

SAN BRUNO

Community Foundation

Audit Committee

Raul Gomez, *Chair* • Malissa Netane-Jones, *Member*
Leslie Hatamiya, *Executive Director*

AGENDA

SAN BRUNO COMMUNITY FOUNDATION

Special Meeting of the Audit Committee

January 27, 2020

4:00 p.m.

Meeting Location:

San Bruno City Hall, 567 El Camino Real, Room 101, San Bruno

In compliance with the Americans with Disabilities Act, individuals requiring reasonable accommodations or appropriate alternative formats for notices, agendas, and records for this meeting should notify us 48 hours prior to meeting. Please call the City Clerk's Office at 650-616-7058.

- 1. Call to Order**
- 2. Roll Call**
- 3. Public Comment:** Individuals are allowed three minutes, groups in attendance, five minutes. If you are unable to remain at the meeting, contact the President to request that the Board consider your comments earlier. It is the Board's policy to refer matters raised in this forum to staff for research and/or action where appropriate. The Brown Act prohibits the Board from discussing or acting upon any matter not agendaized pursuant to State Law.
- 4. Approval of Minutes:** October 18, 2019, Special Committee Meeting
- 5. Conduct of Business**
 - a. Review Proposals Received in Response to Request for Proposal for Nonprofit Audit and Tax Preparation Services and Provide Direction to Staff
- 6. Committee Member Comments**
- 7. Adjourn**

SAN BRUNO

Community Foundation

Audit Committee

Raul Gomez, *Chair* • Malissa Netane-Jones, *Member*
Leslie Hatamiya, *Executive Director*

MINUTES

SAN BRUNO COMMUNITY FOUNDATION

Special Meeting of the Audit Committee

October 18, 2019

3:00 p.m.

Meeting Location:

San Bruno City Hall, 567 El Camino Real, Room 101, San Bruno

1. **Call to Order:** Committee Chair McGlothlin called the meeting to order at 3:04 p.m.
2. **Roll Call:** Committee Members McGlothlin and Bohm, present.
3. **Public Comment:** None.
4. **Approval of Minutes:** October 23, 2018, Special Meeting: Committee Member Bohm moved to approve the minutes of the October 23, 2018, Special Meeting, seconded by Chair McGlothlin, passed unanimously.
5. **Conduct of Business**
 - a. Review Report from Novogradac & Company LLP on Audited Financial Statements for Year Ended June 30, 2019

The Committee discussed the Audited Financial Statements for the Year Ended June 30, 2019, that were prepared by the team of auditors from Novogradac & Company LLP headed by Lance Smith, CPA. Participating by teleconference, Mr. Smith thanked Executive Director Leslie Hatamiya and Accounting Consultant Frank Bittner for their work preparing for the audit and said his firm is planning to issue an unmodified, clean opinion of the Foundation's financial statements. He said the audit process went very smoothly. He noted a positive change in assets based on investment income, an increase in program expenses corresponding with an increase in grants awarded, and an increase in grants payable, as several of the larger grants are being paid out over time.

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Mr. Smith noted two new additions to this year's statements due to changes in reporting standards. First, there are new designations for Net Assets on the Statement of Financial Position: "without donor restriction" and "with donor restriction." Second, there is a new note required of all nonprofit audits on liquidity and the availability of financial assets. He noted that he did not expect any significant reporting changes to take place in 2020. Mr. Smith said that Novogradac would issue its standard letter (AU-C 260) to accompany the audited financials and reported a clean set of books with no major difficulties or misstatements/misclassifications. He said that his team intends to have a draft of the Foundation's tax returns prepared by the end of October and confirmed that he would be at the November 6 Foundation Board meeting.

In discussing the audited financial statements, Mr. Bittner, who participated in the meeting by phone, noticed that the liquidity disclosure included grants payable but not scholarships payable. Mr. Smith agreed that in the spirit of full disclosure accrued scholarships payable should also be included and said his team would produce a final draft with scholarships payable included in the liquidity disclosure.

