



# OFFICE OF ASSESSOR COUNTY OF ALAMEDA

1221 Oak St., County Administration Building  
Oakland, California 94612-4288  
(510) 272-3766 / FAX (510) 208-3970

**P H O N G   L A**  
**A S S E S S O R**

AGENDA#\_\_\_\_\_, December 19, 2023

December 5, 2023

The Honorable Board of Supervisors  
County Administration Building  
1221 Oak Street  
Oakland, CA 94612

SUBJECT: APPROVE A SERVICES AGREEMENT WITH COMPSTAK TO PROVIDE APPRAISAL DATA INFORMATION TO THE ASSESSOR'S OFFICE.

Dear Board Members:

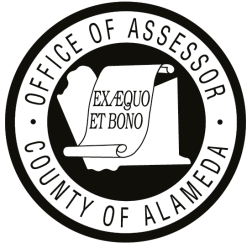
## **RECOMMENDATION:**

- A) Approve a new services agreement (Procurement Contract No. 26303) with CompStak (Principal: Chris Cresswell; Location: New York, NY) to provide nationwide commercial real estate data to the Assessor's Office, for the retroactive term from 09/29/2023 to 09/30/2024, in the amount of \$50,000; and
- B) Delegate authority to the Agency Director, or designee, to execute the agreement, subject to review and approval as to form by County Counsel and submit an executed copy to the Clerk of the Board for filing.

## **SUMMARY/DISCUSSION**

The Alameda County Assessor's Office currently has a 6-month services agreement with CompStak, that started on September 29, 2023, to provide our office with extensive and superior lease data. This database is utilized by our Commercial Appraisers and Assessment Appeals Board Unit. The initial 6-month service agreement, approved as to form by County Counsel, costs \$25,000 and provides us with an option to extend up to a full year for an additional \$25,000, for a total of \$50,000/year. In order to test the usefulness of the data fully and determine if this is a service that would be beneficial to our office moving forward, we would like to take advantage of the 6-month extension. The extension terms will begin on April 1, 2024, and end on September 30, 2024.

[www.acassessor.org](http://www.acassessor.org)



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### **SELECTION CRITERIA AND PROCESS:**

*CompStak is the only source for the same commercial real estate lease and sales comps that are used by brokers, independent appraisers, and CRE researchers involved in the transactions. They provide, at a national level, extremely hard-to-find data points such as actual starting rents, free rent, TI packages, rent schedules, expiration dates, net effective rents, and cap rates for Office, Industrial, Retail, and other assets within the US. Unlike other sources, these are not based on averages, surveys, or estimates. For this reason, the Alameda County General Services Agency Procurement approved a Sole Source Waiver No. 9600, as well as a SLEB Waiver No. 9202, both with the expiration date of 09/30/2024.*

### **FINANCING**

The Assessor's Office will be utilizing funds from our Discretionary Services account. There is no increase in the net County Cost as a result of this action.

### **VISION 2026 GOAL**

Providing the Assessor's Office staff with additional tools to execute their tasks more accurately and more effectively, **resulting in an increase in efficiency and productivity, supports our shared vision of a Prosperous and Vibrant Economy.**

Sincerely,

DocuSigned by:  
  
F2CBDF6A70D4457...

Phong La  
Assessor  
County of Alameda

# Order Form

1. **Subscription Term:** 12 Months
2. **Total Number of Users:** 10
3. **Total Number of Exports:** 200 / User / Market / Month
4. **Markets Included:** Bay Area, California
5. **Effective Date:** September 29, 2023

**Additional Terms:** This Agreement shall replace the Agreement executed on September 29, 2023.

**Payment Terms:** The Subscription Fee of \$50,000 (discounted from \$100,000) will be due and payable in two installments; the first installment of \$25,000 shall be due upon execution, and the second installment of \$25,000 shall be on April 1, 2024. Any amounts not paid within 30 days will be subject to interest of 1.5% per month, at which time interest will be immediately due and payable.

Year 1

## Subscription

Item Name	Total Authorized Users	Year	Start Date	End Date	Price
CompStak Enterprise - Lease Comps	10	Year 1 (1st 6 mos)	Sep 30, 2023	March 29, 2024	\$25,000
CompStak Enterprise - Lease Comps	10	Year 1 (2nd 6 mos)	April 1, 2024	Sep 29, 2024	\$25,000
Total Net Price					\$50,000

THIS MASTER SUBSCRIPTION AGREEMENT ("AGREEMENT") IS BETWEEN COUNTY OF ALAMEDA, A POLITICAL SUBDIVISION OF THE STATE OF CALIFORNIA, ON BEHALF OF ITS ASSESSOR ("CUSTOMER" OR "YOU") AND COMPSTAK, INC., A DELAWARE CORPORATION ("COMPANY"). THIS AGREEMENT GOVERNS CUSTOMER'S ACQUISITION AND USE OF COMPANY'S SERVICE (DEFINED IN SECTION 1 BELOW). BY ELECTRONICALLY SIGNING THIS AGREEMENT WHERE PROVIDED BELOW, CUSTOMER AGREES TO THE TERMS OF THIS AGREEMENT. IF CUSTOMER IS ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, THEN CUSTOMER REPRESENTS THAT CUSTOMER HAS THE AUTHORITY TO BIND SUCH ENTITY TO THIS AGREEMENT, IN WHICH CASE THE TERM "CUSTOMER" SHALL REFER TO SUCH ENTITY. IF CUSTOMER DOES NOT HAVE SUCH AUTHORITY, OR IF CUSTOMER DOES NOT AGREE WITH THE TERMS OF THIS AGREEMENT, THEN CUSTOMER MAY NOT ACCESS AND USE THE SERVICE.

