

## COUNTY OF MONTEREY STANDARD AGREEMENT

This **Agreement** is made by and between the County of Monterey, a political subdivision of the State of California (hereinafter "County") and:  
SkillSurvey, Inc.

\_\_\_\_\_  
(hereinafter "CONTRACTOR").

In consideration of the mutual covenants and conditions set forth in this Agreement, the parties agree as follows:

### 1.0 GENERAL DESCRIPTION:

The County hereby engages CONTRACTOR to perform, and CONTRACTOR hereby agrees to perform, the services described in **Exhibit A** in conformity with the terms of this Agreement. The goods and/or services are generally described as follows:

**Provide:**

Online reference assessment solutions to increase quality of hire and improve recruiting efficiency for the County of Monterey HR centralized departments.

### 2.0 PAYMENT PROVISIONS:

County shall pay the CONTRACTOR in accordance with the payment provisions set forth in **Exhibit A**, subject to the limitations set forth in this Agreement. The total amount payable by County to CONTRACTOR under this Agreement shall not exceed the sum of: \$ 37,086.00

### 3.0 TERM OF AGREEMENT:

3.01 The term of this Agreement is from June 10, 2020 to June 30, 2023, unless sooner terminated pursuant to the terms of this Agreement. This Agreement is of no force or effect until signed by both CONTRACTOR and County and with County signing last, and **CONTRACTOR may not commence work before County signs this Agreement.**

### 4.0 SCOPE OF SERVICES AND ADDITIONAL PROVISIONS:

The following attached exhibits are incorporated herein by reference and constitute a part of this Agreement:

**Exhibit A - Scope of Services/Payment Provisions**

**Exhibit B - Unlimited Reference Order Form**

**Exhibit C - Services Level Agreement**

**Exhibit D - SkillSurvey Inc. Terms of Use**

## 5.0 PERFORMANCE STANDARDS:

- 5.01 CONTRACTOR warrants that CONTRACTOR and CONTRACTOR's agents, employees, and subcontractors performing services under this Agreement are specially trained, experienced, competent, and appropriately licensed to perform the work and deliver the services required under this Agreement and are not employees of the County, or immediate family of an employee of the County.
- 5.02 CONTRACTOR, its agents, employees, and subcontractors shall perform all work in a safe and skillful manner and in compliance with all applicable laws and regulations. All work performed under this Agreement that is required by law to be performed or supervised by licensed personnel shall be performed in accordance with such licensing requirements.
- 5.03 CONTRACTOR shall furnish, at its own expense, all materials, equipment, and personnel necessary to carry out the terms of this Agreement, except as otherwise specified in this Agreement. CONTRACTOR shall not use County premises, property (including equipment, instruments, or supplies) or personnel for any purpose other than in the performance of its obligations under this Agreement.

## 6.0 PAYMENT CONDITIONS:

- 6.01 Prices shall remain firm for the initial term of the Agreement and, thereafter, may be adjusted annually as provided in this paragraph. The County does not guarantee any minimum or maximum amount of dollars to be spent under this Agreement.
- 6.02 Negotiations for rate changes shall be commenced, by CONTRACTOR, a minimum of ninety days (90) prior to the expiration of the Agreement. Rate changes are not binding unless mutually agreed upon in writing by the County and the CONTRACTOR.
- 6.03 Invoice amounts shall be billed directly to the ordering department.
- 6.04 CONTRACTOR shall submit such invoice periodically or at the completion of services, but in any event, not later than 30 days after completion of services. The invoice shall set forth the amounts claimed by CONTRACTOR for the previous period, together with an itemized basis for the amounts claimed, and such other information pertinent to the invoice. The County shall certify the invoice, either in the requested amount or in such other amount as the County approves in conformity with this Agreement and shall promptly submit such invoice to the County Auditor-Controller for payment. The County Auditor-Controller shall pay the amount certified within 30 days of receiving the certified invoice.

## 7.0 TERMINATION:

- 7.01 ~~During the term of this Agreement, the County may terminate the Agreement for any reason by giving written notice of termination to the CONTRACTOR at least thirty (30) days prior to the effective date of termination. Such notice shall set forth the effective date of termination. In the event of such termination, the amount payable under this Agreement shall be reduced in proportion to the services provided prior to the date of termination.~~

7.02 The County may cancel and terminate this Agreement for good cause effective immediately upon written notice to CONTRACTOR. “Good cause” includes the failure of CONTRACTOR to perform the required services at the time and in the manner provided under this Agreement. If County terminates this Agreement for good cause, the County may be relieved of the payment of any consideration to CONTRACTOR, and the County may proceed with the work in any manner, which County deems proper. The cost to the County shall be deducted from any sum due the CONTRACTOR under this Agreement.

7.03 The County’s payments to CONTRACTOR under this Agreement are funded by local, state and federal governments. If funds from local, state and federal sources are not obtained and continued at a level sufficient to allow for the County’s purchase of the indicated quantity of services, then the County may give written notice of this fact to CONTRACTOR, and the obligations of the parties under this Agreement shall terminate immediately, or on such date thereafter, as the County may specify in its notice, unless in the meanwhile the parties enter into a written amendment modifying this Agreement.

## 8.0 INDEMNIFICATION:

CONTRACTOR shall indemnify, defend, and hold harmless the County, its officers, agents, and employees, from and against any and all claims, liabilities, and losses whatsoever (including damages to property and injuries to or death of persons, court costs, and reasonable attorneys’ fees) occurring or resulting to any and all persons, firms or corporations furnishing or supplying work, services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims, liabilities, and losses occurring or resulting to any person, firm, or corporation for damage, injury, or death arising out of or connected with the CONTRACTOR’s performance of this Agreement, unless such claims, liabilities, or losses arise out of the sole negligence or willful misconduct of the County. “CONTRACTOR’s performance” includes CONTRACTOR’s action or inaction and the action or inaction of CONTRACTOR’s officers, employees, agents and subcontractors.