Chair McGlothlin and Committee Member Bohm thanked Mr. Bittner for his work closing the 2018-2019 accounting books and preparing for the audit; they also thanked Mr. Smith and his team for their work on the audit.

- b. Review Request for Proposals for Audit and Tax Preparation Services and Provide Direction to Executive Director on Next Steps in the Auditor Selection Process

Executive Director Hatamiya explained that under the Foundation's Fiscal Policies and Procedures the Board must issue a Request for Proposals for Audit and Tax Preparation Services prior to the next audit, as the Foundation has been using the same auditor for the past five years, and presented to the Committee the draft RFP that she prepared. Committee members reviewed and discussed the draft RFP, requesting no changes to the draft. Ms. Hatamiya also shared a list of potential certified public accounting firms with nonprofit audit practices to whom she planned to send the RFP. The Committee directed Ms. Hatamiya to proceed with her plan to present the RFP to the Foundation Board of Directors at its November 6, 2019, meeting, distribute the RFP by mid-November, and set a January 15, 2020 deadline for proposals.

6. Committee Member Comments: Chair McGlothlin thanked Committee Member Bohm, who is retiring from the Board at the end of 2019, for her service on the Committee and expressed that he has deeply valued her perspective and experience as a nonprofit executive on the Committee.

7. Adjourn: Committee Member Bohm moved to adjourn the meeting at 4:31 p.m., seconded by Chair McGlothlin, approved unanimously.

SAN BRUNO

Community Foundation

Audit Committee

Raul Gomez, *Chair* • Malissa Netane-Jones, *Member*
Leslie Hatamiya, *Executive Director*

Respectfully submitted for approval at the Special Audit Committee Meeting of January 27, 2020, by
Audit Committee Chair Raul Gomez.

Raul Gomez, Audit Committee Chair

SAN BRUNO

Community Foundation

Memorandum

DATE: January 23, 2020

TO: Audit Committee, San Bruno Community Foundation

FROM: Leslie Hatamiya, Executive Director

SUBJECT: Review of Proposals Submitted in Response to Request for Proposals for Nonprofit Audit and Tax Preparation Services and Direction to Staff

On November 18, 2019, I began distributing to various Bay Area certified public accounting (CPA) firms with nonprofit practices the Request for Proposal for Nonprofit Audit and Tax Preparation Services (RFP) that the Audit Committee reviewed at its October 18, 2019, meeting and presented to the full Board on November 6, 2019. By the January 15, 2020, deadline, the Foundation had received proposals from six CPA firms.

I provided electronic copies of the proposals to the Committee and requested that Committee Members review the proposals by January 27.

At the January 27 Special Committee Meeting, the Committee will discuss the proposals and determine next steps in the review process. Such steps may include selecting a small number of finalists for further consideration, including interviews with the Committee and reference checks. The Committee's goal is to complete its review process by the end of February so that, at the March 4, 2020, Board meeting, it can present its recommendation, for Board consideration and approval, of a CPA firm to conduct the Foundation's next audit and prepare its federal and state tax returns.

Attachment:

1. San Bruno Community Foundation Request for Proposal for Nonprofit Audit and Tax Preparation Services, November 18, 2019

SAN BRUNO

Community Foundation

REQUEST FOR PROPOSAL FOR NONPROFIT AUDIT AND TAX PREPARATION SERVICES

November 18, 2019

The San Bruno Community Foundation (“Foundation”) requests a proposal for the annual audit of its financial statements and preparation of state and federal information tax returns (IRS-990, CA-199, and RRF-1).