## **1. Definitions.**

1.1. "Authorized Purpose" means Customer's analysis of commercial real estate comparables in connection with the performance of the Customer's assessment duties under the California Constitution and statutory law, including mass appraisal, appraisal, property tax appeals, and sales ratio studies. For avoidance of doubt, the term "Authorized Purpose" shall not be construed to limit the right of the assessee or the assessee's representative to access any record to which the assessee or assessee's representative is entitled to access pursuant to California Revenue and Taxation Code section 408.

1.2. "Authorized Users" means the specific Customer employees either identified on the Order Form, or who are later identified in writing to Company, who need to access the Service for the Authorized Purpose and who are provided with a Service account login by Company. Customer may request the addition of additional Authorized Users as set forth in Section 2.4 below.

1.3. "Comp" shall mean the record of the terms, provisions and conditions of a commercial lease transaction, including such items as landlord name, tenant name, rent and payment provisions, square footage, lease term and landlord concessions.

1.4. "Export" means a single Comp delivered to the Customer and downloaded in any form from the platform.

1.5. "CompStak Data" means the Reports and any other information or data accessible from the Service.

1.6. "Confidential Information" shall have the meaning set forth in Section 6.1.

1.7. "Derivative Data" means data or other information created from calculations, manipulations, analyses and/or other processes performed by Customer utilizing the CompStak Data, whether alone or in conjunction with other data, provided that attribution of the source of the CompStak Data to CompStak does not remain identifiable and may not be readily extracted or reverse engineered.

1.8. "Order Form" means the order information fields on Company's web-based platform that Customer must complete in connection with purchasing access to the Service.

1.9. "Effective Date" means the date of mutual execution of the Agreement, unless otherwise stated in the Order Form.

1.10. "Markets" shall mean any geographical region for which Customer is provided Service by Company, as identified on the Order Form.

1.11. "Related Parties" means all parties who are involved in the Customer's mass appraisal and tax appeals process; specifically, the California State Board of Equalization, or California Courts; and including but not limited to property tax agents, individual taxpayers, local and state governmental agencies, local taxing jurisdictions, the in-house and retained counsel for the Customer and/or taxpayers, the experts engaged by the Customer, and any party with a right of access under Revenue and Taxation Code section 408. For avoidance of doubt, the term "Related Parties" shall not be construed to limit the right of the assessee or the assessee's representative to access any record to which the assessee or assessee's representative is entitled to access pursuant to California Revenue and Taxation Code section 408.

1.12. "Reports" means the data reports generated by Company or by the Service and delivered to Customer.

1.13. "Service" means the online platform to which access is provided to Customer pursuant to this Agreement and which allows Authorized Users to access and analyze aggregated data about commercial real estate properties.

1.14. "Term" shall have the meaning set forth in Section 7.1.

## **2. Access to Service.**

### **2.1. Grant.**

Subject to the terms and conditions of this Agreement, Company hereby grants to Customer a nonexclusive and nontransferable right during the Term (a) to allow the Authorized Users to access and use the Service for the Authorized Purpose in the Markets specified in the Order Form, which may be updated from time to time and (b) to allow Authorized Users to reproduce, prepare Derivative Data) of, and utilize, present, and share the Derivative Data and Reports with other Authorized Users and Related Parties, solely for the Authorized Purpose. Customer shall not allow access to the Service by any person other than an Authorized User or for use other than as reasonably necessary for the Authorized Purpose, or as required by law.

### **2.2 Reservation of Rights.**

Customer acknowledges that it is only granted access to the Service and the license to the Reports for the Authorized Purpose during the Term in accordance with this Section 2 and agrees that it shall not use the Service or Reports except as permitted under this Sections 2.1 and 2.6. Customer acknowledges that Company retains title to the Service and Reports. Company hereby reserves all rights to the Service, Reports, or any copyrights, patents, trademarks or other intellectual property rights embodied or used in connection therewith, except for the rights expressly granted herein. Notwithstanding the foregoing, nothing in this Agreement shall be construed to limit the right of Customer to continue to use and retain any Derivative Data generated from CompStak Data obtained by Customer, and to retain any Reports and CompStak Data obtained by Customer during the Term that is the basis for Derivative Data or otherwise relied upon by Customer for an Authorized Purpose conducted during the Term, provided that any Reports and CompStak Data

retained by Customer after the Term shall remain subject to any and all Confidentiality protections provide for herein.

