



ALAMEDA COUNTY COMMUNITY DEVELOPMENT AGENCY

AGENDA ITEM NO. _____ February 26, 2013

Chris Bazar
Agency Director

February 11, 2013

Honorable Board of Supervisors
County Administration Building
Oakland, California 94612

224
West Winton Avenue
Room 110

Hayward
California
94544-1215

phone
510.670.5333
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510.670.6374

www.acgov.org/cda

Dear Board Members:

**SUBJECT: AUTHORIZE PROCUREMENT CONTRACT NO. 8582,
BETWEEN ALAMEDA COUNTY AND THE CASTRO VALLEY /
EDEN AREA CHAMBER OF COMMERCE TO PROVIDE
ECONOMIC DEVELOPMENT SERVICES.**

RECOMMENDATION:

Authorize and approve Procurement Contract No. 8582, between Alameda County and the Castro Valley / Eden Area Chamber of Commerce (Principal: Roberta Rivet, Location: Castro Valley) to provide economic development services for Ashland, Castro Valley, Cherryland, and San Lorenzo for the period March 1, 2013 through September 30, 2013, in the amount of \$57,250.

DISCUSSION / SUMMARY:

The Castro Valley / Eden Area Chamber of Commerce (Chamber) is a 501(c)(6) non-profit business membership organization that promotes, markets, and provides networking opportunities to local businesses in the unincorporated urban areas of Alameda County. The Chamber also provides information on local governmental agencies, community based organizations, business resources, and referrals. The Chamber has worked closely with Community Development Agency (CDA) staff to interface with local businesses in unincorporated Alameda County for a number of years.

In 2009, the Chamber expanded its service area to include the Ashland, Cherryland, and San Lorenzo communities. Free one-year memberships were extended to new member businesses within the expanded footprint. Since this initial outreach, the Chamber has continued to work within the expanded service area. In order to leverage local business-to-business connections and have input from all of the areas served, the Chamber Board of Directors includes five members from the Ashland, Cherryland, and San Lorenzo communities. The significant economic downturn has affected the membership renewal rate for businesses over the past several years. Even though the Chamber has made significant cuts to organizational expenses, revenues have also continued to decline. The goal of the Chamber returning to self-sufficiency has not yet been achieved.

Therefore, in addition to offering financial assistance to this much-needed business support system, this short-term (7 months) contract requires the Chamber to submit quarterly reports on its continuing efforts to reduce expenses and outstanding debt, increase membership and revenues, ensure continuity of leadership and program implementation responsibilities. The Chamber's sustainability will be greatly determined by its performance under this short term contract.

The Chamber continues to collaborate with CDA on economic development goals of the County. To promote economic development within the unincorporated urban areas of Alameda County, the contract with the Chamber includes the following features:

- Assistance with distribution of information to the business community on projects and programs such as business seminars, restaurant guides, and streetscape design and construction impacts
- Assistance to CDA with business retention and expansion
- Quarterly membership and financial reports to CDA
- Networking opportunities to the small business community with regular evening mixers, lunch events, and business fairs
- Customer attraction events to benefit local business
- Upgrades to the Chamber website to include revenue-generating advertising offers
- Implementation of CDA's seasonal banner program

SELECTION CRITERIA AND PROCESS:

The Chamber was selected on a sole source basis because it is the only chamber of commerce located within urban unincorporated Alameda County. The Chamber is a private non-profit entity and is therefore exempt from the SLEB process. The Chamber was granted sole source waiver #2260 by the General Services Agency on January 8, 2013.

FINANCING:

This contract will be funded in the CDA FY 12-13 General Fund.

Very truly yours,



Chris Bazar, Director
Community Development Agency

cc: Susan Muranishi, County Administrator
Donna Ziegler, County Counsel
Patrick O'Connell, Auditor-Controller
Richard Conway, County Administrator's Office
Brian Washington, Office of the County Counsel
U.B. Singh, CDA Finance Director
Eileen Dalton, CDA Deputy Director

**COUNTY OF ALAMEDA
STANDARD SERVICES AGREEMENT**

This Agreement, dated as of _____, 2013, is by and between the County of Alameda, hereinafter referred to as the “County”, and Castro Valley Eden Area Chamber of Commerce, hereinafter referred to as the “Contractor”.

WITNESSETH

Whereas, County desires to obtain Economic Development services which are more fully described in Exhibit A hereto; and

Whereas, Contractor is professionally qualified to provide such services and is willing to provide same to County; and

Now, therefore it is agreed that County does hereby retain Contractor to provide Economic Development Services, and Contractor accepts such engagement, on the General Terms and Conditions hereinafter specified in this Agreement, the Additional Provisions attached hereto, and the following described exhibits, all of which are incorporated into this Agreement by this reference:

- Exhibit A Definition of Services
- Exhibit B Payment Terms
- Exhibit C Insurance Requirements
- Exhibit D Debarment and Suspension Certification
- Exhibit E Contract Compliance Reporting Requirements

The term of this Agreement shall be from March 1, 2013 through September 30, 2013.

