the actual number of definite P1 and P2 events by the target number of definite P1 and P2 events, multiplied by 100, for a percentage success rate.

1.4. The assigned Weighted Percentage for this category is 15%.

3. **Convention Center Gross Revenue**

3.1. It is expected that P1 and P2 events will generate a certain level of Gross Revenue at the Convention Center. Contractor shall establish target revenue projections for P1 and P2 events in accordance to the *Convention Center Booking Policy Guidelines* and by using historical information of group/client actual event spend including rental, food and beverage services, audio-visual services, information technology services and other event related services.

3.2. Contractor shall be evaluated on its rate of success in meeting revenue projections. This is calculated by dividing actual revenue by the revenue goal, multiplied by 100, for a percentage success rate.

3.3. The assigned Weighted Percentage for this category is 15%.

4. **Number of Room Nights Booked**

4.1. The total number of room nights booked is the total number of rooms blocked at Santa Clara lodging businesses for a P1 or P2 event, multiplied by the number of nights each room is reserved.

4.2. The target number of room nights blocked shall be established in accordance to the *Convention Center Booking Policy Guidelines* and by using group/client room block history.

4.3. Contractor shall be evaluated on its rate of success in meeting target number. This is calculated by dividing the actual number of room nights booked by the target number, multiplied by 100, for a percentage success rate.

4.4. The assigned Weighted Percentage for this category is 10%.

5. **Number of Room Nights Consumed**

5.1. The total number of nights consumed is the total number of rooms occupied at Santa Clara lodging businesses for a P1 or P2 event, multiplied by the number of nights each room is occupied.

- 5.2. The target number of room nights consumed will be validated by Santa Clara lodging businesses providing reports to Contractor with supporting client data.
- 5.3. Contractor shall be evaluated on its rate of success in meeting the target number. This is calculated by dividing the actual number of room nights consumed by the target number, multiplied by 100, for a percentage success rate.
- 5.4. The assigned Weighted Percentage for this category is 5%.

6. Number of Weeks Impacted

- 6.1. Defined as the number of weeks throughout the year where a P1 event, citywide or a combination of events positively impacts the host destination's local economy.
- 6.2. Using the Convention Center calendar and the target number of P1 events, Contractor shall establish the target number of weeks impacted by P1 events.
- 6.3. Contractor shall be evaluated on its rate of success in meeting target number of weeks impacted. This is calculated by dividing the actual number of weeks impacted by the target number of weeks impacted, multiplied by 100, for a percent success rate.
- 6.4. The assigned Weighted Percentage for this category is 15%.

7. Customer Service Survey Results

- 7.1. Customer service is the direct interaction and assistance provided by Contractor to individuals or groups looking to hold an event in Santa Clara.
- 7.2. Customer service satisfaction surveys shall be administered by a third-party administrator to Convention Center meeting planners, clients and attendees. The survey instrument shall measure the overall customer satisfaction with the Contractor's performance in providing services and survey results shall be provided directly to City.
- 7.3. City shall establish the target overall satisfaction rating with Contractor. Contractor shall be evaluated on its rate of success on meeting the target rating. This is calculated by dividing the actual overall rating by the target overall rating, multiplied by 100, for a percent success rate.
- 7.4. The assigned Weighted Percentage for this category is 10%.

8. Prospects

- 8.1. Prospects are any person or entity that is potentially interested in booking an event at the Convention Center.
- 8.2. Contractor shall develop and maintain a Customer Relations Management System (CRMS), a database of prospects, and engage in sales activities to convert potential customers to current customers.
- 8.3. The target number of prospects shall be determined by the optimization process and Contractor shall be evaluated on the number new prospects Contractor adds to the CRMS. Contractor shall be evaluated on its rate of success on meeting the target number for new prospects. This is calculated by dividing the actual overall number of prospects by the target overall number of prospects, multiplied by 100, for a percent success rate. (Weighted Percentage = 10%)

8.4. Contractor shall be evaluated on the prospect conversion rate which will be based upon industry conversion averages. The conversion rate is calculated by dividing the total number of definite events by the actual number of prospects. (Weighted Percentage = 5%)

8.5. The total assigned Weighted Percentage for this category 15%.

9. Economic Impact

9.1. Defined as the total value of an event, including indirect spending, on the host destination's local economy over and above the original direct spending.