### **2.3 Additional Restrictions.**

Customer shall not itself, or through any parent, subsidiary, affiliate, agent or other third party: (a) transfer, distribute, sell, lease, license or sublicense access to the Service; (b) attempt to decompile, disassemble, or reverse engineer the Service, in whole or in part; (c) allow access to the Service by any person other than an Authorized User; (d) write or develop any derivative software or any other software program based upon the Service or any Confidential Information; (e) use the Service to provide processing services to third parties, or otherwise use the Service on a 'service bureau' basis; or (f) provide, disclose, divulge or make available to, or permit use of the Service by any third party without Company's prior written consent. Authorized Users may use Reports for the Authorized Purpose only and may not reproduce or distribute any Reports to any third parties, other than to Related Parties for the Authorized Purpose as expressly provided herein, without Company's prior written consent. Notwithstanding the foregoing, if Company provides such consent, or if the production of the Report(s), other than Customer's Derivative Data, is required in the course of the appraisal and appeals process, Customer must only provide Company with attribution for Reports in a mutually-agreed-upon format. Further, Customer represents and warrants it will not use the CompStak Data for the benefit of a CompStak Competitor or provide the CompStak Data, directly or indirectly, to a CompStak Competitor. A "CompStak Competitor" is any company whose primary business is to provide an online commercial real estate analytics platform, including, without limitation, CoStar Group, Inc. Notwithstanding the foregoing, this Section 2.3 shall not be construed to limit the rights of an assessee or assessee's representative under California Revenue and Taxation Code section 408.

### **2.4 Authorized Users.**

Customer acknowledges and agrees that it is responsible for all use or misuse of the Service by its Authorized Users, and a breach by any such Authorized User of any term of this Agreement shall be deemed a breach under this Agreement, which may result in the suspension of such Authorized User's access to the Service. As between the parties, Customer agrees that is responsible for notifying and obtaining the agreement of such Authorized Users to the restrictions with respect to the Service. Company reserves the right to immediately suspend any or all Authorized Users' access to the Service, upon notice to Customer, if Company reasonably believes, in its sole discretion, that an Authorized User has misused the Service and such misuse may compromise the intellectual property of the Company in a meaningful way. Each Service account login provided to an Authorized User is specific to that individual and may not be transferred, sold or otherwise assigned to or shared with any other individual or entity. Customer shall notify Company if Customer wishes to add or replace Authorized Users, and Company shall not unreasonably withhold or deny approval of such replacement. Customer shall have the right to replace any Authorized User at no cost provided that (1) the total number of Authorized Users following the replacement does not exceed the total amount identified on the Order Form, and (2) Customer notifies Company in writing of the

Authorized User to be replaced, and the identity of the replacement Authorized User, such that the replacement may be memorialized on the Order Form. Customer shall endeavor to limit the number of Authorized User replacements. In the event Company accepts Customer's request to add additional Authorized Users, the parties will (a) amend the Order Form to include the name of such additional Authorized User, and (b) increase the Subscription Fees (defined in Section 3.1 below) by either 1) the amount set forth in the Order Form per month per added Authorized User or 2) if no amount is listed by a mutually agreed upon amount. Company reserves the right to increase the Subscription Fee for each additional Authorized User based upon factors including without limitation, additional markets added by Customer or product features added to the Service.

## **2.5 Data Export.**

The total quantity of Comps that may be exported in each thirty (30) day period, beginning on the Effective Date, is indicated in the Order Form (the "Comp Limit"). Customer shall notify Company if Customer wishes to increase the Comp Limit. In the event Company accepts Customer's request to increase the Comp Limit, the parties will (a) amend the Order Form to reflect the increased Comp Limit and (b) increase the Subscription Fees as set forth in Section 3.3 below.

For avoidance of doubt, the Comp Export Limit shall have no impact on Customer's ability to access and view all CompStak Data within the Service.

## **2.6 Additional Markets.**

Customer's access to the Services shall be limited to the Markets specified in the Order Form. Customer shall notify Company if Customer wishes to add Markets to the Order Form. In the event Company accepts Customer's request to provide access to additional Markets, the parties will (a) amend the Order Form to include the additional Markets, and (b) increase the Subscription Fees as set forth in Section 3.2 below. For each Market added to the Order Form, the Comp Limit shall be adjusted accordingly in the Order Form.

## **2.7 Additional Data Sets.**

N/A

# **3. Subscription Fee.**

## **3.1 Payment of Fees.**

As per the Order Form.

## **3.2 Additional Markets.**

For every Market added to the Order Form after the Effective Date of this Agreement, the Subscription Fees shall be increased by either 1) the amount set forth in the Order Form per month or 2) if no amount is listed by a mutually agreed upon amount.

## **3.3 Increases in the Comp Limit.**

For every 100 Comps added to the Comp Limit, pursuant to Section 2.5 above, the Subscription Fees shall be increased by either 1) the amount set forth in the Order Form per month or 2) if no amount is listed by a mutually agreed upon amount. For the avoidance of doubt, increases in the Comp Limit occurring pursuant to the addition of a Market as set forth in Section 2.6 shall not be subject to the fee increase in this Section 3.3. Any Comp Limit increase should be subject to written request by Customer.

### **3.4 Taxes.**

All charges and fees provided for in this Agreement are inclusive of any taxes, duties, or similar charges imposed by any government, unless noted in the Order Form. Customer shall pay or reimburse Company for all federal, state, dominion, provincial, or local sales, use, personal property, excise or other taxes, fees, or duties arising out of this Agreement or the transactions contemplated by this Agreement (other than taxes on the net income of Company).