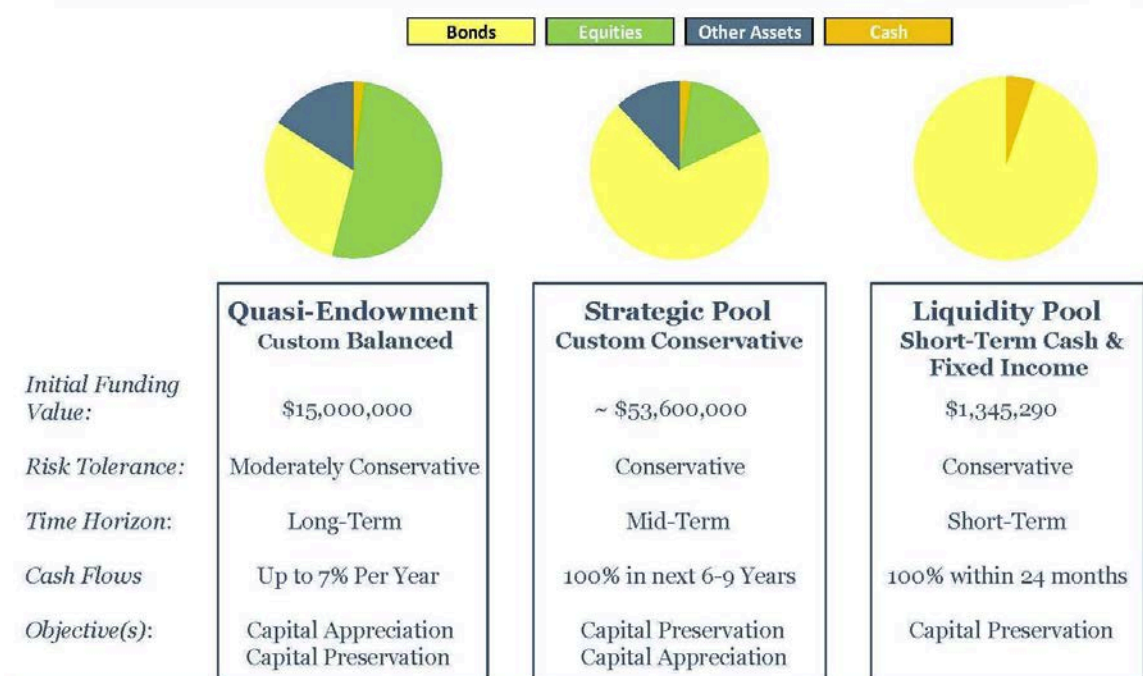
The Foundation is a nonprofit entity incorporated in California, with federal income tax exemption issued under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended. The Foundation is classified as a public charity and, under Section 509(a)(3), as a Type I supporting organization.

The San Bruno City Council created the Foundation to administer the \$70 million in restitution funds resulting from the devastating 2010 gas pipeline explosion in San Bruno’s Crestmoor neighborhood. As stated in the Foundation’s Bylaws, the primary purpose of the Foundation is “to benefit the San Bruno community through enduring and significant contributions to, and investments in, charitable and community programs, and publicly owned community facilities, over the long term.”

The Foundation runs three main programs: the Crestmoor Neighborhood Memorial Scholarship (multi-year college scholarships to San Bruno students who have been actively engaged in the San Bruno community), the Community Grants Fund (community organizations are able to apply for grants of up to \$25,000 for programs benefiting San Bruno), and a portfolio of strategic grants. Of note, the Foundation has committed to providing a series of strategic grants totaling up to \$50 million to the City of San Bruno to fund the design and construction of a new Recreation and Aquatics Center in San Bruno City Park.

A seven-member Board of Directors appointed by the City Council governs the Foundation. The Board has a two-member Audit Committee that is overseeing the auditor selection process.

The Foundation was founded in 2013 and began independent operations in early 2015. In 2016, the Foundation developed its Investment Policy Statement; established three investment accounts, each with its own strategy, for holding the funds; hired an investment management firm (Sand Hill Global Advisors, LLC); and took possession of the restitution funds. The three investment accounts are as follows:



The Foundation’s fiscal year runs from July 1 to June 30. In fiscal year 2018-2019, the Foundation reported revenues of \$3,781,370 (primarily investment income), expenses of \$7,596,815, and total year-end assets of \$75,582,041. Currently, the Foundation’s activities are primarily funded by investment income (from the Quasi-Endowment for the Crestmoor Scholarship and the Community Grants Fund, and from the Strategic Pool for other grants and operating expenses). Funding for the San Bruno Recreation and Aquatics Center project, which the Foundation is transferring to the City on a quarterly schedule based on actual expenditures, will eventually reduce the Strategic Pool. During each of the last two fiscal years, approximately five restricted donations have been received. The largest (\$100,000) supports Community Grants and the others (totaling about \$20,000) are from Community Day sponsors. For 2019-2020, total budgeted expenses are \$1,541,185. Most revenue is investment income, which is not projected or budgeted.