## 9.0 INSURANCE REQUIREMENTS:

9.01 **Evidence of Coverage:** Prior to commencement of this Agreement, the Contractor shall provide a “Certificate of Insurance” certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition, the Contractor upon request shall provide a certified copy of the policy or policies.

This verification of coverage shall be sent to the County’s Contracts/Purchasing Department, unless otherwise directed. The Contractor shall not receive a “Notice to Proceed” with the work under this Agreement until it has obtained all insurance required and the County has approved such insurance. This approval of insurance shall neither relieve nor decrease the liability of the Contractor.

9.02 **Qualifying Insurers:** All coverage’s, except surety, shall be issued by companies which hold a current policy holder’s alphabetic and financial size category rating of not less than A- VII, according to

the current Best's Key Rating Guide or a company of equal financial stability that is approved by the County's Purchasing Manager.

9.03 **Insurance Coverage Requirements:** Without limiting CONTRACTOR's duty to indemnify, CONTRACTOR shall maintain in effect throughout the term of this Agreement a policy or policies of insurance with the following minimum limits of liability:

**Commercial General Liability Insurance:** including but not limited to premises and operations, including coverage for Bodily Injury and Property Damage, Personal Injury, Contractual Liability, Broad form Property Damage, Independent Contractors, Products and Completed Operations, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.

*(Note: any proposed modifications to these general liability insurance requirements shall be attached as an Exhibit hereto, and the section(s) above that are proposed as not applicable shall be lined out in blue ink. All proposed modifications are subject to County approval.)*

**Requestor must check the appropriate Automobile Insurance Threshold:**

Requestor must check the appropriate box.

**Agreement Under \$100,000 Business Automobile Liability Insurance:** covering all motor vehicles, including owned, leased, non-owned, and hired vehicles, used in providing services under this Agreement, with a combined single limit for Bodily Injury and Property Damage of not less than \$500,000 per occurrence.

**Agreement Over \$100,000 Business Automobile Liability Insurance:** covering all motor vehicles, including owned, leased, non-owned, and hired vehicles, used in providing services under this Agreement, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.

*(Note: any proposed modifications to these auto insurance requirements shall be attached as an Exhibit hereto, and the section(s) above that are proposed as not applicable shall be lined out in blue ink. All proposed modifications are subject to County approval.)*

**Workers' Compensation Insurance:** if CONTRACTOR employs others in the performance of this Agreement, in accordance with California Labor Code section 3700 and with Employer's Liability limits not less than \$1,000,000 each person, \$1,000,000 each accident and \$1,000,000 each disease.

*(Note: any proposed modifications to these workers' compensation insurance requirements shall be attached as an Exhibit hereto, and the section(s) above that are proposed as not applicable shall be lined out in blue ink. All proposed modifications are subject to County approval.)*

**Professional Liability Insurance:** if required for the professional services being provided, (e.g., those persons authorized by a license to engage in a business or profession regulated by the California Business and Professions Code), in the amount of not less than \$1,000,000 per claim and \$2,000,000 in the aggregate, to cover liability for malpractice or

errors or omissions made in the course of rendering professional services. If professional liability insurance is written on a “claims-made” basis rather than an occurrence basis, the CONTRACTOR shall, upon the expiration or earlier termination of this Agreement, obtain extended reporting coverage (“tail coverage”) with the same liability limits. Any such tail coverage shall continue for at least three years following the expiration or earlier termination of this Agreement.

*(Note: any proposed modifications to these insurance requirements shall be attached as an Exhibit hereto, and the section(s) above that are proposed as not applicable shall be lined out in blue ink. All proposed modifications are subject to County approval.)*

#### 9.04 **Other Requirements:**

All insurance required by this Agreement shall be with a company acceptable to the County and issued and executed by an admitted insurer authorized to transact Insurance business in the State of California. Unless otherwise specified by this Agreement, all such insurance shall be written on an occurrence basis, or, if the policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of three years following the date CONTRACTOR completes its performance of services under this Agreement.

Each liability policy shall provide that the County shall be given notice in writing at least thirty days in advance of any endorsed reduction in coverage or limit, cancellation, or intended non-renewal thereof. Each policy shall provide coverage for Contractor and additional insureds with respect to claims arising from each subcontractor, if any, performing work under this Agreement, or be accompanied by a certificate of insurance from each subcontractor showing each subcontractor has identical insurance coverage to the above requirements.

**Commercial general liability and automobile liability policies shall provide an endorsement naming the County of Monterey, its officers, agents, and employees as Additional Insureds** with respect to liability arising out of the CONTRACTOR’S work, including ongoing and completed operations, **and shall further provide that such insurance is primary insurance to any insurance or self-insurance maintained by the County and that the insurance of the Additional Insureds shall not be called upon to contribute to a loss covered by the CONTRACTOR’S insurance.** The required endorsement form for Commercial General Liability Additional Insured is ISO Form CG 20 10 11-85 or CG 20 10 10 01 in tandem with CG 20 37 10 01 (2000). The required endorsement form for Automobile Additional Insured endorsement is ISO Form CA 20 48 02 99.

Prior to the execution of this Agreement by the County, CONTRACTOR shall file certificates of insurance with the County’s contract administrator and County’s Contracts/Purchasing Division, showing that the CONTRACTOR has in effect the insurance required by this Agreement. The CONTRACTOR shall file a new or amended certificate of insurance within five calendar days after any change is made in any insurance policy, which would alter the information on the certificate then on file. Acceptance or approval of insurance shall in no way modify or change the indemnification clause in this Agreement, which shall continue in full force and effect.