The compensation payable to Contractor hereunder shall not exceed Fifty Seven Thousand Two Hundred Fifty (\$57,250) for the term of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

COUNTY OF ALAMEDA

CONTRACTOR

By: _____
Signature

By:  _____
Signature

Name: Roberta Rivet

Title: President of the Board of Supervisors

Title: Executive Director

Date: 12-18-12

Approved as to Form:

By:  _____
County Counsel Signature

By signing above, signatory warrants and represents that he/she executed this Agreement in his/her authorized capacity and that by his/her signature on this Agreement, he/she or the entity upon behalf of which he/she acted, executed this Agreement

GENERAL TERMS AND CONDITIONS

1. **INDEPENDENT CONTRACTOR:** No relationship of employer and employee is created by this Agreement; it being understood and agreed that Contractor is an independent contractor. Contractor is not the agent or employee of the County in any capacity whatsoever, and County shall not be liable for any acts or omissions by Contractor nor for any obligations or liabilities incurred by Contractor.

Contractor shall have no claim under this Agreement or otherwise, for seniority, vacation time, vacation pay, sick leave, personal time off, overtime, health insurance medical care, hospital care, retirement benefits, social security, disability, Workers' Compensation, or unemployment insurance benefits, civil service protection, or employee benefits of any kind.

Contractor shall be solely liable for and obligated to pay directly all applicable payroll taxes (including federal and state income taxes) or contributions for unemployment insurance or old age pensions or annuities which are imposed by any governmental entity in connection with the labor used or which are measured by wages, salaries or other remuneration paid to its officers, agents or employees and agrees to indemnify and hold County harmless from any and all liability which County may incur because of Contractor's failure to pay such amounts.

In carrying out the work contemplated herein, Contractor shall comply with all applicable federal and state workers' compensation and liability laws and regulations with respect to the officers, agents and/or employees conducting and participating in the work; and agrees that such officers, agents, and/or employees will be considered as independent contractors and shall not be treated or considered in any way as officers, agents and/or employees of County.

Contractor does, by this Agreement, agree to perform his/her said work and functions at all times in strict accordance with currently approved methods and practices in his/her field and that the sole interest of County is to insure that said service shall be performed and rendered in a competent, efficient, timely and satisfactory manner and in accordance with the standards required by the County agency concerned.

Notwithstanding the foregoing, if the County determines that pursuant to state and federal law Contractor is an employee for purposes of income tax withholding, County may upon two week's notice to Contractor, withhold from payments to Contractor hereunder federal and state income taxes and pay said sums to the federal and state governments

2. **INDEMNIFICATION:** To the fullest extent permitted by law, Contractor shall hold harmless, defend and indemnify the County of Alameda, its Board of Supervisors, employees and agents from and against any and all claims, losses, damages, liabilities and expenses, including but not limited to attorneys' fees, arising out of or resulting from the performance of services under this Agreement, provided that any such claim, loss, damage, liability or expense is attributable to bodily injury, sickness, disease, death or to injury to or destruction of property, including the loss therefrom, or to any violation of

federal, state or municipal law or regulation, which arises out of or is any way connected with the performance of this agreement (collectively "Liabilities") except where such Liabilities are caused solely by the negligence or willful misconduct of any indemnitee. The County may participate in the defense of any such claim without relieving Contractor of any obligation hereunder.

In the event that Contractor or any employee, agent, or subcontractor of Contractor providing services under this Agreement is determined by a court of competent jurisdiction or the Alameda County Employees' Retirement Association (ACERA) or California Public Employees' Retirement System (PERS) to be eligible for enrollment in ACERA and PERS as an employee of County, Contractor shall indemnify, defend, and hold harmless County for the payment of any employee and/or employer contributions for ACERA and PERS benefits on behalf of Contractor or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of County.

3. **INSURANCE AND BOND:** Contractor shall at all times during the term of the Agreement with the County maintain in force those insurance policies and bonds as designated in the attached Exhibit C, and will comply with all those requirements as stated therein.
4. **PREVAILING WAGES:** Pursuant to Labor Code Sections 1770 et seq., Contractor shall pay to persons performing labor in and about Work provided for in Contract not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the Work is performed, and not less than the general prevailing rate of per diem wages for legal holiday and overtime work in said locality, which per diem wages shall not be less than the stipulated rates contained in a schedule thereof which has been ascertained and determined by the Director of the State Department of Industrial Relations to be the general prevailing rate of per diem wages for each craft or type of workman or mechanic needed to execute this contract.
5. **WORKERS' COMPENSATION:** Contractor shall provide Workers' Compensation insurance, as applicable, at Contractor's own cost and expense and further, neither the Contractor nor its carrier shall be entitled to recover from County any costs, settlements, or expenses of Workers' Compensation claims arising out of this Agreement.
6. **CONFORMITY WITH LAW AND SAFETY:**
 - a. In performing services under this Agreement, Contractor shall observe and comply with all applicable laws, ordinances, codes and regulations of governmental agencies, including federal, state, municipal, and local governing bodies, having jurisdiction over the scope of services, including all applicable provisions of the California Occupational Safety and Health Act. Contractor shall indemnify and hold County harmless from any and all liability, fines, penalties and consequences from any of Contractor's failures to comply with such laws, ordinances, codes and regulations.