The Foundation employs one full-time staff person and has two part-time contractors (accounting consultant/full charge bookkeeper and program consultant). For the first three months of fiscal year 2019-2020, accounts payable payments have averaged eleven per month. In addition to savings, payroll, and general checking bank accounts, the Foundation has a credit card account in the name of the Foundation and the Executive Director.

In accordance with the Foundation’s Bylaws and Fiscal Policies and Procedures, the Foundation has its financial statements audited on an annual basis by an independent CPA. The Fiscal Policies and Procedures require the Foundation to issue a Request for Proposal (RFP) for nonprofit audit and tax preparation services at least every five years.

The Foundation's audited financial statements and federal tax returns, including those for the fiscal year ended June 30, 2019, can be downloaded at <https://www.sbcf.org/financials>.

EXPECTED ANNUAL AUDIT & TAX SERVICES DELIVERABLES

The selected auditor or CPA firm will be expected to do the following annually:

1. Conduct an audit of the Foundation's records, internal controls, and financial statements in accordance with auditing standards generally accepted in the United States of America.
2. Communicate with the Audit Committee as appropriate, before, during, and after audit fieldwork.
3. Complete audited financial statements report with appropriate accompanying notes by October 10.
4. Complete report or communication related to audit findings with Board of Directors (*e.g.*, AU-C 260 letter) by October 10.
5. Present in person both reports mentioned in numbers 3 and 4 above to the Foundation Board of Directors at its November meeting (typically the first Wednesday in November).
6. Complete IRS-990, CA-199, and RRF-1 by November 1, thereby allowing for timely filing of these forms on or before November 15 (or such extension as mutually agreed).

INFORMATION AND/OR RESPONSES TO BE PROVIDED

In order to assist the Board of Directors in its search for an auditor to provide the services described above, please provide, by January 15, 2020, a proposal that includes responses to the following:

1. Please describe your firm's background, history, and areas or industries of specialization. Highlight your experience with 501(c)(3) nonprofit organizations, particularly those with assets of at least \$50 million. Please include the names of any principals of the firm and their backgrounds. Also, provide a copy of your firm's annual report (if any) and/or other literature about your firm.
2. Please provide the location of your office(s) and the names and titles of personnel that are expected to be involved in the Foundation's annual audit and tax services.
3. Please provide a proposed timeline for fieldwork and final reporting for all services requested, assuming an on-time November 15 tax filing for fiscal year 2019-2020.
4. Does your firm have a written Code of Conduct, Ethics Policy, or Conflict of Interest Policy? If so, please provide a copy of each.

5. Please describe the level of coverage for errors and omissions and professional liability insurance your firm carries. List the insurance carrier(s) supplying the coverage.
6. Has your firm, or anyone in your firm, provided any gifts, travel and room expenses, entertainment, or meals to any Foundation Board member or employee during the past 12 months? If yes, please describe in detail.
7. What makes your firm superior to other firms that the Foundation may be considering?
8. Provide a list of other nonprofit 501(c)(3) clients for whom your firm provides annual audit services. Also, please provide a sample of your audit reports for such organizations.
9. Please provide a reference to three of your nonprofit 501(c)(3) clients that have contracted with your firm for annual audit and tax preparation services during the past five years.
10. What will be your projected fee for completing all services described above in the “Expected Annual Audit & Tax Services Deliverables” section of this RFP for fiscal year 2019-2020? Indicate how these fees may change for fiscal years 2020-2021, 2021-2022, and beyond. Do you provide any financial incentives for clients who are particularly well prepared and organized in preparing for the audit?
11. Does the fee described above differ from fees charged to other clients? If yes, please explain.
12. Describe any other potential fees the Foundation may be charged, based upon common situations with other clients.
13. Include a copy of your firm’s pre-audit requests for information that your clients are required to provide, including any worksheets and questionnaires. How far in advance of the site visit must the information be submitted to your firm?
14. Describe your process for informing clients of the timeline for completion of the audit and tax filings.
15. Include a copy of your firm’s most recent peer review report, the related letter of comments, and the firm’s response to the letter of comments.
16. Provide any additional information that you believe to be relevant to the Request for Proposal and your capability to provide the services requested.