CONTRACTOR shall always during the term of this Agreement maintain in force the insurance coverage required under this Agreement and shall send, without demand by County, annual certificates to County's Contract Administrator and County's Contracts/Purchasing Division. If the certificate is not received by the expiration date, County shall notify CONTRACTOR and CONTRACTOR shall have five calendar days to send in the certificate, evidencing no lapse in coverage during the interim. Failure by CONTRACTOR to maintain such insurance is a default of this Agreement, which entitles County, at its sole discretion, to terminate this Agreement immediately.

## 10.0 **RECORDS AND CONFIDENTIALITY:**

- 10.1 **Confidentiality:** CONTRACTOR and its officers, employees, agents, and subcontractors shall comply with any and all federal, state, and local laws, which provide for the confidentiality of records and other information. CONTRACTOR shall not disclose any confidential records or other confidential information received from the County or prepared in connection with the performance of this Agreement, unless County specifically permits CONTRACTOR to disclose such records or information. CONTRACTOR shall promptly transmit to County any and all requests for disclosure of any such confidential records or information. CONTRACTOR shall not use any confidential information gained by CONTRACTOR in the performance of this Agreement except for the sole purpose of carrying out CONTRACTOR's obligations under this Agreement.
- 10.2 **County Records:** When this Agreement expires or terminates, CONTRACTOR shall return to County any County records which CONTRACTOR used or received from County to perform services under this Agreement.
- 10.3 **Maintenance of Records:** CONTRACTOR shall prepare, maintain, and preserve all reports and records that may be required by federal, state, and County rules and regulations related to services performed under this Agreement. CONTRACTOR shall maintain such records for a period of at least three years after receipt of final payment under this Agreement. If any litigation, claim, negotiation, audit exception, or other action relating to this Agreement is pending at the end of the three-year period, then CONTRACTOR shall retain said records until such action is resolved.
- 10.4 **Access to and Audit of Records:** The County shall have the right to examine, monitor and audit all records, documents, conditions, and activities of the CONTRACTOR and its subcontractors related to services provided under this Agreement. Pursuant to Government Code section 8546.7, if this Agreement involves the expenditure of public funds in excess of \$10,000, the parties to this Agreement may be subject, at the request of the County or as part of any audit of the County, to the examination and audit of the State Auditor pertaining to matters connected with the performance of this Agreement for a period of three years after final payment under the Agreement.
- 10.5 **Royalties and Inventions:** County shall have a royalty-free, exclusive and irrevocable license to reproduce, publish, and use, and authorize others to do so, all original computer programs, writings, sound recordings, pictorial reproductions, drawings, and other works of similar nature produced in the course of or under this Agreement. CONTRACTOR shall not publish any such material without the prior written approval of County.

## 11.0 NON-DISCRIMINATION:

11.01 During the performance of this Agreement, CONTRACTOR, and its subcontractors, shall not unlawfully discriminate against any person because of race, religious creed, color, sex, national origin, ancestry, physical disability, mental disability, medical condition, marital status, age (over 40), or sexual orientation, either in CONTRACTOR's employment practices or in the furnishing of services to recipients. CONTRACTOR shall ensure that the evaluation and treatment of its employees and applicants for employment and all persons receiving and requesting services are free of such discrimination. CONTRACTOR and any subcontractor shall, in the performance of this Agreement, fully comply with all federal, state, and local laws and regulations which prohibit discrimination. The provision of services primarily or exclusively to such target population as may be designated in this Agreement shall not be deemed to be prohibited discrimination.

## 12.0 COMPLIANCE WITH TERMS OF STATE OR FEDERAL GRANTS:

If this Agreement has been or will be funded with monies received by the County pursuant to a contract with the state or federal government in which the County is the grantee, CONTRACTOR will comply with all the provisions of said contract, to the extent applicable to CONTRACTOR as a subgrantee under said contract, and said provisions shall be deemed a part of this Agreement, as though fully set forth herein. Upon request, County will deliver a copy of said contract to CONTRACTOR, at no cost to CONTRACTOR.

## 13.0 INDEPENDENT CONTRACTOR:

In the performance of work, duties, and obligations under this Agreement, CONTRACTOR is always acting and performing as an independent contractor and not as an employee of the County. No offer or obligation of permanent employment with the County or County department or agency is intended in any manner, and CONTRACTOR shall not become entitled by virtue of this Agreement to receive from County any form of employee benefits including but not limited to sick leave, vacation, retirement benefits, workers' compensation coverage, insurance or disability benefits. CONTRACTOR shall be solely liable for and obligated to pay directly all applicable taxes, including federal and state income taxes and social security, arising out of CONTRACTOR's performance of this Agreement. In connection therewith, CONTRACTOR shall defend, indemnify, and hold County harmless from any and all liability which County may incur because of CONTRACTOR's failure to pay such taxes.

## 14.0 NOTICES:

Notices required under this Agreement shall be delivered personally or by first-class, postage pre-paid mail to the County and CONTRACTOR'S contract administrators at the addresses listed below:

<b>FOR COUNTY:</b>	<b>FOR CONTRACTOR:</b>
Irma Ramirez-Bough, Director of Human Resources	Leeza Wardak, Client Relations Director
Name and Title	Name and Title
168 W. Alisal Street, 3rd Floor Salinas, CA 93901	1235 Westlake Drive, Suite 330 Berwyn, PA 19312
Address	Address
(831) 755-5043	(925) 642-2111
Phone:	Phone:

## 15.0 MISCELLANEOUS PROVISIONS.

- 15.01 **Conflict of Interest:** CONTRACTOR represents that it presently has no interest and agrees not to acquire any interest during the term of this Agreement, which would directly, or indirectly conflict in any manner or to any degree with the full and complete performance of the services required to be rendered under this Agreement.
- 15.02 **Amendment:** This Agreement may be amended or modified only by an instrument in writing signed by the County and the CONTRACTOR.
- 15.03 **Waiver:** Any waiver of any terms and conditions of this Agreement must be in writing and signed by the County and the CONTRACTOR. A waiver of any of the terms and conditions of this Agreement shall not be construed as a waiver of any other terms or conditions in this Agreement.
- 15.04 **Contractor:** The term "CONTRACTOR" as used in this Agreement includes CONTRACTOR's officers, agents, and employees acting on CONTRACTOR's behalf in the performance of this Agreement.
- 15.05 **Disputes:** CONTRACTOR shall continue to perform under this Agreement during any dispute.
- 15.06 **Assignment and Subcontracting:** The CONTRACTOR shall not assign, sell, or otherwise transfer its interest or obligations in this Agreement without the prior written consent of the County. None of the services covered by this Agreement shall be subcontracted without the prior written approval of the County. Notwithstanding any such subcontract, CONTRACTOR shall continue to be liable for the performance of all requirements of this Agreement.



- 15.07 **Successors and Assigns:** This Agreement and the rights, privileges, duties, and obligations of the County and CONTRACTOR under this Agreement, to the extent assignable or delegable, shall be binding upon and inure to the benefit of the parties and their respective successors, permitted assigns, and heirs.
- 15.08 **Compliance with Applicable Law:** The parties shall comply with all applicable federal, state, and local laws and regulations in performing this Agreement.
- 15.09 **Headings:** The headings are for convenience only and shall not be used to interpret the terms of this Agreement.
- 15.10 **Time is of the Essence:** Time is of the essence in each and all of the provisions of this Agreement.
- 15.11 **Governing Law:** This Agreement shall be governed by and interpreted under the laws of the State of California; venue shall be Monterey County.
- 15.12 **Non-exclusive Agreement:** This Agreement is non-exclusive and both County and CONTRACTOR expressly reserve the right to contract with other entities for the same or similar services.
- 15.13 **Construction of Agreement:** The County and CONTRACTOR agree that each party has fully participated in the review and revision of this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any amendment to this Agreement.
- 15.14 **Counterparts:** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.
- 15.15 **Authority:** Any individual executing this Agreement on behalf of the County or the CONTRACTOR represents and warrants hereby that he or she has the requisite authority to enter into this Agreement on behalf of such party and bind the party to the terms and conditions of this Agreement.
- 15.16 **Integration:** This Agreement, including the exhibits, represent the entire Agreement between the County and the CONTRACTOR with respect to the subject matter of this Agreement and shall supersede all prior negotiations, representations, or agreements, either written or oral, between the County and the CONTRACTOR as of the effective date of this Agreement, which is the date that the County signs the Agreement.
- 15.17 **Interpretation of Conflicting Provisions:** In the event of any conflict or inconsistency between the provisions of this Agreement and the Provisions of any exhibit or other attachment to this Agreement, the provisions of this Agreement shall prevail and control.

16.0 SIGNATURE PAGE.

IN WITNESS WHEREOF, County and CONTRACTOR have executed this Agreement as of the day and year written below.

COUNTY OF MONTEREY

CONTRACTOR

By: \_\_\_\_\_  
Contracts/Purchasing Officer

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Department Head (if applicable)

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Board of Supervisors (if applicable)

Date: \_\_\_\_\_

Approved as to Form<sup>1</sup>

By: \_\_\_\_\_  
County Counsel

Date: \_\_\_\_\_

Approved as to Fiscal Provisions<sup>2</sup>

By: \_\_\_\_\_  
Auditor/Controller

Date: \_\_\_\_\_

Approved as to Liability Provisions<sup>3</sup>

By: \_\_\_\_\_  
Risk Management

Date: \_\_\_\_\_

SkillSurvey, Inc.

Contractor's Business Name\*

By: \_\_\_\_\_  
DocuSigned by:  
*Ray Bixler*  
338BAD468F434AD  
(Signature of Chair, President, or Vice-President) \*

Ray Bixler President and CEO

Date: \_\_\_\_\_  
Name and Title  
6/1/2020 | 4:09 PM PDT

By: \_\_\_\_\_  
DocuSigned by:  
*Mary Weaver*  
77EAABDCCE744AD  
(Signature of Secretary, Asst. Secretary, CFO, Treasurer or Asst. Treasure) \*

Mary weaver Controller

Date: \_\_\_\_\_  
Name and Title  
6/1/2020 | 4:11 PM PDT

County Board of Supervisors' Agreement Number: \_\_\_\_\_, approved on (date): \_\_\_\_\_

\*INSTRUCTIONS: If CONTRACTOR is a corporation, including non-profit corporations, the full legal name of the corporation shall be set forth above together with the signatures of two (2) specified officers per California Corporations Code Section 313. If CONTRACTOR is a Limited Liability Corporation (LLC), the full legal name of the LLC shall be set forth above together with the signatures of two (2) managers. If CONTRACTOR is a partnership, the full legal name of the partnership shall be set forth above together with the signature of a partner who has authority to execute this Agreement on behalf of the partnership. If CONTRACTOR is contracting in an individual capacity, the individual shall set forth the name of the business, if any, and shall personally sign the Agreement or Amendment to said Agreement.