## **4. Limited Warranty and Limitation of Liability**

### **4.1 Disclaimer.**

Company makes no warranties, whether express, implied, or statutory regarding or relating to the Service, Reports, or any materials or services furnished or provided to Customer under this Agreement.

COMPANY HEREBY DISCLAIMS ALL IMPLIED WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE SERVICE, REPORTS, AND SAID OTHER MATERIALS AND SERVICES, AND WITH RESPECT TO THE USE OF ANY OF THE FOREGOING.

### **4.2 Limitation of Liability.**

IN NO EVENT WILL COMPANY BE LIABLE FOR ANY LOSS OF PROFITS, LOSS OF USE, BUSINESS INTERRUPTION, LOSS OF DATA, COST OF COVER OR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND IN CONNECTION WITH OR ARISING OUT OF THE FURNISHING, PERFORMANCE OR USE OF THE SERVICE AND REPORTS, WHETHER ALLEGED AS A BREACH OF CONTRACT OR TORTIOUS CONDUCT, INCLUDING NEGLIGENCE, EVEN IF COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. COMPANY'S LIABILITY UNDER THIS AGREEMENT FOR DAMAGES WILL NOT, IN ANY EVENT, EXCEED THE LIMITS OF COMPANY'S INSURANCE POLICY CONTAINED IN EXHIBIT B.

The provisions of this Section 4 allocate risks under this Agreement between Customer and Company. Company's pricing of the Service and Reports reflects this allocation of risks and limitation of liability.

## **5. Indemnification for Infringement**

### **5.1 Indemnity.**

Company shall, at its expense, defend or settle any claim, action or allegation brought against Customer that the Service or any Report infringes any patent, copyright or trade secret of any third



party and shall pay any final judgments awarded or settlements entered into; provided that Customer (i) gives prompt written notice to Company of any such claim, action or allegation of infringement, (ii) gives the Company the assistance, authority and information as Company may reasonably require to settle or oppose such claims, and (iii) gives Company the authority to proceed as contemplated herein. Company will have the exclusive right to defend any such claim, action or allegation and make settlements thereof at its own discretion, and Customer may not settle or compromise such claim, action or allegation, except with prior written consent of Company.

## **5.2 Options.**

In the event any such infringement, claim, action or allegation is brought or threatened, Company may, at its sole option and expense: (a) procure for Customer the right to continue use of the Service or infringing part thereof; or (b) modify or amend the Service or infringing part thereof, or replace the Service or infringing part thereof with other software having substantially the same or better capabilities; or, (c) if neither of the foregoing is commercially practicable, terminate this Agreement and repay to Customer a pro rata portion, if any, of any pre-paid Subscription Fees. Company and Customer will then be released from any further obligation to the other under this Agreement, except for the obligations of indemnification provided for above and such other obligations that survive termination.

## **5.3 Exclusions**

Company shall have no liability hereunder if the actual or alleged infringement results from (a) Customer's breach of this Agreement, (b) any modification, alteration or addition made to the Service, any Report or any use thereof, including any combination of the Service or any Report with software or other materials not provided by Company, (c) Customer's failure to use any corrections or modifications made available by Company that would not result in any material loss of functionality, (d) use of the Service or any Report in a manner or in connection with a product or data not contemplated by this Agreement, or (e) any settlements entered into by Customer or costs incurred by Customer for such claim that are not pre-approved by Company in writing.

## **5.4 Limitation.**

THIS SECTION 5 STATES THE ENTIRE LIABILITY OF COMPANY WITH RESPECT TO INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADE SECRET OR OTHER PROPRIETARY RIGHT.

## **5.4 Insurance.**

Company shall at all times during the term of the Agreement with the Customer maintain in force, at minimum, the insurance policy limits designated in the attached Exhibit B.

Company shall provide Workers' Compensation insurance, as applicable, at Company's own cost and expense and further, neither the Company nor its carrier shall be entitled to recover from Customer any costs, settlements, or expenses of Workers' Compensation claims arising out of this Agreement.

## **6. Confidential Information**

### **6.1 Definition.**

"Confidential Information" means any information disclosed by either party to the other party, either directly or indirectly, in writing, orally or by inspection of tangible objects (including without limitation documents and prototypes), which is designated as "Confidential," "Proprietary" or some similar designation at the time of disclosure. Information communicated orally will be considered Confidential Information if such information is confirmed in writing as being Confidential Information within a reasonable time (no more than ten (10) days) after the initial disclosure. Confidential Information may also include information disclosed to a disclosing party by third parties. In addition, Company Confidential Information includes, but is not limited to the Service, CompStak Data, any responses to technical support requests, and any business information, technical data, or know-how relating to the Service, CompStak Data, any services, or any associated technology or services, including without limitation all such information disclosed in written form.

