

**AGREEMENT BETWEEN  
CITY/COUNTY ASSOCIATION OF GOVERNMENTS OF SAN MATEO COUNTY  
AND  
JOINT VENTURE SILICON VALLEY**

This Agreement entered this \_\_\_\_ day of \_\_\_\_\_, 2019 by and between the CITY/COUNTY ASSOCIATION OF GOVERNMENTS OF SAN MATEO COUNTY, a joint powers agency whose members include the County of San Mateo and the twenty incorporated cities and towns within San Mateo County, hereinafter called “C/CAG,” and Joint Venture Silicon Valley, hereinafter called “Consultant”.

**WHEREAS**, C/CAG is a joint powers agency formed for the purpose of preparation, adoption and monitoring of a variety of county-wide state-mandated plans; and

**WHEREAS**, Joint Venture Silicon Valley is a California non-profit corporation that promotes and facilitates greater cooperation and understanding within the region’s public and private sectors; and

**WHEREAS**, C/CAG desires to work jointly with organizations that support initiatives aimed at reducing energy use and greenhouse gas emissions; and

**WHEREAS**, C/CAG supports the Silicon Valley Index, the Joint Venture Silicon Valley’s facilitation of the public sector climate protection task force that includes cities from San Mateo County, and transportation management coordination activities; and

**WHEREAS**, C/CAG has determined that Consultant has the requisite qualifications to perform this work; and

**WHEREAS**, the total amount available to Consultant under this Agreement is not to exceed \$75,000.

**NOW, THEREFORE, IT IS HEREBY AGREED** by the parties as follows:

1. **Services to be provided by Consultant.** In consideration of the payments hereinafter set forth, Consultant agrees to perform the services described in Exhibit A, attached hereto (the “Services”). All Services are to be performed and completed by June 30, 2021.
2. **Payments.** In consideration of the Services rendered with all terms, conditions, and specifications set forth herein, C/CAG shall reimburse Consultant based on the costs set forth in Exhibit A up to a maximum amount of seventy-five thousand dollars (\$75,000) for Services provided during the Contract Term as set forth below. Payments shall be made to Consultant based on C/CAG’s approval of the progress report submitted by Consultant that identifies expenditures and describes Services performed in accordance with the Agreement. C/CAG shall have the right to receive, upon request, documentation substantiating charges billed to C/CAG.

3. **Contract Materials.** At the end of the Contract Term, or in the event of termination, all finished or unfinished documents, data, studies, maps, photographs, reports, and other written materials (collectively referred to as “contract materials”) prepared by Consultant under this Agreement shall become the property of C/CAG and shall be promptly delivered to C/CAG. Upon termination, Consultant may make and retain a copy of such contract materials if permitted by law.
4. **Relationship of the Parties.** It is understood that Consultant is an Independent Consultant and this Agreement is not intended to, and shall not be construed to, create the relationship of agent, servant, employee, partnership, joint venture or association, or any other relationship whatsoever other than that of Independent Consultant.
5. **Non-Assignability.** Consultant shall not assign this Agreement or any portion thereof to a third party, or subcontract with a third party, without the prior written consent of the C/CAG Executive Director. Any such assignment or subcontract without the C/CAG Executive Director’s prior written consent shall give C/CAG the right to automatically and immediately terminate this Agreement without penalty or advance notice.
6. **Contract Term/Termination.** This Agreement shall be in effect as of **July 12, 2019** and shall terminate on June 30, 2021; provided, however, the C/CAG Chairperson may terminate this Agreement at any time for any reason by providing 30 days’ notice to Consultant. Termination will be effective on the date specified in the notice. In the event of termination under this paragraph, Consultant shall be paid for all services provided to the date of termination, subject to availability of funding. Such payment shall be that prorated portion of the full payment determined by comparing the work actually completed to the work required by the Agreement.
7. **Hold Harmless/Indemnity.**
  - a. *General.* Consultant shall indemnify and save harmless C/CAG and its officers, agents, employees, and servants from all claims, suits, or actions of every name, kind, and description resulting from this Agreement, the performance of any work or services required of Consultant under this Agreement, or payments made pursuant to this Agreement brought for, or on account of, any of the following: (A) injuries to or death of any person, including Consultant or its employees/officers/agents; (B) damage to any property of any kind whatsoever and to whomsoever belonging; (C) any sanctions, penalties, or claims of damages resulting from Consultant’s failure to comply, if applicable, with the requirements set forth in the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended; or (D) any other loss or cost, including but not limited to that caused by the concurrent active or passive negligence of C/CAG and/or its officers, agents, employees, or servants. However, Consultant’s duty to indemnify and save harmless under this Section shall not apply to injuries or damage for which C/CAG has been found in a court of competent jurisdiction to be solely liable by reason of its own negligence or willful misconduct. The duty of Consultant to indemnify and save