- b. Accidents: If a death, serious personal injury or substantial property damage occurs in connection with Contractor's performance of this Agreement, Contractor shall immediately notify the Alameda County Risk Manager's Office by telephone. Contractor shall promptly submit to County a written report, in such form as may be required by County of all accidents which occur in connection with this Agreement. This report must include the following information: (1) name and address of the injured or deceased person(s); (2) name and address of Contractor's sub-Contractor, if any; (3) name and address of Contractor's liability insurance carrier; and (4) a detailed description of the accident and whether any of County's equipment, tools, material, or staff were involved.
 - c. Contractor further agrees to take all reasonable steps to preserve all physical evidence and information which may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and to grant to the County the opportunity to review and inspect such evidence, including the scene of the accident.
7. DEBARMENT AND SUSPENSION CERTIFICATION: (Applicable to all agreements funded in part or whole with federal funds and contracts over \$25,000).
- a. By signing this agreement and Exhibit D, Debarment and Suspension Certification, Contractor/Grantee agrees to comply with applicable federal suspension and debarment regulations, including but not limited to 7 Code of Federal Regulations (CFR) 3016.35, 28 CFR 66.35, 29 CFR 97.35, 34 CFR 80.35, 45 CFR 92.35 and Executive Order 12549.
 - b. By signing this agreement, Contractor certifies to the best of its knowledge and belief, that it and its principals:
 - (1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency;
 - (2) Shall not knowingly enter into any covered transaction with a person who is proposed for debarment under federal regulations, debarred, suspended, declared ineligible, or voluntarily excluded from participation in such transaction.
8. PAYMENT: For services performed in accordance with this Agreement, payment shall be made to Contractor as provided in Exhibit B hereto.
9. TRAVEL EXPENSES: Contractor shall not be allowed or paid travel expenses unless set forth in this Agreement.
10. TAXES: Payment of all applicable federal, state, and local taxes shall be the sole responsibility of the Contractor.

11. **OWNERSHIP OF DOCUMENTS:** Contractor hereby assigns to the County and its assignees all copyright and other use rights in any and all proposals, plans, specification, designs, drawings, sketches, renderings, models, reports and related documents (including computerized or electronic copies) respecting in any way the subject matter of this Agreement, whether prepared by the County, the Contractor, the Contractor's sub-Contractors or third parties at the request of the Contractor (collectively, "Documents and Materials"). This explicitly includes the electronic copies of all above stated documentation.

Contractor also hereby assigns to the County and its assignees all copyright and other use rights in any Documents and Materials including electronic copies stored in Contractor's Information System, respecting in any way the subject matter of this Agreement.

Contractor shall be permitted to retain copies, including reproducible copies and computerized copies, of said Documents and Materials. Contractor agrees to take such further steps as may be reasonably requested by County to implement the aforesaid assignment. If for any reason said assignment is not effective, Contractor hereby grants the County and any assignee of the County an express royalty – free license to retain and use said Documents and Materials. The County's rights under this paragraph shall apply regardless of the degree of completion of the Documents and Materials and whether or not Contractor's services as set forth in Exhibit "A" of this Agreement have been fully performed or paid for.

In Contractor's contracts with other Contractors, Contractor shall expressly obligate its Sub-Contractors to grant the County the aforesaid assignment and license rights as to that Contractor's Documents and Materials. Contractor agrees to defend, indemnify and hold the County harmless from any damage caused by a failure of the Contractor to obtain such rights from its Contractors and/or Sub-Contractors.

Contractor shall pay all royalties and license fees which may be due for any patented or copyrighted materials, methods or systems selected by the Contractor and incorporated into the work as set forth in Exhibit "A", and shall defend, indemnify and hold the County harmless from any claims for infringement of patent or copyright arising out of such selection. The County's rights under this Paragraph 11 shall not extend to any computer software used to create such Documents and Materials.