<sup>1</sup>Approval by County Counsel is required

<sup>2</sup>Approval by Auditor-Controller is required

<sup>3</sup>Approval by Risk Management is necessary only if changes are made in paragraphs 8 or 9

## **EXHIBIT A**

### **To Agreement by and between**

**the COUNTY OF MONTEREY, hereinafter referred to as “COUNTY”  
and  
SkillSurvey, Inc., hereinafter referred to as “CONTRACTOR”**

### **SCOPE OF SERVICES/PAYMENT PROVISIONS**

#### **A. SCOPE OF SERVICES**

**A.1** CONTRACTOR shall provide services and staff, and otherwise do all things necessary for incidental to the performance of work, as set forth below:

CONTRACTOR shall:

1. Do all things necessary for set-up, training, customization of forms, technical support, reference checks, and candidate reports;
2. Configure the SkillSurvey website to meet the County Human Resources Department's website;
3. Customize and edit emails that go to candidates;
4. Set up frequency of notifications to users;
5. Set up sourcing database;
6. Report outcome views/options;
7. Set up County users in SkillSurvey software program;
8. Train the County users initially and any new users that need training during the term of the agreement;
9. Provide County users access to the SkillSurvey link launched via any browser through [www.skillsurvey.com](http://www.skillsurvey.com);
10. Provide technical support to County users via email or a toll-free phone number.

#### **B. PAYMENT PROVISIONS**

##### **B.1 COMPENSATION/PAYMENTS**

COUNTY shall pay an amount not to exceed \$37,086.00 for the performance of all things necessary for or incidental to the performance of work as set forth in the Scope of Services. CONTRACTOR's compensation for services rendered shall be based on the rates stated on the Unlimited Reference Order Form, attached hereto as Exhibit B.

There shall be no travel reimbursement allowed during this Agreement.

CONTRACTOR warrants that the cost charged for services under the terms of this contract

are not in excess of those charged any other client for the same services performed by the same individuals.

## **B.2 BILLING PROCEDURES**

CONTRACTOR will invoice the COUNTY annually and payments will be made based upon satisfactory acceptance of CONTRACTOR's annual invoices.

CONTRACTOR shall submit the first annual invoice to County within seven (7) days of the County's execution of this Agreement. Thereafter, CONTRACTOR shall submit an annual invoice to County no later than the 10<sup>th</sup> day of the month following the anniversary date of this Agreement. Invoices shall be emailed to the person listed under the Billing Information on Exhibit B, attached hereto. County shall certify the invoices and promptly submit them to the County Auditor-Controller for payment. The Auditor-Controller shall pay the amount certified within 30 days of receiving the certified invoice.

COUNTY may terminate this Agreement or withhold payments claimed by CONTRACTOR for services rendered if CONTRACTOR breaches any term or condition of this Agreement.

COUNTY shall not pay any claims for payment for services submitted more than twelve (12) months after the calendar month in which the services were completed.



## Exhibit B - Unlimited Reference Order Form

Customer Name:

County of Monterey

## Type of Order

New: X

Expansion:

Renewal:

SkillSurvey Contact:

David Hershman

Proposal Expires

June 13, 2020

Effective Date

End Date

Contract Effective:

June 10, 2020

June 30, 2023

## Service Item

Affected Employee Population: 950

Fees

SkillSurvey Reference®	Unlimited	\$9,292
SkillSurvey Source®	Unlimited	\$3,070
Set-up and Training	One-time	\$2,500
Annual Service & Support	Included	\$0
Set-up and Training	Setup Waived if signed before May 31, 2020	(\$2,500)
	<b>Subtotal</b>	<b>\$12,362</b>

## Additional Annual Unlimited Reference Order Form Comments:

Multi-year contract (Y/N)

Y

06/10/20 – 06/30/20 (Pilot)

\$0.00

07/01/20 – 06/30/21

\$12,362

07/01/21 – 06/30/22

\$12,362

07/01/22 – 06/30/23

\$12,362

Total Commitment

\$37,086

## Special Terms

AEP includes the following departments: Human Resources, Child Support Services, CAO, Public Defender, Co-Op Extensions, Clerk of the Board, Civil Rights Office, Elections, County Counsel, Water Resources Agency, District Attorney, Library, RMA, Auditor-Controller, Sheriff-Coroner.

## AFFECTED EMPLOYEE POPULATION

SkillSurvey will not increase fees during the Initial Term of this agreement unless Customer's Affected Employee Population (AEP) increases by more than 10%. If the AEP during this Initial Term does increase by more than 10%, the pricing will be computed by taking the per employee price times the increased number of employees beyond that which is stated on the Order Form. Pricing will be prorated for remainder of the Term.

## TERM AND FEE ADJUSTMENT

The term of this Agreement shall commence on the Effective Date and continue, unless terminated earlier as provided herein, for a period of one year (the "Initial Term").

## SERVICE AND SUPPORT INFORMATION

Information on Support Services for SkillSurvey Customers may be found at <http://www.skillsurvey.com/serviceagreement>

## TERMS OF USE

Initial term of this agreement is defined above by Contract Start Date and End date. Use of SkillSurvey Services by Subscriber is governed by the SkillSurvey Terms and Conditions found at <http://www.skillsurvey.com/termsfuse>

## PAYMENT TERMS

SkillSurvey is hereby authorized to invoice for services on the date of execution of this Order Form and thereafter. All invoicing is to be transmitted electronically via email to Customer unless otherwise indicated.

## CONFIDENTIALITY OF TERMS

Customer shall not disclose to the public or to any third party the terms and conditions or special pricing provisions contained in this Agreement, other than pursuant to the California Public Records Act.



## Exhibit B - Unlimited Reference Order Form

**ORDER COMMITMENT**

This is a binding order for products and services from SkillSurvey and is effective as of the Contract Start Date stated above. The person executing this commitment is fully authorized to execute this commitment on behalf of Customer. All products and services ordered herein are governed in all cases by the terms of the entire Agreement.

**SERVICE ITEM DESCRIPTIONS****PLAN**

A Statement of Work (SOW) is required for Survey Customization, Email Customization, and Private Label Branding.