Basis for award of contract will include but not be limited to responsiveness to the RFP, interview performance, quality and timeliness of service, and price.

Only licensed Certified Public Accountants or firms may respond to this RFP. The Foundation reserves the right to reject all proposals or request additional information from one or more proposers. All costs incurred in the preparation of a proposal responding to this RFP will be the responsibility of the proposer and will not be reimbursed by the Foundation.

The successful proposer agrees to execute a professional services agreement for the work in a form substantially similar to the agreement provided in Attachment A of this RFP. The successful proposer must also obtain a City of San Bruno business license during the term of the agreement.

Proposals must not be marked as confidential or proprietary. Information in submitted proposals shall be subject to public disclosure laws. All proposals shall become the property of the Foundation.

Submit proposals (three hard copies along with an electronic copy) by January 15, 2020, to:

San Bruno Community Foundation
Attn: Audit Committee
901 Sneath Lane, Suite 209
San Bruno, CA 94066
lhatamiya@sbcf.org

Questions? Please contact Leslie Hatamiya, Executive Director, at lhatamiya@sbcf.org or (650) 763-0775.

SAN BRUNO

Community Foundation

AGREEMENT FOR PROFESSIONAL SERVICES

This agreement (“Agreement”) is entered into by and between the San Bruno Community Foundation, the “Foundation,” a California 501(c)(3) nonprofit corporation, and _____, a *[insert form: corporation of _____, limited liability corporation, sole proprietor]*, with offices located at _____ (“Contractor”). Its purpose is to clearly define the responsibilities and compensation of the Contractor.

1. **Relationship.** During the term of this Agreement, Contractor will provide professional services (the “Services”) to the Foundation as described on Exhibit A attached to this Agreement. Contractor represents that Contractor is duly licensed (as applicable) and has the qualifications, the experience and the ability to properly perform the Services in a manner commensurate with community professional standards. Contractor shall use Contractor’s best efforts to perform the Services such that the results are satisfactory to the Foundation.

2. **Fees.** As consideration for the Services to be provided by Contractor and other obligations, the Foundation shall pay to Contractor the amounts specified in Exhibit A attached to this Agreement at the times specified therein.

3. **Expenses.** Contractor shall not be authorized to incur on behalf of the Foundation any expenses without the prior consent of the Foundation’s Executive Director, whose consent shall be evidenced in writing for any expenses in excess of \$100.00. As a condition to receipt of reimbursement, Contractor shall be required to submit to the Foundation reasonable evidence that the amount involved was expended and related to Services provided under this Agreement.

4. **Term and Termination.** Contractor shall provide Services to the Foundation for a period commencing on _____ and terminating on _____. However, the Relationship shall terminate prior to such date if Contractor shall have been paid the maximum amount of fees as provided in Exhibit A, unless otherwise agreed to in writing.

Notwithstanding the above, either party may terminate this Agreement at any time upon two weeks’ written notice, although this period may be shortened or eliminated if professional standards prevent Contractor from continuing to provide services to the Foundation. In the event of such termination, Contractor shall be paid for any portion of the Services that have been performed prior to the termination.

This agreement can be renewed for two additional years by mutual agreement at the end of each year.

5. **Background Check.** Contractor agrees to certify that all employees with access to Foundation information have successfully completed credit and criminal background checks.