9.2. The target economic impact of the P1 and P2 events booked by Contractor will be established using the Event Impact Calculator (EIC), an industry standard for measuring how events impact destinations.

9.3. Contractor shall be evaluated on its rate of success on meeting the target economic impact goal. This is calculated by dividing the actual overall number of prospects by the target overall number of prospects, multiplied by 100, for a percent success rate.

9.4. The assigned Weighted Percentage for this category is 5%.

B. KPI SCORECARD

Contractor shall achieve a minimum aggregate Scorecard of 85 points (85%) annually. The points for attainment of targets within each category are calculated on a proportionate basis. The City shall meet monthly with Contractor to monitor and assess the Contractor's progress toward achievement of the performance goals, including review of sales and marketing activity.

Example Calculation of Performance Measures

Key Performance Indicator	Target	Actual	% Success Rate	Weight	Score
Event Mix	-	-	106%	10%	10.6
Number of P1 events	3	1	33.33%	-	-
Number of P2 events	7	3	42.9%	-	-
Number of P3 events	23	15	150%	-	-
Number of P4 events	12	20	150%	-	-
Number of P5 events	25	30	120%	-	-
Number of P6 events	20	28	140%	-	-
Number of Definite Events	5	4	80%	15%	12.00
Convention Center Revenue	\$4 million	\$3.75 million	93.75%	15%	14.06
Number of Room Nights Booked	10,000	8,500	85%	10%	8.50
Number of Room Nights Consumed	12,000	9,250	77.08%	5%	3.84
Number of Weeks Impacted	4	2	50%	15%	7.50

Customer Service Survey Results	85%	88%	103.5%	10%	10.35
Prospects	-	-		15%	17.06
Number of Prospects	100	130	130%	10%	13.00
Prospect Conversion Rate	20%	16.5%	81.25%	5%	4.06
Economic Impact	\$2 million	\$1.8 million	82.5%	5%	4.13
Scorecard Total					88.04

C. GOAL SETTING

Throughout the term of the Agreement, Contractor shall lead an annual goal setting process related to the contractual metrics that includes a defined internal process and the participation of the City, TID lodging businesses, and the Center operator and food and beverage provider. Contractor shall develop an annual calendar showing when the agreed upon goal setting steps will be accomplished and the City will be made aware of all meetings to execute the goal setting process. The goal setting process shall include a review of sales activity and discussions on need periods, targeted vertical markets and underperforming markets.

EXHIBIT C REPORTING

A. MONTHLY REPORTS

On or before the 5th day of each month, Contractor shall provide City a written brief on all activities of Contractor, including the scheduling of events, room night bookings, the economic impact the City has or is forecasted to receive from Center bookings and events the previous month, and local businesses economic opportunities.

B. QUARTERLY REPORTS

Contractor shall submit a quarterly written report to the City no later than October 15, January 15, April 15 and July 15 of each fiscal year.

Each report shall include:

- a. Summary of activities performed relative to this Agreement;
- b. Financial reporting of expenditures;
- c. Monthly and YTD performance of the designated KPI's vs goals

C. ANNUAL REPORTS

1. Sales and Marketing Plan

During the second quarter of each fiscal year, the Contractor's Board of Directors shall adopt an Annual Sales and Marketing Plan that will be implemented during the following Fiscal Year (July – June). Contractor shall submit to City, a comprehensive convention sales and marketing plan, as well as marketing approaches for all event types at the Center and any amendments thereto (such plan and amendments hereinafter referred to singly and collectively as the "Convention Sales and Marketing Plan" or "Plan". The Plan shall:

- a. Formulate a strategy for acquiring new and maintaining existing desirable convention, trade show and group leisure clients of the Convention Center and the destination;
- b. Identify: Ideal customers by industry, type of business, and other appropriate factors as determined by Contractor and customers that should be targeted for development;
- c. Describe the unique selling proposition that sets Santa Clara and the Center apart from competing destinations and venues;
- d. Define the sales territory(ies) and/or market segment(s) that will be targeted and the rationale for such delineation;
- e. Address competitive factors, including venues and the value proposition of the destination and the Center relative to such competition and all targeted markets; and
- f. Articulate a forecast of sales and marketing results each quarter and annually, and include sales head count, sales activity, Center revenue,

room nights and economic impact generated, with the understanding that sales expectations.