**MAINTENANCE AND SUPPORT**

System updates, enhancements, and support for administrators, recruiters, candidates, and references are included.

**SURVEY CUSTOMIZATION**

Encompasses changes to existing surveys in our library as well as creation of new surveys.

**TRAINING AND SET-UP**

There is an initial fee that includes WebEx training and coaching for administrators and recruiters as well as provisioning and set-up on SkillSurvey servers.

**Customer  
Information**

**Billing  
Information**

	<b>Customer Information</b>	<b>Billing Information</b>
<b>Customer</b>	County of Monterey	County of Monterey
<b>Contact</b>	Yvonne Walker	Jose Tapia
<b>Title</b>	HR Program Manager	Finance Manager
<b>Signature</b>		
<b>Date</b>		
<b>Address</b>	168 W. Alisal St. 3 <sup>rd</sup> Floor	168 W. Alisal St. 3 <sup>rd</sup> Floor
<b>City</b>	Salinas	Salinas
<b>State/Province</b>	CA	CA
<b>Postal Code</b>	93901	93901
<b>Country</b>	United States	United States
<b>Phone Number</b>	831-796-3087	831-755-5268
<b>Email ID</b>	walkery@co.monterey.ca.us	TapiaJL@co.monterey.ca.us

## EXHIBIT C

### Service Level Agreement

#### SkillSurvey Inc. – Service Level Agreement Commitment

SkillSurvey is a 24 x 7 mission critical service. We know that your success depends on immediate access to the reference information you need, and we're dedicated to ensuring that it's always available. SkillSurvey strives to have the most reliable and up-to-date systems available. We rely on our own internal expertise as well as that of our partners to deliver unparalleled customer service. SkillSurvey's uptime numbers rival those of the best web service companies – for both business and consumer sites. SkillSurvey realizes there may occasionally be system outages due to issues beyond our control. SkillSurvey has established policies which quickly escalate to the proper personnel in the event of any system outage. The remainder of this document covers our detailed service level commitments to all our customers.

#### System Uptime

Our objective is to meet or exceed 99% system uptime, outside of normal scheduled maintenance. Any scheduled system maintenance is completed on an after-hours basis, with advance notice given to all clients. All components of the SkillSurvey system are proactively monitored and managed so that faults are detected before system outages occur. Our service is hosted by Rackspace.com, one of the fastest growing managed hosting companies in the world. Rackspace.com is committed to Fanatical Support™, their award-winning methodology and business commitment that governs their hosting operations. Rackspace.com also provides a guarantee of 100% uptime, outside of scheduled maintenance. You can read more about Rackspace.com's customer commitment at [www.rackspace.com](http://www.rackspace.com)

#### Problem Reporting

System problems can be reported in the following ways:

- Email us at [CustomerService@SkillSurvey.com](mailto:CustomerService@SkillSurvey.com)
- Phone our dedicated customer support hotline at 610-422-3532 or 1-855-842-5251 enter a trouble ticket into the support section of the service.

#### Customer Support Hours:

8:00 a.m. to 8:00 p.m. EST Monday through Friday.

**Severity 1 Support will be provided on a 24 hour by 7-day basis**

Severity Level	Description	Example
Severity 1	A major fault causing serious disruption to business activity and preventing the use of	System down Unable to add candidates

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	the service for the purpose for which it was designed.	Unable to generate reports Lost data
<b>Severity 2</b>	Significant fault causing the service not to operate in accordance with the specification but still usable with difficulty (e.g. by means of a work-around solution), with some disruption to business activity	Candidate Report scored incorrectly Email alerts not being sent
<b>Severity 3</b>	Minor fault causing the service not to operate completely in accordance with the specification but with no disruption to business activity	New user request Email formatting problem
<b>Severity 4</b>	All other requests for service – from general usage questions, to recommendations for product enhancements or modifications and calls passed on to us for information purposes. The impact on you is non-critical.	Training request Sample document not available

**Target Response Times**

The target response time is the time taken by SkillSurvey to respond to a reported problem, and to confirm with the Customer that the problem is being managed. Target response time does not specify when an issue will be resolved. The starting point for the target response time is the time recorded when the Customer reports the problem to SkillSurvey, either by phone, email, or trouble ticket system. The finishing point is when SkillSurvey calls or emails the Customer contact to progress the call. SkillSurvey will use its reasonable efforts to meet the target response times detailed below:

<b>Description</b>	<b>Service Level</b>	
Target Response time during business hours	Severity 1	60 minutes
	Severity 2	2 hours
	Severity 3	4 hours
	Severity 4	24 hours
Target Response time during non-business Hours	Severity 1	60 minutes
	Severity 2 to 4	Next business day



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### Escalation

Escalation is the formal notification of a problem to progressively more senior levels of management within SkillSurvey and the Customer, to enable appropriate actions to be taken by both parties to address the problem. Escalation levels and target wait times are defined as follows:

<b>Problem Escalation / Severity Wait Times (during Service Hours)</b>						
Escalation Level	SkillSurvey	Customer	Severity 1	Severity 2	Severity 3	Severity 4
C	EVP Field Operations	TBD	2 Work Days	3 Work Days		
B	Director of Customer Service	TBD	1 Work Day	2 Work Days	3 Work Days	4 Work Days
B	Account Manager	TBD	4 Hours	1 Work Day	1 Work Day	2 Work Days
A	Customer Service Representative	TBD	60 minutes	2 Hours	4 Hours	24 Hours

The Customer Service desk will be the focal point for the co-ordination of the escalation within SkillSurvey and will manage the effective resolution of the problem in conjunction with the Director of Customer Service. Escalation to the next level will occur whenever the appropriate escalation wait time has expired. The escalation wait time is measured from the time SkillSurvey is notified of the problem. Each time a problem is escalated, it will be to the next level upwards. At the time of escalation, SkillSurvey will contact the appropriate Customer Service Representative with an update on the estimated time to resolve the problem.