6. **Independent Contractor.** Contractor's relationship with the Foundation will be that of an independent contractor and not that of an employee.

a. **Method of Provision of Services.** Contractor shall be solely responsible for determining the method, details and means of performing the Services. Contractor may, at Contractor's own expense, employ or engage the service of such employees or subcontractors as Contractor deems necessary to perform the Services required by this Agreement. Such employees or subcontractors are not employees of the Foundation, and Contractor shall be wholly responsible for the professional performance of the Services by his employees and subcontractors such that the results are satisfactory to the Foundation.

b. **No Authority to Bind Foundation.** Neither Contractor nor any partner, agent, or employee of Contractor has authority to enter into contracts that bind the Foundation or create obligations on the part of the Foundation without the prior written authorization of the Foundation.

c. **No Benefits.** Contractor acknowledges and agrees that Contractor (or Contractor's employees, if Contractor is an entity) will not be eligible for any Foundation employee benefits and, to the extent Contractor (or Contractor's employees, if Contractor is an entity) otherwise would be eligible for any Foundation employee benefits but for the express terms of this Agreement, Contractor (on behalf of itself and its employees) hereby expressly declines to participate in such Foundation employee benefits.

d. **Tax Indemnification.** Contractor shall have full responsibility for applicable withholding taxes for all compensation paid to Contractor, its partners, agents or its employees under this Agreement, and for compliance with all applicable labor and employment requirements with respect to Contractor's self-employment, sole proprietorship or other form of business organization, and Contractor's partners, agents and employees, including state worker's compensation insurance coverage requirements and any U.S. immigration visa requirements. Contractor agrees to indemnify, defend and hold the Foundation harmless from any liability for, or assessment of, any claims or penalties with respect to such withholding taxes, labor or employment requirements, including any liability for, or assessment of, withholding taxes imposed on the Foundation by the relevant taxing authorities with respect to any compensation paid to Contractor or Contractor's partners, agents, or its employees.

e. **Liability Indemnification.** Contractor shall indemnify, defend, and hold the Foundation, its Board of Directors, officers, agents, employees, and the City of San Bruno harmless from any and all claims, damages, losses, causes of action, and demands, including reasonable attorney's fees and costs, incurred in connection with or in any manner arising out of Contractor's performance of the work contemplated by this Agreement. Acceptance of this Agreement constitutes that the Contractor is not covered under the Foundation's general liability insurance, employee benefits, or worker's compensation insurance. It further establishes that the Contractor shall be fully responsible for such coverage.

f. **Insurance.** Contractor shall return an executed copy of this Agreement with proof of insurance and endorsements to insurance coverage satisfactory to the Foundation that shows that on or before beginning any of the services or work called for by any term of this Agreement, Contractor, at its own cost and expense, shall carry, maintain for the duration of the Agreement insurance coverage naming the Foundation, its officers, officials and employees, as well as the City of San Bruno, as additional insureds (except in the case of professional liability insurance), as follows: i) statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Contractor with limits not less than \$1,000,000, ii) Commercial General and Automobile Liability insurance in an amount not less than \$1,000,000 per occurrence, and c) professional liability insurance for licensed professionals performing work pursuant to this agreement in an amount not less than \$1,000,000 covering the licensed professionals' errors and omissions. Contractor shall not allow any subcontractor to commence work on any subcontract until all insurance required of the Contractor has also been obtained for the subcontractor.

7. **Supervision of Contractor's Services.**

a. **Audit Services.** All Audit Services to be performed by Contractor, including but not limited to the Services related to the audit of the Foundation's financial statements in Exhibit A, will be as agreed between Contractor and the Audit Committee. Contractor will be required to report to the Audit Committee concerning the Audit Services performed under this Agreement. The nature and frequency of these reports will be left to the discretion of the Audit Committee. The Audit Committee is responsible for the retention of Contractor's services and agreement on scope of work.

b. **Tax Services.** All Tax Services to be performed by Contractor, including but not limited to the Services related to the preparation of the Foundation's tax returns in Exhibit A, will be as agreed between Contractor and the Executive Director. Contractor will be required to report to the Executive Director concerning the Tax Services performed under this Agreement. The nature and frequency of these reports will be left to the discretion of the Executive Director. The Executive Director is responsible for the retention of Contractor's services and agreement on scope of work.