2. Annual Report

Contractor shall prepare an annual report in conformance to and as set forth by the applicable Government Code for TIDs. The annual report shall also include the following:

- a. Executed Sales and Marketing Activities;
- b. Annual results of KPI's vs goals with accompanying narrative related to achievement;
- c. List of Priority 1 and Priority 2 citywide bookings for the fiscal year;
- d. Other key achievements; and
- e. Proposed Annual Budget for future fiscal year.

EXHIBIT D

INSURANCE REQUIREMENTS

Without limiting the Contractor's indemnification of the City, 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 the City, 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 the City of Santa Clara so that any other coverage held by the City shall not contribute to any loss under Contractor's insurance. The minimum coverages, provisions and endorsements are as follows:

A. 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
2. 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.
3. 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:
 - a. Coverage shall be on a "pay on behalf" basis with defense costs payable in addition to policy limits;
 - b. There shall be no cross-liability exclusion which precludes coverage for claims or suits by one insured against another; and
 - c. 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.

B. 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.

C. 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 the City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents.

D. 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 City Attorney's Office.

E. 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. City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents are hereby added as additional insureds in respect to liability arising out of Contractor's work for City, 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.

- a. 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 City 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.
- b. 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 City 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.

F. ADDITIONAL INSURANCE RELATED PROVISIONS

Contractor and City 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 City, all agreements with, and insurance compliance documents provided by, such subcontractors and others engaged in the project will be submitted to City 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 City or Contractor for the cost of additional insurance coverage required

by this Agreement. Any such provisions are to be deleted with reference to City. It is not the intent of City to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against City for payment of premiums or other amounts with respect thereto.

3. The City reserves the right to withhold payments from the Contractor in the event of material noncompliance with the insurance requirements set forth in this Agreement.

G. 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 City and as described in this Agreement. Contractor shall file with the City all certificates and endorsements for the required insurance policies for City's approval as to adequacy of the insurance protection.

H. 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 City, or its representative as set forth below, at or prior to execution of this Agreement. Upon City's request, Contractor shall submit to City 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 City pursuant to this Agreement shall be mailed to:

EBIX Inc.
City of Santa Clara City Manager's Office
P.O. Box 100085 – S2
Duluth, GA 30096

Telephone number: 951-766-2280
Fax number: 770-325-0409
Email address: ctsantaclara@ebix.com

I. 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 City or its insurance compliance representatives.

EXHIBIT E

SANTA CLARA CONVENTION CENTER BOOKING POLICY GUIDELINES

Overview

A primary objective and high priority of the Santa Clara Convention Center (SCCC) is to host multi-day National/Regional Conventions, Conferences, Meetings and Events that will generate the greatest economic impact for the TID while also generating revenue for the Center. These conventions will bring attendees primarily from out of town and generate a positive impact for the SCCC and Santa Clara businesses.

The following guidelines give priority to Events, (Conventions, Conferences, Meetings, etc.) that will generate the greatest hotel room usage, economic benefit through direct spending as well as revenue for SCCC. These guidelines are general in nature and are intended to serve as a consistent basis for decision making. Consideration of events not conforming to the stated schedule can be made on a group-by-group basis to determine the extent to which they concur with the DMO's and the Convention Center's primary objectives. This approach also lays the groundwork for developing sales and marketing strategies to focus on attracting the highest priority groups to Santa Clara.

Booking Priorities (Weekday and Weekend)

Priority One Weekday: Priority 1 (P1) events would have a minimum peak (highest number of rooms per day) of 900 rooms at hotels located within the Santa Clara TID. These events would typically include conventions and/or trade shows that are regional, national, or international in scope. P1 events may book space at SCCC including all ballrooms at any time. The calendar would essentially be held exclusively for P1 events 18 months and out. Only P1 events will be issued license agreements more than 18 months in advance of the event unless approved by the City of Santa Clara (City), the DMO and Spectra. P1 events are expected to produce significant revenue for SCCC. The target is \$650,000 in overall gross revenue to SCCC.