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

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

- b. *Intellectual Property.* Consultant hereby certifies that it owns, controls, and/or licenses and retains all right, title, and/or interest in and to any intellectual property it uses in relation to this Agreement, including the design, look, feel, features, source code, content, and/or other technology relating to any part of the services it provides under this Agreement and including all related patents, inventions, trademarks, and copyrights, all applications therefor, and all trade names, service marks, know how, and trade secrets (collectively referred to as “IP Rights”) except as otherwise noted by this Agreement.

Consultant warrants that the services it provides under this Agreement do not infringe, violate, trespass, or constitute the unauthorized use or misappropriation of any IP Rights of any third party. Consultant shall defend, indemnify, and hold harmless C/CAG from and against all liabilities, costs, damages, losses, and expenses (including reasonable attorney fees) arising out of or related to any claim by a third party that the services provided under this Agreement infringe or violate any third-party’s IP Rights provided any such right is enforceable in the United States. Consultant’s duty to defend, indemnify, and hold harmless under this Section applies only provided that: (a) C/CAG notifies Consultant promptly in writing of any notice of any such third-party claim; (b) C/CAG cooperates with Consultant, at Consultant’s expense, in all reasonable respects in connection with the investigation and defense of any such third-party claim; (c) Consultant retains sole control of the defense of any action on any such claim and all negotiations for its settlement or compromise (provided Consultant shall not have the right to settle any criminal action, suit, or proceeding without C/CAG’s prior written consent, not to be unreasonably withheld, and provided further that any settlement permitted under this Section shall not impose any financial or other obligation on C/CAG, impair any right of C/CAG, or contain any stipulation, admission, or acknowledgement of wrongdoing on the part of C/CAG without C/CAG’s prior written consent, not to be unreasonably withheld); and (d) should services under this Agreement become, or in Consultant’s opinion be likely to become, the subject of such a claim, or in the event such a third party claim or threatened claim causes C/CAG’s reasonable use of the services under this Agreement to be seriously endangered or disrupted, Consultant shall, at Consultant’s option and expense, either: (i) procure for C/CAG the right to continue using the services without infringement or (ii) replace or modify the services so that they become non-infringing but remain functionally equivalent.

Notwithstanding anything in this Section to the contrary, Consultant will have no obligation or liability to C/CAG under this Section to the extent any otherwise covered claim is based upon: (a) any aspects of the services under this Agreement

which have been modified by or for C/CAG (other than modification performed by, or at the direction of, Consultant) in such a way as to cause the alleged infringement at issue; and/or (b) any aspects of the services under this Agreement which have been used by C/CAG in a manner prohibited by this Agreement.

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

8. **Insurance.**

- a. *General Requirements.* Consultant or its subconsultants performing the services on behalf of Consultant shall not commence work under this Agreement until all insurance required under this section has been obtained. Consultant shall use diligence to obtain such insurance. Consultant shall furnish C/CAG with Certificates of Insurance evidencing the required coverage and there shall be a specific contractual liability endorsement extending Consultant's coverage to include the contractual liability assumed by Consultant pursuant to this Agreement. These Certificates shall specify or be endorsed to provide that thirty (30) days' notice must be given, in writing, to C/CAG of any pending change in the limits of liability or of non-renewal, cancellation, or modification of the policy.
- b. *Workers' Compensation and Employer Liability Insurance.* Consultant shall have in effect, during the entire life of this Agreement, Workers' Compensation and Employer Liability Insurance providing full statutory coverage. In signing this Agreement, Consultant certifies, as required by Section 1861 of the California Labor Code, that (a) it is aware of the provisions of Section 3700 of the California Labor Code, which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the Labor Code, and (b) it will comply with such provisions before commencing the performance of work under this Agreement.
- c. *Liability Insurance.* Consultant shall take out and maintain during the life of this Agreement such Bodily Injury Liability and Property Damage Liability Insurance as shall protect Consultant, its employees, officers and agents while performing work covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as any and all claims for property damage that may arise from Consultant's operations under this Agreement, whether such operations be by Consultant or by any sub-consultant or by anyone directly or indirectly employed by either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall be not less than \$1,000,000 unless another amount is specified below and shows approval by C/CAG Staff.
- d. *Insurance Limits; Insured Entities; Breach.* Required insurance shall include:

	Required Amount	Approval by C/CAG Staff if under \$ 1,000,000
1. Comprehensive General Liability	\$ 1,000,000	_____
2. Workers' Compensation	\$ Statutory	_____
3. Professional Liability	\$1,000,000	_____
4. Motor Vehicle Liability	\$1,000,000	_____

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

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

9. **Compliance with All Laws.** Consultant shall at all times comply with all applicable federal, state, San Mateo County, and municipal laws, ordinances, and regulations, including without limitation those regarding services to disabled persons, including any requirements of Section 504 of the Rehabilitation Act of 1973. In the event of a conflict between the terms of this Agreement and any applicable State, Federal, San Mateo County, or municipal law or regulation, the requirements of the applicable law or regulation will take precedence over the requirements set forth in this Agreement. Consultant will timely and accurately complete, sign, and submit all necessary documentation of compliance.
10. **Non-discrimination.** Consultant and any subconsultants performing the services on behalf of Consultant shall not discriminate or permit discrimination against any person or group of persons on the basis of race, color, religion, national origin or ancestry, age, sex, sexual orientation, marital status, pregnancy, childbirth or related conditions, medical condition, mental or physical disability or veteran's status, or in any manner prohibited by federal, state or local laws.
11. **Substitutions.** If particular persons or classifications are identified in Exhibit A as working on this Agreement, Consultant will not assign others to work in their place without the prior written consent of the C/CAG Executive Director. Any substitution shall be with a person or classification of commensurate experience and knowledge

unless otherwise authorized by the C/CAG Executive Director.

12. **Sole Property of C/CAG.** Work products of Consultant which are delivered under this Agreement or which are developed, produced and paid for under this Agreement, shall be and become the property of C/CAG. Consultant shall not be liable for C/CAG's use, modification or re-use of products without Consultant's participation or for purpose other than those specifically intended pursuant to this Agreement.
13. **Record Retention; Right to Monitor and Audit.**
  - a. Consultant shall maintain all required records relating to services provided under this Agreement for three (3) years after C/CAG makes final payment and all other pending matters are closed, and Consultant shall be subject to the examination and/or audit by C/CAG, a Federal grantor agency, and the State of California.
  - b. Consultant shall comply with all program and fiscal reporting requirements set forth by applicable Federal, State, and local agencies and as required by C/CAG.
  - c. Consultant agrees upon reasonable notice to provide to C/CAG, to any Federal or State department having monitoring or review authority, to C/CAG's authorized representative, and/or to any of their respective audit agencies access to and the right to examine all records and documents necessary to determine compliance with relevant Federal, State, and local statutes, rules, and regulations, to determine compliance with this Agreement, and to evaluate the quality, appropriateness, and timeliness of services performed.
14. **Permits/Licenses.** If any license, permit, or approval is required to perform the work or services required by this Agreement, Consultant bears the responsibility to obtain said license, permit, or approval from the relevant agency at Consultant's own expense prior to commencement of said work/services. Failure to do so will result in forfeit of any right to compensation under this Agreement.
15. **Merger Clause; Amendments.** This Agreement, including Exhibits A attached hereto and incorporated herein by reference, constitutes the sole agreement of the parties hereto with regard to the matters covered in this Agreement, and correctly states the rights, duties and obligations of each party as of the document's date. Any prior agreement, promises, negotiations or representations between the parties not expressly stated in this Agreement are not binding. All subsequent amendments shall be in writing and signed by the C/CAG Chair. In the event of a conflict between the terms, conditions or specifications set forth herein and those in Exhibit A attached hereto, the terms, conditions or specifications set forth herein shall prevail.
16. **Governing Law.** This Agreement shall be governed by the laws of the State of California, without regard to its choice of law rules, and any suit or action initiated by either party shall be brought in the County of San Mateo, California.
17. **Notices.** All notices hereby required under this agreement shall be in writing and

delivered in person or sent by certified mail, postage prepaid and addressed as follows:

City/County Association of Governments of San Mateo County  
555 County Center, 5th Floor  
Redwood City, CA 94063  
Attention: Sandy Wong, Executive Director

Notices required to be given to Consultant shall be addressed as follows:

Joint Venture Silicon Valley  
100 W. San Fernando, Suite 310  
San Jose, CA 95113  
Attention: Russell Hancock, Chief Executive Officer

IN WITNESS WHEREOF, the parties hereto have affixed their hands on the day and year first above written.

**Joint Venture Silicon Valley (Consultant)**

By \_\_\_\_\_  
Date \_\_\_\_\_

**City/County Association of Governments of San Mateo County (C/CAG)**

By \_\_\_\_\_  
Maryann Moise Derwin  
C/CAG Chair  
Date \_\_\_\_\_

C/CAG Legal Counsel

By \_\_\_\_\_  
Matthew J. Sanders, C/CAG Counsel

**Exhibit A**

**SUMMARY PAGE**

Agency:	Joint Venture Silicon Valley
Project:	2019/20 and 2020/21 Agreement
Description:	Joint Venture Silicon Valley promotes and facilitates greater cooperation and understanding within the region’s public and private sectors through initiatives, forums and subcommittees. Through this agreement Joint Venture agrees to assist the City/County Association of Governments of San Mateo County (C/CAG) and its members with meeting their transportation sustainability goals; and C/CAG agrees to support Joint Venture’s Index of Silicon Valley.
Contract Not to Exceed:	\$75,000 (total for two fiscal years)
Payment Terms:	Net 30 (as billed)
Agreement Term:	Start Date: <u>7/1/2019</u> End Date: <u>6/30/2021</u>

**PARTIES TO AGREEMENT:**

	<b>Service Provider</b>	<b>Local Government Agency</b>
Agency Name:	Joint Venture Silicon Valley	City/County Association of Governments of San Mateo County (C/CAG)
Address:	100 W. San Fernando, Suite 310	555 County Center, 5 <sup>th</sup> Floor
City/State/Zip Code:	San Jose, CA 95113	Redwood City, CA 94063
Attention:	Russell Hancock Chief Executive Officer	Sandy Wong Executive Director
Email Address:	<b>hancock@jointventure.org</b>	<b>slwong@smcgov.org</b>
Telephone No.:	408-298-9330	650-599-1409
Taxpayer ID	77-0332854	
Type of Entity:	California non-profit corporation	



## SCOPE OF SERVICES

1. Support and services to San Mateo County cities and County staff:
  - a) Up to 4 meetings on transportation - climate topics will be held for attendees from San Mateo County cities and county representatives.  
\$2,500 per meeting
  - b) Workshops at the request of C/CAG:  
Up to 2 workshops on topics of mutual interest; Joint Venture to provide cost estimates for workshops to C/CAG in advance.  
  
Not to exceed \$5,000 total over term of agreement

\$15,000 total over term of agreement

2. Development of Index of Silicon Valley/State of the Valley participation:
  - a) C/CAG input on relevant indicators.
  - b) Acknowledgement of C/CAG sponsorship in publication.
  - c) A half-table at State of the Valley conference.

\$15,000 for 2020 Index of Silicon Valley

\$15,000 for 2021 Index of Silicon Valley

3. Funding toward transportation management coordination activities.
  - a) Steering Committee seat for a C/CAG representative on (post-Manzanita) initiative.
  - b) Staff time to support future convenings
  - c) Research and analysis
  - d) Acknowledgement of C/CAG sponsorship at events and in any publications of initiative.

\$30,000

## PAYMENT TO JOINT VENTURE AND REPORTING

Joint Venture will report on progress in milestone reports to C/CAG, which will include invoices commensurate with progress.