6.1.1 Company acknowledges and understands that County is a government entity subject to the public records and meeting laws of the State of California, including the California Public Records Act (Government Code Section 6250 et seq.) and the California Brown Act (Government Code Section 54950 et seq.). Notwithstanding any other provision contained in this Agreement, any information (including Confidential Information), communications, and documents given by Company to Customer and meetings involving Customer may be subject to disclosure pursuant to the California Public Records Act and Brown Act. Customer acknowledges and understands that trade secrets may be exempt from the disclosure requirements of the California Public Records Act and the California Brown Act, and will ensure Company will have a reasonable opportunity to object to any disclosure of Company information that is exempt from disclosure under public disclosure laws and regulations, including seeking an order blocking such disclosure. Each Party shall disclose the other Party's Confidential Information when required by law or otherwise in response to a valid order of a court or other governmental body of the United States or any political subdivision thereof (provided, however, that, if legally permissible, the responding Party shall first have given notice to the other Party hereto and shall have made a reasonable effort to limit the scope of such disclosure or otherwise obtain a protective order requiring that the Confidential Information so disclosed be used only for the purposes for which the order was issued).

### **6.2 Exceptions.**

Confidential Information will not, however, include any information which (i) was publicly known and made generally available in the public domain prior to the time of disclosure by the disclosing party; (ii) becomes publicly known and made generally available after disclosure by the disclosing party to the receiving party through no action or inaction of the receiving party; (iii) is already in the

possession of the receiving party at the time of disclosure by the disclosing party as shown by the receiving party's files and records immediately prior to the time of disclosure; (iv) is obtained by the receiving party from a third party without a breach of such third party's obligations of confidentiality; (v) is independently developed by the receiving party without use of or reference to the disclosing party's Confidential Information, as shown by documents and other competent evidence in the receiving party's possession; or is Derivative Data.

### **6.3 Non-Use and Non-Disclosure.**

Each party agrees not to use any Confidential Information of the other party for any purpose except to exercise its rights and perform its obligations under this Agreement. Each party agrees not to disclose any Confidential Information of the other party to third parties or to such party's employees who do not have a need to know. Notwithstanding, a receiving party may disclose such Confidential Information that is required by law to be disclosed if the receiving party gives the disclosing party prompt written notice of such requirement prior to such disclosure and assistance in obtaining an order protecting the information from public disclosure. For further avoidance of doubt, it is expressly agreed that Customer's disclosure of Derivative Data in connection with the appraisal and appeals process shall not require notice to Company. Neither party shall reverse engineer, disassemble or decompile any prototypes, software or other tangible objects which embody the other party's Confidential Information and which are provided to the party hereunder.

### **6.4 Maintenance of Confidentiality.**

Each party agrees that it shall take reasonable measures to protect the secrecy of and avoid disclosure and unauthorized use of the Confidential Information of the other party. Without limiting the foregoing, each party shall take at least those measures that it takes to protect its own confidential information and shall ensure that its employees who have access to Confidential Information of the other party are aware of the provisions hereof, prior to any disclosure of Confidential Information to such employees. In order to protect the Confidential Information, Customer shall maintain appropriate standard security measures to prevent access, intrusion or other interference by any unauthorized third parties of the CompStak Data, that are: (a) no less rigorous than those maintained by Customer for its own information; and (b) no less rigorous than best practices in the industry. Customer shall immediately inform Company when Customer has reason to believe that any unauthorized access to CompStak Data has occurred. Customer agrees that Company, or its authorized representatives, will have the right, upon reasonable written notice, to perform an audit with respect to Customer's performance of its data security obligations under this Section 6. Neither party shall make any copies of the Confidential Information of the other party unless the same are previously approved in writing by the other party. Each party shall reproduce the other party's proprietary rights notices on any such approved copies, in the same manner in which such notices were set forth in or on the original. Customer shall be deemed to be in compliance with the provisions of this Section 6.4 by treating the Confidential Information as non-public records under Revenue and Taxation Code section 408.

## **6.5 Return or Destruction of Materials.**

Upon the termination or expiration of this Agreement, each party shall either deliver to the other party all of such other party's Confidential Information that such party may have in its possession or control or each party shall destroy such Confidential Information. The undertaking to destroy or return the Confidential Information shall not apply to Confidential Information which a party must retain under any applicable law, rule or regulation. Nothing in this paragraph shall be deemed to require Customer to seek removal or return of any information – whether or not confidential – which forms a part of any appraisal or appeal process. Notwithstanding the foregoing, in the event that any such Confidential Information is retained by Customer after the termination or expiration of this Agreement in accordance with this provision, it may only be utilized and disclosed by Customer for the limited purpose for which it was required to be retained.

## **7. Term and Termination**

### **7.1 Term.**

This Agreement shall be in effect for twelve (12) months from the Effective Date. The first six (6) months of this Agreement shall be the Initial Term (the “Initial Term”). After the Initial Term, this Agreement may be extended for an additional six (6) months upon the same terms; subject to the addition of taxes, if any (“Extension Term”). In addition, the Agreement may be renewed on an annual basis upon the mutual agreement of the parties herein (the “Renewal Term”). Such Renewal Term(s) may be subject to an annual increase. Collectively, the Initial Term, Extension Term, and Renewal Terms are the “Term.”