Priority One Weekend: Priority 1 (P1) events would have a peak (highest number of rooms per day) of 400 rooms at hotels located within the Santa Clara TID. These events would typically include conventions and/or trade shows that are regional, national, or international in scope. P1 events may book space at SCCC including all ballrooms at any time. The calendar would essentially be held exclusively for P1 events 18 months and out. Only P1 events will be issued license agreements more than 18 months in advance of the event unless approved by the City, the DMO and Spectra. P1 events are expected to produce significant revenue for SCCC. The target for weekend P1 events is \$450,000 in overall gross revenue to the SCCC.

Priority Two Weekday: Priority 2 (P2) events would have a peak of 600-899 room nights at hotels located within the Santa Clara TID. These events would typically include regional multiple-day corporate meetings, trade shows, etc. P2 events may book space between 13-18 months. P2 events can only book space beyond 18 months on a "1st

Option” basis and only with approval from the DMO and Spectra. License agreements for P2 events will only be issued within the 13-18-month window. P2 events are expected to generate \$250,000 – \$649,000,000 in overall gross revenue to SCCC.

Priority Two Weekend: Priority 2 (P2) events would have a peak of 100-399 room nights at hotels located within the Santa Clara TID. These events would typically include regional multiple-day SMERF or Association meetings, trade shows, etc. P2 events may book space between 13-18 months. P2 events can only book space beyond 18 12 months on a “1st Option” basis and only with approval from the DMO and Spectra. License agreements for P2 events will only be issued within the 13-18 month window. P2 weekend events are expected to generate \$250,000 – \$449,999 in overall gross revenue to SCCC.

Priority Three Weekday: Priority 3 (P3) events would have a peak of 150-599 Room Nights at hotels located within Santa Clara. These events would typically include local or regional meetings or trade shows. P3 events may book space within 0-13 months. P3 events may book space beyond 13 months on a “1st Option” basis and only with approval from the DMO and Spectra. License agreements for P3 events will only be issued within the 0-13-month window. P3 events are expected to generate \$150,000 – \$249,000 in overall gross revenue to SCCC.

Priority Three Weekend: Priority 3 (P3) events would have a peak of 50-99 Room Nights at hotels located within Santa Clara. These events would typically include local or regional meetings or trade shows. P3 events may book space within 0-13 months. P3 events may book space beyond 13 months on a “1st Option” basis and only with approval from the DMO and Spectra. License agreements for P3 events will only be issued within the 0-13 month window. P3 weekend events are expected to generate \$100,000 - \$249,999 in overall gross revenue to SCCC.

Priority Four Weekday: Priority 4 (P4) events would have a peak of less than 149 room nights. These events typically include consumer shows, one day meetings and larger social events. P4 events can only book space within 9 months. P4 events may book space beyond 9 months on a “1st Option” basis and only with approval from the DMO and Spectra. P4 events are expected to deliver \$50,000 - \$149,000 in overall gross revenue to SCCC. License agreements for P4 events will only be issued within the 0-9 month window.

Priority Four Weekend: Priority 4 (P4) events would have a peak of less than 50 room nights. These events typically include consumer shows, one day meetings and larger social events. P4 events can only book space within 6 months. P4 events may book space beyond 6 months on a “1st Option” basis and only with approval from the DMO and Spectra. P4 weekend events are expected to generate \$50,000 – \$99,999 in overall gross revenue to SCCC.

Priority Five Weekday: Priority 5 (P5) events would have no room night requirements. These events typically include social events and day meetings. P5 events can only book

space within 3 months. P5 events may book space beyond 3 months on a “1st Option” basis and only with approval from the DMO and Spectra. License agreements for P5 events will only be issued within the 3-month window. P5 events are expected to generate \$10,000 – \$49,000 in overall gross revenue.

Priority Five Weekend. Priority 5 (P5) events would have no room night requirements. These events typically include social events and day meetings. P5 events can only book space within 3 months. P5 events may book space beyond 3 months on a “1st Option” basis and only with approval from the DMO and Spectra. License agreements for P5 events will only be issued within the 3-month window. P5 events are expected to generate \$10,000 – \$49,000 in overall gross revenue to SCCC.