12. **CONFLICT OF INTEREST; CONFIDENTIALITY:** The Contractor covenants that it presently has no interest, and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of services required under this Agreement. Without limitation, Contractor represents to and agrees with the County that Contractor has no present, and will have no future, conflict of interest between providing the County services hereunder and any other person or entity (including but not limited to any federal or state wildlife, environmental or regulatory agency) which has any interest adverse or potentially adverse to the County, as determined in the reasonable judgment of the Board of Supervisors of the County.

The Contractor agrees that any information, whether proprietary or not, made known to or discovered by it during the performance of or in connection with this Agreement for

the County will be kept confidential and not be disclosed to any other person. The Contractor agrees to immediately notify the County by notices provided in accordance with Paragraph 13 of this Agreement, if it is requested to disclose any information made known to or discovered by it during the performance of or in connection with this Agreement. These conflict of interest and future service provisions and limitations shall remain fully effective five (5) years after termination of services to the County hereunder.

13. NOTICES: All notices, requests, demands, or other communications under this Agreement shall be in writing. Notices shall be given for all purposes as follows:

Personal delivery: When personally delivered to the recipient, notices are effective on delivery.

First Class Mail: When mailed first class to the last address of the recipient known to the party giving notice, notice is effective three (3) mail delivery days after deposit in a United States Postal Service office or mailbox. Certified Mail: When mailed certified mail, return receipt requested, notice is effective on receipt, if delivery is confirmed by a return receipt.

Overnight Delivery: When delivered by overnight delivery (Federal Express/Airborne/United Parcel Service/DHL World Wide Express) with charges prepaid or charged to the sender's account, notice is effective on delivery, if delivery is confirmed by the delivery service. Telex or facsimile transmission: When sent by telex or facsimile to the last telex or facsimile number of the recipient known to the party giving notice, notice is effective on receipt, provided that (a) a duplicate copy of the notice is promptly given by first-class or certified mail or by overnight delivery, or (b) the receiving party delivers a written confirmation of receipt. Any notice given by telex or facsimile shall be deemed received on the next business day if it is received after 5:00 p.m. (recipient's time) or on a non-business day.

Addresses for purpose of giving notice are as follows:

To County: COUNTY OF ALAMEDA
Community Development Agency
224 W. Winton Ave, Suite 110
Hayward, CA 94544
Attn: Eileen Dalton

To Contractor: Castro Valley Eden Area Chamber of Commerce
4367 Castro Valley Blvd
Castro Valley, CA 94546-0312
Attn: Roberta Rivet

Any correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified shall be deemed effective as of the first date that said notice was refused, unclaimed, or deemed undeliverable by the postal authorities, messenger, or overnight delivery service.

Any party may change its address or telex or facsimile number by giving the other party notice of the change in any manner permitted by this Agreement.

14. USE OF COUNTY PROPERTY: Contractor shall not use County property (including equipment, instruments and supplies) or personnel for any purpose other than in the performance of his/her obligations under this Agreement.

15. EQUAL EMPLOYMENT OPPORTUNITY PRACTICES PROVISIONS: Contractor assures that he/she/it will comply with Title VII of the Civil Rights Act of 1964 and that no person shall, on the grounds of race, creed, color, disability, sex, sexual orientation, national origin, age, religion, Vietnam era Veteran's status, political affiliation, or any other non-merit factor, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this Agreement.
 - a. Contractor shall, in all solicitations or advertisements for applicants for employment placed as a result of this Agreement, state that it is an "Equal Opportunity Employer" or that all qualified applicants will receive consideration for employment without regard to their race, creed, color, disability, sex, sexual orientation, national origin, age, religion, Vietnam era Veteran's status, political affiliation, or any other non-merit factor.
 - b. Contractor shall, if requested to so do by the County, certify that it has not, in the performance of this Agreement, discriminated against applicants or employees because of their race, creed, color, disability, sex, sexual orientation, national origin, age, religion, Vietnam era Veteran's status, political affiliation, or any other non-merit factor.
 - c. If requested to do so by the County, Contractor shall provide the County with access to copies of all of its records pertaining or relating to its employment practices, except to the extent such records or portions of such records are confidential or privileged under state or federal law.
 - d. Contractor shall recruit vigorously and encourage minority - and women-owned businesses to bid its subcontracts.
 - e. Nothing contained in this Agreement shall be construed in any manner so as to require or permit any act, which is prohibited by law.
 - f. The Contractor shall include the provisions set forth in paragraphs A through E (above) in each of its subcontracts.