8. **Assignment and Subcontracting.** Neither party hereto shall assign this Agreement or any portion thereof to a third party without the prior written consent of the other party, and any attempted assignment without such prior written consent in violation of this Section shall automatically terminate this Agreement. Unless otherwise specified in Exhibit A, Contractor shall not subcontract any portion of the performance contemplated and provided for herein without prior written approval of the Foundation.

9. **Discrimination and Harassment Prohibited.** Contractor will comply with all applicable local, state, and federal laws and regulations prohibiting discrimination and harassment.

10. **Confidential Information.** Contractor agrees at all times during the term of this Agreement and thereafter to hold in strictest confidence and not to use, except for the benefit

of the Foundation to the extent necessary to perform under this Agreement, or to disclose to any person, firm, corporation, or other entity, without written authorization of the Board of Directors of the Foundation (or pursuant to a valid subpoena or other legally enforceable compulsion), any Confidential Information of the Foundation. As used in this Agreement, the term "Confidential Information" means information pertaining to any aspects of the Foundation's business which is either information not known by the general public or is proprietary information of the Foundation or its affiliates, whether of a technical nature or otherwise.

11. **Ownership of Documents.** It is expected that all work product produced by Contractor or its agents, employees pursuant to this Agreement shall consist of Contractor's pre-existing and or generic intellectual property ("Contractor IP"). Contractor grants to the Foundation a perpetual, fully paid license to utilize Contractor IP to the extent integrated into deliverables for which the Foundation has paid Contractor.

12. **Retention of Records.** Contractor shall maintain all records related to this Agreement for no less than three years after the Foundation makes final payment or after termination of this contract and all other pending matters are closed. All records shall be subject to the examination and/or audit by agents of the Foundation.

13. **Conflict of Interest.**

a. **In General.** Contractor represents and warrants that, to the best of the Contractor's knowledge and belief, there are no relevant facts or circumstances that could give rise to a "conflict of interest," as that term is defined in the Political Reform Act, as codified at California Government Code Section 81000, et seq., on the part of the Contractor, or that Contractor has already disclosed all such relevant information in writing.

b. **Subsequent Conflict of Interest.** Contractor agrees that if an actual or potential conflict of interest in the part of the Contractor is discovered after award, the Contractor will make a full disclosure in writing to the Foundation. This disclosure shall include a description of the actions, which the Contractor has taken or proposes to take, after consultation with the Foundation to avoid, mitigate, or neutralize the actual or potential conflict and shall take all such steps within thirty (30) days.

c. **Interests of Foundation Officers, Board Members, and Staff.** No officer, board member or employee of the Foundation shall have any pecuniary interest, direct or indirect, in this Agreement or the proceeds thereof. Neither Contractor nor any member of the Contractor's family shall serve on any Foundation board or committee or hold any such position which either by rule, practice, or action nominates, recommends, or supervises Contractor's operations or authorizes funding Contractor.

14. **Conflicts with this Agreement.** Contractor represents and warrants that neither Contractor nor any of Contractor's partners, employees, or agents is under any pre-existing obligation in conflict or in any way inconsistent with the provisions of this Agreement. Contractor represents and warrants that Contractor's performance of all the terms of this

Agreement will not breach any agreement to keep in confidence proprietary information acquired by Contractor in confidence or in trust prior to commencement of this Agreement. Contractor warrants that Contractor has the right to disclose and/or use all ideas, processes, techniques and other information, if any, which Contractor has gained from third parties, and which Contractor discloses to the Foundation or uses in the course of performance of this Agreement, without liability to such third parties. Notwithstanding the foregoing, Contractor agrees that Contractor shall not bundle with or incorporate into any deliveries provided to the Foundation herewith any third party products, ideas, processes, or other techniques, without the express, written prior approval of the Foundation. Contractor represents and warrants that Contractor has not granted and will not grant any rights or licenses to any intellectual property that would conflict with Contractor's obligations under this Agreement. Contractor will not knowingly infringe upon any copyright, trade secret, or other property right of any former client, employer, or third party in the performance of the Services required by this Agreement.