Ineligible Events: In keeping with the three overarching measurements of success, an event will be deemed ineligible for SCCC if it does not produce sufficient economic impact, SCCC revenue (less than \$10,000) or have a meaningful impact on the Santa Clara community.

Overview

Weekday Groups

Priority	Booking Window	Minimum Room Nights on peak
P1	18-months +	900
P2	13-18 months	600-899
P3	0-13 months	150-599
P4	0-9 months	0-149
P5	0-3 months	N/A

Weekend Groups (Friday-Sunday & Holidays)

Priority	Booking Window	Minimum Room Nights on peak
P1	18-months +	400
P2	13-18 months 0-12 months	100-399
P3	0-13 months	0-99
P4	0-6 months	N/A
P5	0-3 months	N/A

In reference to the criteria established within in each Booking Priority category, DMO and Spectra have discretion to consider the following factors when booking an event. These factors may support an event’s case for flexibility in the booking policy based on recommendation from Spectra’s GM, the DMO and ultimately approval by the City:

- Economic impact on the City of Santa Clara
- Hotel room utilization
- Revenue to SCCC
- Time of year (peak vs. non-peak seasons and what year)

- How short term it is, and does it fill a slow period
- Number of days of use
- Potential for repeat booking
- Applicant's event history and experience
- Compatibility with concurrent facility users
- Community Impact

Events are booked on a first-come, first-serve basis within the criteria established in the Booking Priority categories noted above. Event bookings are not considered "Definite" until both Spectra and the Licensee have executed the license agreement. For P1 and P2 bookings, a signed hotel contract must also be completed.

Gross Revenue Variances – Upgrading Priorities

Events listed as P2, P3 or P4 may be upgraded to a higher priority based on estimated Gross Revenue with a lesser room block commitment to the Center.

Events that are estimated to generate:

- \$1M or more to the Center may be upgraded to P2 and may be booked 13-18 months in advance of the event start date.
- \$750k-\$1M may be upgraded to P3/P4 and may be booked 0-13 months in advance of the event start date.
- \$500k-\$749k may be upgraded to P5 and may be booked 0-12 months in advance of the event start date

***Overview Chart – Included as Attachment A**

Event Type - Definitions

Tradeshows: An exhibition of products and/or services held for members of a common or related industry. Not open to the general public.

Conventions: An event where the primary activity of the attendees is to attend educational sessions, participate in meetings/discussions, socialize or attend other organized events of which the attendees are primarily from out of town. Sometimes there is a secondary exhibit component.

Consumer Shows: An exhibition that is open to the public, usually requiring an entrance fee. Common examples of consumer shows include auto shows, bridal shows, boat shows, flower and garden shows, craft shows and festivals.

Banquets/Social Events: Formal, often ceremonial, dinner for a select group of people, often in honor of a particular person. The meal is the primary component of the event, consisting of a sit-down breakfast, lunch or dinner.

Meetings & Seminars: An event where the primary activity of the attendees is to attend educational sessions, participate in meetings/discussions, socialize, or attend other organized events. There is no exhibit component to this event.

Sporting Events: An event where athletes or individuals compete, and spectators view the event activities and/or ceremonies.

Community Based Event: An event that has been designed to encourage community participation at the SCCC. These could be in conjunction with the City or designated non-profit organizations.

Attachment A – Overview Chart

Priority	Peak Room Nights	Combined Building Spend	Economic Impact	Convention Center Impact	Community Impact	Booking Window
Priority 1 (full center user)	1,100 rooms on peak or greater	\$1,000,000+	High	High	Medium	18+ months
Priority 2	600-1,099 rooms on peak	\$750,000-\$1,000,000	High	Medium	Low	13-18 months
Priority 3	100-599 rooms on peak	\$500,000-\$750,000	Medium	Medium	Medium	0-13 months
Priority 4	< 100 rooms on peak	\$200,000-\$500,000	Medium	High	Low	0-13 months
Priority 5 (social events)	Non room night generating	\$90,000 - \$199,000	Low	High	Medium	0-12 months
Priority 6	Non room night generating	\$10,000 – \$89,0000	Low	Medium	Medium	Within six months
Community	Non room night generating	N/A	Low	Low	High	0-6
Non-Eligible Events	Non room night generating	<\$10,000	Low	Low	Low	Not eligible