16. DRUG-FREE WORKPLACE: Contractor and Contractor's employees shall comply with the County's policy of maintaining a drug-free workplace. Neither Contractor nor Contractor's employees shall unlawfully manufacture, distribute, dispense, possess or use controlled substances, as defined in 21 U.S. Code § 812, including, but not limited to, marijuana, heroin, cocaine, and amphetamines, at any County facility or work site. If Contractor or any employee of Contractor is convicted or pleads nolo contendere to a criminal drug statute violation occurring at a County facility or work site, the Contractor

within five days thereafter shall notify the head of the County department/agency for which the contract services are performed. Violation of this provision shall constitute a material breach of this Agreement

17. **AUDITS; ACCESS TO RECORDS:** The Contractor shall make available to the County, its authorized agents, officers, or employees, for examination any and all ledgers, books of accounts, invoices, vouchers, cancelled checks, and other records or documents evidencing or relating to the expenditures and disbursements charged to the County, and shall furnish to the County, its authorized agents, officers or employees such other evidence or information as the County may require with regard to any such expenditure or disbursement charged by the Contractor.

The Contractor shall maintain full and adequate records in accordance with County requirements to show the actual costs incurred by the Contractor in the performance of this Agreement. If such books and records are not kept and maintained by Contractor within the County of Alameda, California, Contractor shall, upon request of the County, make such books and records available to the County for inspection at a location within County or Contractor shall pay to the County the reasonable, and necessary costs incurred by the County in inspecting Contractor's books and records, including, but not limited to, travel, lodging and subsistence costs. Contractor shall provide such assistance as may be reasonably required in the course of such inspection. The County further reserves the right to examine and reexamine said books, records and data during the three (3) year period following termination of this Agreement or completion of all work hereunder, as evidenced in writing by the County, and the Contractor shall in no event dispose of, destroy, alter, or mutilate said books, records, accounts, and data in any manner whatsoever for three (3) years after the County makes the final or last payment or within three (3) years after any pending issues between the County and Contractor with respect to this Agreement are closed, whichever is later.

18. **DOCUMENTS AND MATERIALS:** Contractor shall maintain and make available to County for its inspection and use during the term of this Agreement, all Documents and Materials, as defined in Paragraph 11 of this Agreement. Contractor's obligations under the preceding sentence shall continue for three (3) years following termination or expiration of this Agreement or the completion of all work hereunder (as evidenced in writing by County), and Contractor shall in no event dispose of, destroy, alter or mutilate said Documents and Materials, for three (3) years following the County's last payment to Contractor under this Agreement.
19. **TIME OF ESSENCE:** Time is of the essence in respect to all provisions of this Agreement that specify a time for performance; provided, however, that the foregoing shall not be construed to limit or deprive a party of the benefits of any grace or use period allowed in this Agreement.
20. **TERMINATION:** The County has and reserves the right to suspend, terminate or abandon the execution of any work by the Contractor without cause at any time upon giving to the Contractor prior written notice. In the event that the County should abandon, terminate or suspend the Contractor's work, the Contractor shall be entitled to payment for services provided hereunder prior to the effective date of said suspension,

termination or abandonment. Said payment shall be computed in accordance with Exhibit B hereto, provided that the maximum amount payable to Contractor for its Economic Development Services shall not exceed \$57,250 payment for services provided hereunder prior to the effective date of said suspension, termination or abandonment.

21. **SMALL LOCAL AND EMERGING BUSINESS PARTICIPATION:** Contractor has been approved by County to participate in contract without SLEB participation. As a result, there is no requirement to subcontract with another business in order to satisfy the County's Small and Emerging Locally owned Business provision.

However, if circumstances or the terms of the contract should change, Contractor may be required to immediately comply with the County's Small and Emerging Local Business provisions, including but not limited to:

- a. Contractor must be a certified small or emerging local business(es) or subcontract a minimum 20% with a certified small or emerging local business(es).
- b. SLEB subcontractor(s) is independently owned and operated (i.e., is not owned or operated in any way by Prime), nor do any employees of either entity work for the other.
- c. Small and/or Emerging Local Business participation and current SLEB certification status must be maintained for the term of the contract. Contractor shall ensure that their own certification status and/or that of participating subcontractors (as is applicable) are maintained in compliance with the SLEB Program.
- d. Contractor shall not substitute or add any small and/or emerging local business(s) listed in this agreement without prior written approval from the County. Said requests to substitute or add a small and/or emerging local business shall be submitted in writing to the County department contract representative identified under Item #13 above. Contractor will not be able to substitute the subcontractor without prior written approval from the Alameda County Auditor Controller Agency, Office of Contract Compliance (OCC).
- e. All SLEB participation, except for SLEB prime contractor, must be tracked and monitored utilizing the Elation compliance System.

County will be under no obligation to pay contractor for the percent committed to a SLEB (whether SLEB is a prime or subcontractor) if the work is not performed by the listed small and/or emerging local business.

For further information regarding the Small Local Emerging Business participation requirements and utilization of the Alameda County Contract Compliance System contact the County Auditor- Controller's Office of Contract Compliance (OCC) located at 1221 Oak St., Rm. 249, Oakland, CA 94612 at Tel: (510) 891-5500, Fax: (510) 272-6502 or via E-mail at ACSLEBcompliance@acgov.org.