### **7.2 Termination Events.**

Company may, by written notice to Customer, terminate this Agreement if any of the following events (“Termination Events”) occur:

- (a) Customer fails to pay any amount due Company within thirty (30) days after Company gives Customer written notice of such nonpayment; or
- (b) Customer is in material breach of any nonmonetary term, condition or provision of this Agreement, which breach, if capable of being cured, is not cured within thirty (30) days after Company gives Customer written notice of such breach; or
- (c) Customer (i) terminates or suspends its business, (ii) becomes insolvent, admits in writing its inability to pay its debts as they mature, makes an assignment for the benefit of creditors, or becomes subject to direct control of a trustee, receiver or similar authority, or (iii) becomes subject to any bankruptcy or insolvency proceeding under federal or state statutes. If any Termination Event occurs, termination will become effective immediately or on the date set forth in the written notice of termination. Termination of this Agreement will not affect the provisions regarding Customer's or Company's treatment of Confidential Information, provisions relating to the payment of amounts

due, or provisions limiting or disclaiming Company's liability, which provisions will survive termination of this Agreement.

Customer may terminate this Agreement without cause upon thirty (30) days written notice served upon the Company stating the extent and effective date of termination; provided however, upon any such termination, Customer shall not be entitled to a refund of Subscription Fees paid to Company.

### **7.3 Survival and Termination Obligations.**

Immediately upon expiration or termination of this Agreement for any reason whatsoever, Customer will cease all access to and use of the Service and, except as otherwise provided in this Agreement, Reports. In addition, no later than thirty (30) days after the date of termination or discontinuance of this Agreement for any reason whatsoever, Customer shall return or destroy any Confidential Information of the Company in its possession that is in tangible form. Customer shall furnish Company with a certificate signed by an executive officer of Customer verifying that the same has been done. Sections 2.2-2.5, 3, 4.1, 4.2, 5, 6, 7.3, and 8 shall survive any termination or expiration of this Agreement.

## **8. Miscellaneous**

### **8.1 Assignment.**

Neither this Agreement nor any rights under this Agreement may be assigned or otherwise transferred by Customer, in whole or in part, whether voluntary or by operation of law, including by way of sale of assets, merger or consolidation, without the prior written consent of Company. Company may assign this Agreement without consent in connection with its reorganization, reincorporation, sale of assets, merger or consolidation, without the prior written consent of Customer. Subject to the foregoing, this Agreement will be binding upon and will inure to the benefit of the parties and their respective successors and assigns. Any assignment in violation of this Section 8.1 shall be null and void.

### **8.2 Notices.**

Any notice required or permitted under the terms of this Agreement or required by law must be in writing and must be (a) delivered in person, (b) sent by first class registered mail, or air mail, as appropriate, or (c) sent via email, as long as there is a reply confirming receipt (d) sent by overnight air courier, in each case properly posted and fully prepaid to the appropriate address set forth in the Order Form. Notices will be considered to have been given at the time of actual delivery in person, three (3) business days after deposit in the mail as set forth above, or one day after delivery to an overnight air courier service. Notices to Company shall be sent via email to [legal@compstak.com](mailto:legal@compstak.com), or to: CompStak, Inc., 675 Sixth Avenue, Fourth Floor, New York, NY 10011. Notices to Customer shall be sent via email to [mika.hankins@acgov.org](mailto:mika.hankins@acgov.org), or to: Office of the Assessor, County of Alameda, ATTN: Chief Deputy Assessor, 1221 Oak Street, Room 145, Oakland, CA 94612. Either party may change its address for notice by notice to the other party given in accordance with this Section.

### **8.3 Limitation on Claims.**

No action arising out of any breach or claimed breach of this Agreement or transactions contemplated by this Agreement may be brought by either party more than one year after the cause of action has accrued. For purposes of this Agreement, a cause of action will be deemed to have accrued when a party knew or reasonably should have known of the breach or claimed breach.

#### **8.4 No Warranties.**

No employee, agent, representative or affiliate of Company has authority to bind Company to any oral representations or warranty concerning the Service or Reports. Any written representation or warranty not expressly contained in this Agreement will not be enforceable.

#### **8.5 Force Majeure.**

Neither party will incur any liability to the other party on account of any loss or damage resulting from any delay or failure to perform all or any part of this Agreement if such delay or failure is caused, in whole or in part, by events, occurrences, or causes beyond the control and without negligence of the parties. Such events, occurrences, or causes will include, without limitation, acts of God, strikes, lockouts, riots, acts of war, earthquake, fire and explosions, but the inability to meet financial obligations is expressly excluded.

#### **8.6 Waiver.**

Any waiver of the provisions of this Agreement or of a party's rights or remedies under this Agreement must be in writing to be effective. Failure, neglect, or delay by a party to enforce the provisions of this Agreement or its rights or remedies at any time, will not be construed and will not be deemed to be a waiver of such party's rights under this Agreement and will not in any way affect the validity of the whole or any part of this Agreement or prejudice such party's right to take subsequent action. No exercise or enforcement by either party of any right or remedy under this Agreement will preclude the enforcement by such party of any other right or remedy under this Agreement or that such party is entitled by law to enforce.