15. **Miscellaneous.**

a. **Amendments and Waivers.** Any term of this Agreement may be amended or waived only with the written consent of the parties.

b. **Sole Agreement.** This Agreement, including the Exhibits hereto, constitutes the sole agreement of the parties and supersedes all oral negotiations and prior writings with respect to the subject matter hereof.

c. **Notices.** Any notice required or permitted by this Agreement shall be in writing and shall be deemed sufficient upon receipt, when delivered personally or by courier, overnight delivery service or confirmed facsimile, 48 hours after being deposited in the regular mail as certified or registered mail (airmail if sent internationally) with postage prepaid, if such notice is addressed to the party to be notified at such party's address or facsimile number as set forth below, or as subsequently modified by written notice.

d. **Choice of Law.** The validity, interpretation, construction and performance of this Agreement shall be governed by the laws of the State of California, without giving effect to the principles of conflict of laws.

e. **Severability.** If one or more provisions of this Agreement are held to be unenforceable under applicable law, the parties agree to renegotiate such provision in good faith. In the event that the parties cannot reach a mutually agreeable and enforceable replacement for such provision, then (i) such provision shall be excluded from this Agreement, (ii) the balance of the Agreement shall be interpreted as if such provision were so excluded and (iii) the balance of the Agreement shall be enforceable in accordance with its terms.

f. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together will constitute one and the same instrument.

g. **Alternative Dispute Resolution.** If any dispute arises between the parties that cannot be settled after engaging in good faith negotiations, the Foundation and Contractor agree to resolve the dispute in accordance with the following:

i. Each party shall designate a senior management or executive level representative to negotiate any dispute.

ii. The representatives shall attempt, through good faith negotiations, to resolve the dispute by any means within their authority.

iii. If the issue remains unresolved after ten (10) days of good faith negotiations, the parties shall attempt to resolve the disagreement by negotiation between legal counsel. If the above process fails, the parties shall resolve any remaining disputes through mediation to expedite the resolution of the dispute.

iv. The mediation process shall provide for the selection within 15 days by both parties of a disinterested third person as mediator, shall be commenced within 30 days and shall be concluded within 15 days from the commencement of the mediation.

v. The parties shall equally bear the costs and fees of any third party in any alternative dispute resolution process.

vi. The alternative dispute resolution process is a material condition to this Agreement and must be exhausted as an administrative remedy prior to either Party initiating legal action. This alternative dispute resolution process is not intended to nor shall be construed to change the time periods for filing a claim or action specified by Government Code § 900, et. seq.

h. **Advice of Counsel.** EACH PARTY ACKNOWLEDGES THAT, IN EXECUTING THIS AGREEMENT, SUCH PARTY HAS HAD THE OPPORTUNITY TO SEEK THE ADVICE OF INDEPENDENT LEGAL COUNSEL, AND HAS READ AND UNDERSTOOD ALL OF THE TERMS AND PROVISIONS OF THIS AGREEMENT. THIS AGREEMENT SHALL NOT BE CONSTRUED AGAINST ANY PARTY BY REASON OF THE DRAFTING OR PREPARATION HEREOF.

[Signature Page Follows]

The parties have executed this Agreement on the respective dates set forth below.

SAN BRUNO COMMUNITY FOUNDATION

By: _____

Title: _____

Signature: _____

Address: 901 Sneath Lane, Suite 209, San Bruno, CA 94066

Date: _____

NAME OF CONTRACTOR

By: _____

Title: _____

Signature: _____

Address: _____

Date: _____

EXHIBIT A

DESCRIPTION OF SERVICES AND FEES