22. **FIRST SOURCE PROGRAM:** For contracts over \$100,000, Contractor shall provide County ten (10) working days to refer to Contractor, potential candidates to be considered by Contractor to fill any new or vacant positions that are necessary to fulfill their contractual obligations to the County that Contractor has available during the contract term before advertising to the general public.
23. **CHOICE OF LAW:** This Agreement shall be governed by the laws of the State of California.
24. **WAIVER:** No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this Agreement shall be effective unless it is in writing and signed by the party waiving the breach, failure, right or remedy. No waiver of any breach, failure, right or remedy shall be deemed a waiver of any other breach, failure, right or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies.
25. **ENTIRE AGREEMENT:** This Agreement, including all attachments, exhibits, and any other documents specifically incorporated into this Agreement, shall constitute the entire agreement between County and Contractor relating to the subject matter of this Agreement. As used herein, Agreement refers to and includes any documents incorporated herein by reference and any exhibits or attachments. This Agreement supersedes and merges all previous understandings, and all other agreements, written or oral, between the parties and sets forth the entire understanding of the parties regarding the subject matter thereof. The Agreement may not be modified except by a written document signed by both parties.
26. **HEADINGS** herein are for convenience of reference only and shall in no way affect interpretation of the Agreement.
27. **ADVERTISING OR PUBLICITY:** Contractor shall not use the name of County, its officers, directors, employees or agents, in advertising or publicity releases or otherwise without securing the prior written consent of County in each instance.
28. **MODIFICATION OF AGREEMENT:** This Agreement may be supplemented, amended or modified only by the mutual agreement of the parties. No supplement, amendment or modification of this Agreement shall be binding unless it is in writing and signed by authorized representatives of both parties.
29. **ASSURANCE OF PERFORMANCE:** If at any time County believes Contractor may not be adequately performing its obligations under this Agreement or that Contractor may fail to complete the Services as required by this Agreement, County may request from Contractor prompt written assurances of performance and a written plan acceptable to County, to correct the observed deficiencies in Contractor's performance. Contractor shall provide such written assurances and written plan within ten (10) calendar days of its receipt of County's request and shall thereafter diligently commence and fully perform such written plan. Contractor acknowledges and agrees that any failure to provide such

written assurances and written plan within the required time is a material breach under this Agreement.

30. **SUBCONTRACTING/ASSIGNMENT:** Contractor shall not subcontract, assign or delegate any portion of this Agreement or any duties or obligations hereunder without the County's prior written approval.
- a. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. Any agreement that violates this Section shall confer no rights on any party and shall be null and void.
 - b. Contractor shall use the subcontractors identified in Exhibit A and shall not substitute subcontractors without County's prior written approval.
 - c. Contractor shall remain fully responsible for compliance by its subcontractors with all the terms of this Agreement, regardless of the terms of any agreement between Contractor and its subcontractors.
31. **SURVIVAL:** The obligations of this Agreement, which by their nature would continue beyond the termination on expiration of the Agreement, including without limitation, the obligations regarding Indemnification (Paragraph 2), Ownership of Documents (Paragraph 11), and Conflict of Interest (Paragraph 12), shall survive termination or expiration.
32. **SEVERABILITY:** If a court of competent jurisdiction holds any provision of this Agreement to be illegal, unenforceable, or invalid in whole or in part for any reason, the validity and enforceability of the remaining provisions, or portions of them, will not be affected, unless an essential purpose of this Agreement would be defeated by the loss of the illegal, unenforceable, or invalid provision.
33. **PATENT AND COPYRIGHT INDEMNITY:** Contractor represents that it knows of no allegations, claims, or threatened claims that the materials, services, hardware or software ("Contractor Products") provided to County under this Agreement infringe any patent, copyright or other proprietary right. Contractor shall defend, indemnify and hold harmless County of, from and against all losses, claims, damages, liabilities, costs expenses and amounts (collectively, "Losses") arising out of or in connection with an assertion that any Contractor Products or the use thereof, infringe any patent, copyright or other proprietary right of any third party. County will: (1) notify Contractor promptly of such claim, suit or assertion; (2) permit Contractor to defend, compromise, or settle the claim; and, (3) provide, on a reasonable basis, information to enable Contractor to do so. Contractor shall not agree without County's prior written consent, to any settlement, which would require County to pay money or perform some affirmative act in order to continue using the Contractor Products.
- a. If Contractor is obligated to defend County pursuant to this Section 33 and fails to do so after reasonable notice from County, County may defend itself and/or settle such proceeding, and Contractor shall pay to County any and all losses, damages

and expenses (including attorney's fees and costs) incurred in relationship with County's defense and/or settlement of such proceeding.