#### **8.7 Severability.**

If any term, condition, or provision in this Agreement is found to be invalid, unlawful or unenforceable to any extent, the parties shall endeavor in good faith to agree to such amendments that will preserve, as far as possible, the intentions expressed in this Agreement. If the parties fail to agree on such an amendment, such invalid term, condition or provision will be severed from the remaining terms, conditions and provisions, which will continue to be valid and enforceable to the fullest extent permitted by law.

#### **8.8 Integration.**

This Agreement, including the Order Form and all exhibits, contains the entire agreement of the parties with respect to the subject matter of this Agreement and supersedes all previous communications, representations, understandings and agreements, either oral or written, between

the parties with respect to said subject matter. This Agreement may not be amended, except by a writing signed by both parties.

#### **8.9 Purchase Orders.**

No terms, provisions or conditions of any purchase order, acknowledgement or other business form that Customer may use in connection with the acquisition or licensing of the Service or Reports will have any effect on the rights, duties or obligations of the parties under, or otherwise modify, this Agreement, regardless of any failure of Company to object to such terms, provisions or conditions.

#### **8.10 Intentionally Omitted.**

#### **8.11 Governing Law.**

This Agreement shall be governed by the laws of the United States and the State of California, without reference to conflict of laws principles. Any dispute between the parties regarding this Agreement will be subject to the exclusive venue of the state and federal courts in Alameda County, California. The parties hereby consent to the exclusive jurisdiction and venue of such courts. Each party hereby expressly waives the application of New York General Obligation Law section 5-903 to any renewal of this Agreement.

**8.12 Language for Use of Electronic (Digital) Signatures.** This Agreement may be executed in any number of counterparts, each of which will be an original, but all of which together will constitute one instrument. Each party of this Agreement agrees to the use of electronic signatures, such as digital signatures that meet the requirements of the California Uniform Electronic Transactions Act ("CUETA") Cal. Civ. Code §§ 1633.1 to 1633.17), for executing this Agreement. The parties further agree that the electronic signatures of the parties included in this Agreement are intended to authenticate this writing and to have the same force and effect as manual signatures. Electronic signature means an electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign the electronic record pursuant to the CUETA as amended from time to time. The CUETA authorizes use of an electronic signature for transactions and contracts among parties in California, including a government agency. Digital signature means an electronic identifier, created by computer, intended by the party using it to have the same force and effect as the use of a manual signature, and shall be reasonably relied upon by the parties. For purposes of this section, a digital signature is a type of "electronic signature" as defined in subdivision (i) of Section 1633.2 of the Civil Code

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

Company 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.

Company 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 Customer harmless from any and all liability which Customer may incur because of Company's failure to pay such amounts.

In carrying out the work contemplated herein, Company 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 Customer.

Company 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 Customer 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 Customer agency concerned.

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

**8.14 Drug-Free Workplace:** Company and Company's employees shall comply with the Customer's policy of maintaining a drug-free workplace. Neither Company nor Company'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 Customer facility or work site. If Company or any employee of Company is convicted or pleads nolo contendere to a criminal drug statute violation occurring at a Customer facility or work site, the Company within five days thereafter shall notify the head of the Customer department/agency for which the contract services are performed. Violation of this provision shall constitute a material breach of this Agreement.

**8.15 Equal Employment Opportunity Practices Provisions:** Company 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.

8.15.1. Company 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.

8.15.2. Company shall, if requested to so do by the Customer, 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.

8.15.3. If requested to do so by the Customer, Company shall provide the Customer 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.

8.15.4. Company shall recruit vigorously and encourage minority - and women-owned businesses to bid its subcontracts.

8.15.5. Nothing contained in this Agreement shall be construed in any manner so as to require or permit any act, which is prohibited by law.

8.15.6. The Company shall include the provisions set forth in paragraphs 8.15.1 through 8.15.6 (above) in each of its subcontracts.

**8.16 Audits; Access to Records:** The Company shall make available to the Customer, its authorized agents, officers, or employees, for examination any and all invoices and cancelled checks relating to its charges to the Customer.

The Company shall in no event dispose of, destroy, alter, or mutilate said for one (1) year after the Customer makes the final or last payment or within three (3) years after any pending issues between the Customer and Company with respect to this Agreement are closed, whichever is later.

**BY ELECTRONICALLY SIGNING THIS AGREEMENT WHERE PROVIDED BELOW, CUSTOMER HEREBY UNCONDITIONALLY ACCEPTS THE TERMS AND CONDITIONS OF THIS AGREEMENT.**

**Signed by:**

**Signed by:**

**for and on behalf of: County of Alameda, a  
political subdivision of the State of California**

**for and on behalf of: CompStak, Inc., a  
Delaware corporation**

**Name:** PHONG LA

**Job Title:** Assessor

**Date:**

**Name:**

**Job Title:**

**Date:**

Approved as to form:

DONNA R. ZIEGLER

County Counsel

By: \_\_\_\_\_

Andrew Massey

Deputy County Counsel

Exhibit A  
INTENTIONALLY DELETED – N/A  
Exhibit B  
[Insert Insurance Exhibit]



## OFFICE OF AQUISITION POLICY (OAP)

24831

### REQUEST FOR AUTHORIZATION TO WAIVE SLEB PROGRAM REQUIREMENTS

#### For Federal grant funds:

Procurements using Federal grant funds which prohibit geographical preferences require the Federal Grant Funds SLEB Waiver Request form to be completed and submitted for approval to the Auditor-Controller Office of Contract Compliance & Reporting (OCCR) prior to soliciting bids/proposals and awarding contracts. For further information contact OCCR at ACSLEBcompliance@acgov.org.