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### SkillSurvey Inc. Terms of Use

1. **Scope.** These SkillSurvey Inc. (“SkillSurvey”) Terms and Conditions (the “Agreement”) govern the services (the “Services”) ordered by Subscriber from SkillSurvey and set forth in one or more “Order Forms”, unless Subscriber has signed a separate Services Agreement with SkillSurvey, and they also govern the use of the SkillSurvey software system (“Software”).
2. **Order Forms.** An “Order Form” is a form signed or authorized online by Subscriber that identifies the type and quantity of Services being ordered and the associated fees. The Order Form includes the Service description(s). An Order Form is effective only when signed or authorized online by Subscriber and either signed or provisioned by SkillSurvey.
3. **Subscriber Site Set Up.** The Software is distributed and hosted electronically over the internet through a password-protected web page. Upon execution of an Order Form, SkillSurvey will deliver software activation password key(s) to the Subscriber via an e-mail message.
4. **Changes to Services.** SkillSurvey may, at its sole discretion, modify, enhance and/or expand the features of a Service from time to time at no additional cost to Subscriber. SkillSurvey may also, from time to time, make available additional features and/or functionalities to a Service which may, but are not required to, be added to a Service by Subscriber at an additional cost (“Cost Feature”). If Subscriber elects to add a Cost Feature, it may do so by contacting its local SkillSurvey sales representative or SkillSurvey directly at [sales@skillsurvey.com](mailto:sales@skillsurvey.com) in order to receive a quote for the Cost Feature.
5. **SkillSurvey Training and Support.** Training and Support provided by SkillSurvey is specified in the Service descriptions in the Order Form.
6. **Payment.** Invoices for the Services are due in accordance with the Payment Terms set forth on the Order Form. SkillSurvey is entitled to recover any reasonable sums expended in connection with the collection of sums not paid when due, including reasonable attorneys’ fees. Subscriber shall pay all taxes (exclusive of taxes based on the net income of SkillSurvey), levies, or charges imposed by any governmental authority of any kind whatsoever applicable to any of the materials, goods, Services or related components provided by SkillSurvey to Subscriber.
7. **Term and Termination.**
  - a. **Term.** This Agreement commences on the Effective Date and shall continue until the End Date, in both cases as stipulated on the Order Form, unless a renewal period is indicated on the Order Form in which case this Agreement shall renew in accordance therewith

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- b. **Termination.** Each party may terminate any Order(s) and/or this Agreement by written notice to the other party if the other party is in material breach of its obligations under this Agreement and such breach is not cured within fifteen (15) days after written notice thereof from the terminating party.
  - c. **Surviving Provisions.** The following provisions will survive the expiration or termination of this Agreement: (i) any payment provisions set forth in the Order Form (as to amounts due and owing as of the Agreement's expiration or termination date), and (ii) Sections 6, 7, 8, 9, 11, 12, and 13 of this Agreement.
8. **Use of Subscriber Name.**
- a. **Subscriber's Name and Logo.** Subscriber agrees that SkillSurvey may use Subscriber's name and logo on the Subscriber Site, if required by Subscriber for branding.
  - b. **Promotional Use.** Subscriber agrees that SkillSurvey may use Subscriber's name and logo to identify Subscriber as a customer of SkillSurvey on SkillSurvey's website, and as a part of a general list of SkillSurvey customers for use and reference in SkillSurvey corporate, promotional and marketing materials. Subscriber agrees that SkillSurvey may issue a press release identifying Subscriber as a SkillSurvey customer and describing Subscriber's intended utilization, and the benefits that Subscriber expects to receive, from use of the Services. The content of any press release identifying Subscriber as a customer of SkillSurvey will be subject to Subscriber's prior approval, which will not be unreasonably withheld.
9. **Customer Responsibilities.**
- a. Subscriber will use the Software in strict compliance with all applicable law including without limitation, federal and state equal opportunity laws and regulations.
  - b. Subscriber will use the Software for Subscriber's exclusive use only and for employment, development, or selection purposes only, and only in accordance with applicable law. The report should not be disclosed to the subject of the report, except as may be required by law.
  - c. Subscriber will not resell the information provided by the Software to any other entity without the express written permission of an authorized officer of SkillSurvey.
  - d. Subscriber assumes responsibilities for all communications carried out and facilitated by Subscriber, Subscriber's employees, job candidates, vendors and references over the Software, and understands that SkillSurvey will in no way edit, view or facilitate such communication.