- b. In the case of any such claim of infringement, Contractor shall either, at its option, (1) procure for County the right to continue using the Contractor Products; or (2) replace or modify the Contractor Products so that that they become non-infringing, but equivalent in functionality and performance.
 - c. Notwithstanding this Section 33, County retains the right and ability to defend itself, at its own expense, against any claims that Contractor Products infringe any patent, copyright, or other intellectual property right.
34. OTHER AGENCIES: Other tax supported agencies within the State of California who have not contracted for their own requirements may desire to participate in this contract. The Contractor is requested to service these agencies and will be given the opportunity to accept or reject the additional requirements. If the Contractor elects to supply other agencies, orders will be placed directly by the agency and payments made directly by the agency.
35. EXTENSION: This agreement may be extended for two additional one year terms by mutual agreement of the County and the Contractor
36. SIGNATORY: By signing this agreement, signatory warrants and represents that he/she executed this Agreement in his/her authorized capacity and that by his/her signature on this Agreement, he/she or the entity upon behalf of which he/she acted, executed this Agreement

[END OF GENERAL TERMS AND CONDITIONS]

EXHIBIT A
DEFINITION OF SERVICES

1. Contractor shall provide the services incorporated herein by reference and attached hereto in Exhibit A-1, Specific Requirements and Deliverables. In the event of any conflict (direct or indirect) among any of the exhibits, the more stringent requirements providing the County with the broader scope of services shall have precedence.
2. Contractor project team will consist of the following Key Personnel and subcontractors, as applicable during the contract term:

Roberta Rivet, Executive Director, or designated successor

Contractor agrees that it shall not transfer or reassign the individuals identified above as Key Personnel or substitute subcontractors without the express written agreement of County, which agreement shall not be unreasonably withheld. Should such individual or individuals in the employ of Contractor no longer be employed by Contractor during the term of this Agreement, Contractor shall make a good faith effort to present to County an individual with greater or equal qualifications as a replacement subject to County's approval, which approval shall not be unreasonably withheld.

3. The approval of County to a requested change shall not release Contractor from its obligations under this Agreement.

Exhibit A-1
SCOPE OF WORK
Specific Requirements and Deliverables

TASKS

1. Organization

- a. Contractor shall expand its membership base using door-to-door solicitation, direct mail, business events and telemarketing for businesses located in the Eden Area. The “Eden Area” refers to the urban, unincorporated communities of Ashland, Cherryland, and San Lorenzo and Castro Valley. Membership as of February, 2013 was 386; Contractor shall have a goal of a 5% net increase (new over non-renewals) in membership, to 405, by the end of the Term.
- b. Designated County staff shall receive all Chamber Board correspondence and may attend Chamber Board meetings.
- c. Contractor shall solicit and secure Chamber Board members from the Eden Area thereby ensuring that all communities are represented on its Chamber Board of Directors.
- d. Contractor’s Executive Director shall regularly attend County’s Economic Development Forums and other meetings relating to the Agency’s economic development program.
- e. Contractor shall continue to update its existing website to include membership enrollment and rate structure description, web-based advertising and information on the Eden Area. Contractor shall link Contractor’s website to the County’s Community and Economic Development websites.
- f. Simultaneously with submission of its first invoice (30 days from Agreement commencement) Contractor shall submit to County a roster of Board and/or staff with lead responsibility for implementing its various activities as well as its Board Committee assignments. This roster shall include, but not be limited to the Executive Committee, Finance Committee, Media & Technology Committee, website maintenance and activities such as: Fall Festival, Student Award Lunch, Business Person of the Year Award Lunch, Business Expo, and Customer Attraction Events (see item 2.e. below).
- g. Prior to submission of its third invoice (90 days from Agreement commencement), Contractor shall submit to County its organization’s Policy & Procedures Manual, adopted by its Board of Directors.
- h. Prior to submission of its third invoice (90 days from Agreement commencement), Contractor shall hold an all-invited Membership & Stakeholders meeting to discuss the Chamber’s mission, activities, member benefits, and to solicit ideas to implement item 4.a.i-iii below.

2. Community Promotion

- a. Contractor shall develop business and community marketing materials for the Eden Chamber Area in collaboration with County staff.
- b. Contractor shall produce business and appreciation events in the Eden Area.
- c. Contractor shall maintain web-based, social network accounts and actively utilize these media channels to promote Chamber and relevant County events.
- d. Contractor shall maintain a current membership roster with e-mail addresses which can be used for messaging.