#### For ALL Requests over \$3,000 and for Non-Federal SLEB waivers:

Requests must be completed and submitted online. The automated SLEB waiver requests can be found under the "For Work" section. See "Online SLEB Waiver Request". Complete #1-#9 below, complete #10 if over \$100,000 (First Source applies). Attach supporting documentation including 2 quotes or approved Sole Source/Piggybacks (must have both the Questionnaire and Finding Memo).

For questions, or if you are unable to access/log in to the automated system, you can contact OAP at gsa-oapslebwaivers@acgov.org.

#### SLEB Waivers:

Procurement Policy and Procedures Overview (<https://alcoweb.acgov.org/gsaapps/slebwaiver/ppp.htm>)

PO Checklist (<https://alcoweb.acgov.org/gsaapps/slebwaiver/po.htm>)

SLEB Waiver Numbers will be issued as required to enter a Procurement Contract in ALCOLINK. Processed SLEB waivers will receive an automated email from OAP.

**NOTE: All questions require a complete response. Enter "N/A" or "None", etc., as applicable. Do not leave blank lines.**

#### 1. Please check appropriate box and complete department/contact information below.

<input checked="" type="checkbox"/> Requesting Department	<input type="checkbox"/> GSA Procurement managing the competitive process		
Department <input type="text" value="Assessor"/>	Primary <input type="text" value="Ruella Cayabyab"/>	Email <input type="text" value="ruella.cayabyab@acgov.org"/>	Telephone <input type="text" value="(510)272-3723"/>
(Optional)	Secondary <input type="text"/>	Email <input type="text"/>	Telephone <input type="text"/>
GSA Procurement/Auditor:	Contact Name: <input type="text" value="GSA-Buyer"/>	Email <input type="text" value="GSA-Buyer@acgov.org"/>	Telephone <input type="text" value="(510)208-9600"/>

#### 2. Recommended Vendor PO#: REQ#:

Country

Street  City  State:  Zip:

#### 3. Procurement Type (check all appropriate boxes below):

☐ New Contract ☐ Renewal ☒ Contract Amendment-Term ☒ Contract Amendment-  Othe

4 Total PO/Contract Value (including increase,  ; Increase Value (if

Contract Term Start  End Date  OR One-Time Purchase ☐

**5. Goods/Services Procurement Description:**

Assessment Data System called CompStak, that will be used by our Assessor Appraisal staff to obtain complete commercial Real-estate data information.

**6. Brief explanation of why goods/services are**

The Assessor's Office is responsible for locating all taxable property in the County, establishing its taxable value, and applying a legal exemption. This program will help gather that information since it provides extremely hard-to-find data points such as actual starting rents, free rent, TI packages, rent schedules, expiration dates, net effective rates, and cap rates for Office, Industrial, Retail, and other assets within the US.

**7. Date Goods/Services Needed:**

12/06/2023

**a. What are the consequences if the date goods/services needed is**

Assessor's office will not have all of the information needed to appraise properties correctly.

**8. Explanation of why the non-SLEB contractor/subcontractor (in #2 above) is being recommended and, if procurement over \$25,000, why they are unable to subcontract with a SLEB(s) for a minimum of 20%:**

Sole Source

**9. IF APPLICABLE: New Sole Source submitted to Procurement**

☒

**OR Existing Approved Exception on**

☐

**OR Not**

☐

**10. Explain what attempts were made to locate a SLEB prime or, if procurement over \$25,000, SLEB subcontractor(s),**

☒ Copies of bids received and/or detailed statement of efforts made to contact and negotiate with certified businesses, including list of SLEBs contacted, names of individuals, addresses, phone numbers, dates contacted and bid prices attached. In the section

a. n/a

b. n/a

c. n/a

**Supporting Documents:**

Approved SS 9600 Assessor Compstak  
Extension Finding Memo.pdf

TAR 120123.docx.pdf

Compstak - Alameda County Revised  
11-29-23.docx

**11 If the contract is over \$100,000, is the recommended vendor able to comply with the First Source**

Yes: ☐

No: ☐

If No,

Expedite ☐ (Check this box to expedite processing)

12. Department Certification: I certify to the accuracy of the preceding statements,

JODIMARU

Signature of Agency/Department Head  
or Designee or GSA Procurement Manager (if GSA Procurement managed the

Joan Dimarucut

Print Name

12/06/2023

Date

---

OAP to complete below:

A. Request Approved: ☒

Waiver Valid Through:

09/30/2024

SLEB Waiver Number:

9202

Reason:

B. Request Denied:

Reason:

C. Disregard:

Reason:

D. Other:

Reason:

JACKERMAN

Signed by GSA-Office of Acquisition Policy (Required)

12/06/2023

Date

\*Primary Requestor - Main Contact \*\*Secondary Requestor - Backup Contact