- e. Assist County staff and others in the development and production of no less than 2 “customer attraction” event(s) in the Eden Area.
- f. Contractor shall collaborate with County staff to implement a seasonal banner program in the following locations and manner:
 - i. By June 1, 2013 fabricate 46 (2 sets of 23) banners, approximately 93” x 23.5”, for the (22) existing banner pole brackets on E. 14th Street from Thrush Avenue to 162nd Avenue and (1) banner for a new pole at E. 14th Street and 163rd Avenue adjacent to the Ashland Youth Center. One set shall be end-of-year holiday themed. Banner sizes need to be field verified prior to fabrication.
 - ii. By July 1, 2013, upon completion of production above, install one set of (23) banners on E. 14th Street from Thrush to 163rd Avenue.

3. Economic Development

- a. Contractor shall collaborate with County staff in marketing properties in the Eden Chamber Area to business and developer interests.
- b. Contractor shall collaborate with County on occasional business surveys to determine local business issues and their resolution.
- c. Contractor shall collaborate with County in providing referrals to member businesses for technical assistance. Contractor shall promote on its website and other media its referral relationship with both SCORE (Service Corps of Retired Executives) and Alameda County Small Business Development Center (ACSBDC).
- d. Contractor shall assist area businesses with business interruption mitigation measures during any streetscape construction.

4. Agency Oversight/Contractor Reporting

- a. Contractor shall provide County with a quarterly financial report (Quarterly Report) within 30 days of the end of each quarter (March, June, and September). Contractor shall report:
 - i. Revenues, expenses, membership renewals and new members;
 - ii. Plans to reduce expenses and/or increase revenues to meet its budget and pay down outstanding debt;
 - iii. Plans to increase/retain membership;
 - iv. Plans to ensure continuity of its Executive Director position: and
 - v. Details on implementing its upcoming work program items and this contract.
- b. Contractor and County shall meet quarterly at a minimum to discuss activities, issues, and the Quarterly Report.

**EXHIBIT B
COUNTY OF ALAMEDA
PAYMENT TERMS**

Tasks shown on Exhibit A-1, exclusive of Tasks 2.e. and 2.f., shall be performed as needed throughout the contract 7 month term and invoiced monthly at \$6,250/mo. for a total of \$43,750.

Task shown on Exhibit A-1, as 2.e. shall be billed upon completion for not more than \$7,500.

Tasks shown on Exhibit A-1, as 2.f. shall be billed upon completion for not more than \$6,000.

- Produce 46 (2 sets of 23) 2-sided banners, approximately 93" x23.5" for the existing banner pole brackets on E14th St. from Thrush to 162nd Avenue (22) and one for a new pole at 163rd St near the Ashland Youth Center;
- Install one set of 23 (non-holiday) banners on E14th St. from Thrush to 162nd Avenue (22) and one for a new pole at 163rd Ave near the Ashland Youth Center upon completion of production;

Total contract amount = \$57,250.

EXHIBIT D
COUNTY OF ALAMEDA
DEBARMENT AND SUSPENSION CERTIFICATION

(Applicable to all agreements funded in part or whole with federal funds and contracts over \$25,000).

The contractor, under penalty of perjury, certifies that, except as noted below, contractor, its principals, and any named and unnamed subcontractor:

- Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;
- Has not been suspended, debarred, voluntarily excluded or determined ineligible by any federal agency within the past three years;
- Does not have a proposed debarment pending; and
- Has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three years.

Exceptions will not necessarily result in denial of award, but will be considered in determining contractor responsibility. For any exception noted above, indicate below to whom it applies, initiating agency, and dates of action.

Notes: Providing false information may result in criminal prosecution or administrative sanctions. The above certification is part of the Standard Services Agreement. Signing this Standard Services Agreement on the signature portion thereof shall also constitute signature of this Certification.

CONTRACTOR: Castro Valley Eden Area Chamber of Commerce

PRINCIPAL: Roberta Rivet

TITLE: Executive Director

SIGNATURE: _____ DATE: _____

EXHIBIT E
COUNTY OF ALAMEDA
CONTRACT COMPLIANCE REPORTING REQUIREMENTS

Upon receipt of signed contract documents, prime contractor shall immediately enter/assign subcontractors in the System, confirm payments received from the County within 5 business days in the System, immediately enter payments made to subcontractors and ensure that subcontractors confirm they received payments within 5 business days in the System. Subcontractors shall confirm their payments received from the prime contractor within 5 business days in the System.

Alameda County Contract Compliance System training and ongoing support are provided at no charge to contractors and participating sub-contractors awarded a contract as a result of this bid process for this project. Contractors having contracts with the County should schedule a representative from their office/company, along with each of their subcontractors, to attend training. The training schedule may be viewed online at http://www.elationsys.com/elationsys/support_1.htm or call Elation Systems at (925) 924-0340. A special access code will be provided to contractors and subcontractors participating in this contract awarded to allow use of the System free of charge.

It is the Contractor's responsibility to ensure that they and their subcontractors are registered and trained as required to utilize the Alameda County Contract Compliance System. Training sessions are approximately one hour and will be held periodically in a number of locations throughout Alameda County.