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- e. Subscriber will base employment decisions and employee developmental decisions or actions on Subscriber's lawful policies and procedures.
  - f. Subscriber understands that any report generated through the Software is not an assessment of any job candidate, and further understands that SkillSurvey is not assembling or evaluating information about any job candidate, and is not providing any opinions regarding information contained in any report generated through the Software.
  - g. Subscriber represents and warrants that, prior to using the texting feature of the Services or Software in connection with a candidate or a candidate's references, Subscriber will obtain, in writing: the candidate's express consent to receive automated text messages through SkillSurvey and the candidate's confirmation of consent by the candidate's references to receive automated text messages through SkillSurvey. Subscriber shall defend SkillSurvey and its affiliates, and its and their officers, directors, employees, and agents (collectively, the "SkillSurvey Indemnitees"), against any and all allegations, suits, claims, actions or proceedings (each a "Claim") resulting from or related to Subscriber's use of the Services or Software (including, but not limited to, Subscriber's failure to obtain a candidate's consent for SkillSurvey to use the candidate's and the candidate's references' data, including for text message communications). Supplier shall indemnify the SkillSurvey Indemnitees from any out-of-pocket and reasonably-incurred costs, expenses, and fees (including reasonable attorneys' fees) incurred by the SkillSurvey Indemnitees, and damages, awards, penalties, and other amounts awarded against or owed to a third party by the SkillSurvey Indemnitees, resulting from any such Claim.
10. **Privacy.** SkillSurvey's privacy statement may be found on SkillSurvey's website: <https://www.skillsurvey.com/privacy-policy>. Please consult it to learn SkillSurvey's current practices with respect to Subscriber's information.
11. **Limited Warranty.** SUBSCRIBER UNDERSTANDS AND AGREES THAT THE SERVICES, AND ANY ASSOCIATED SOFTWARE, ARE PROVIDED "AS IS" AND "AS AVAILABLE." SKILLSURVEY EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT. SKILLSURVEY MAKES NO WARRANTY OR REPRESENTATION REGARDING THE SERVICES, ANY INFORMATION, MATERIALS, GOODS OR SERVICES OBTAINED THROUGH THE SERVICES, THE GENERAL SITE OR SUBSCRIBER SITE, OR THAT THE SERVICES WILL MEET ANY SUBSCRIBER REQUIREMENTS, OR BE UNINTERRUPTED, TIMELY, SECURE OR ERROR FREE. USE OF THE SERVICES AND WEBSITE ARE AT SUBSCRIBER'S SOLE RISK. SUBSCRIBER WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO SUBSCRIBER RESULTING FROM THE USE OF SUCH SERVICES OR WEBSITE. Because some states and jurisdictions do not allow limitations on implied warranties, the above limitation may not

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apply to Subscriber. In that event, such warranties are limited to the minimum warranty scope and period allowed by applicable law.

### 12. **Limitations of Liability.**

- a. **Limitation of Liability.** IN NO EVENT SHALL SKILLSURVEY'S AGGREGATE, CUMULATIVE MAXIMUM LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT AND/OR THE ORDER FORM, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED IN THE AGGREGATE THE TOTAL AMOUNT ACTUALLY PAID TO SKILLSURVEY BY SUBSCRIBER IN THE TWELVE (12) MONTHS PRECEDING THE INCIDENT.
- b. **Exclusion of Consequential and Related Damages.** IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS, DATA OR REVENUES OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, CONSEQUENTIAL, COVER OR PUNITIVE DAMAGES, HOWEVER CAUSED, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, AND WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE LIMITATIONS OF LIABILITY IN THIS SECTION SHALL BE ENFORCEABLE EVEN IF A REMEDY FAILS IN ITS ESSENTIAL PURPOSE.

### 13. **General.**

- a. **Assignment.** Neither party may assign or delegate their respective obligations under this Agreement either in whole or in part, without the prior written consent of the other party. Notwithstanding the foregoing, either party may assign their rights and obligations under this Agreement as the result of a merger, consolidation, acquisition or the sale of all or substantially all of the assets of the assigning party and SkillSurvey may assign its rights and delegate its obligations in whole or in part to an affiliate, provided that either party may terminate this Agreement upon 10 days' notice, if the assignee can be reasonably considered a competitor of the non-assigning party.
- b. **Governing Law.** This Agreement and the Order Form will be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania as applied to agreements entered into and to be performed entirely within Pennsylvania between Pennsylvania residents. The parties hereby submit to the jurisdiction of, and waive any venue objections against state and federal courts in Chester County, Pennsylvania in any litigation arising out of the Agreement.
- c. **Interpretation and Conflicting Terms.** This Agreement will be interpreted fairly in accordance with its terms and without any strict construction in favor of or against either party. This Agreement, including the Order Forms and all Attachments, constitutes the entire agreement between the parties with respect to the subject matter hereof, and supersedes and replaces all prior or contemporaneous understandings or agreements, written or oral, regarding such subject matter. To the extent that any provision of this Agreement and any Order Form conflict, the terms of the Order Form shall control. SkillSurvey shall not be bound by terms additional to or

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different from those in this Agreement that appear in Subscriber's acknowledgements, purchase orders, quotations, prior understandings, or in any other communications between the parties, unless such terms are expressly agreed to by written amendment to this Agreement, and are executed by SkillsSurvey.

- d. **Confidential Information.** The parties recognize and acknowledge that, by virtue of entering into this Agreement and providing the Services, they may have access to certain information of the other that is confidential and constitutes valuable, special and unique property of the other party. The parties agree that neither they nor any agents, representatives, employees or affiliates will at any time, either during or subsequent to the term of this Agreement, disclose to others or use, copy or permit to be copied, without the other party's express prior written consent, except pursuant to their respective duties hereunder, any confidential or proprietary information of the other party, including, but not limited to, information identified in writing by either party as confidential, and which is not otherwise available to the public. The parties agree that neither party may use the name or other identity of the other party in oral or written statements, without the prior written permission of the other party. The term confidential information shall not include (i) information which, at the time of disclosure, is already known or available to the public, can be obtained from public sources or is otherwise in the public domain, (ii) information which, after disclosure, becomes known or available to the public through no breach by the receiving party of this Agreement, (iii) information already in the receiving party's possession at the time of disclosure, as evidenced by written documentary records of the receiving party, (iv) information which was independently developed by or for the receiving party without the use of or reliance on the disclosing party's confidential information, (v) information received by the receiving party from another person or entity who is not known by the receiving party to be under an obligation to the disclosing party to keep the same confidential, or (vi) information the receiving party is required by court order, injunction, writ, law, rule or regulation to disclose.
- e. **Force Majeure.** Except for Subscriber's obligation to pay for the Services rendered, neither party will be responsible for failure of performance due to causes beyond its control. Such causes include (without limitation) accidents, acts of God, labor disputes, actions of any government agency, shortage of materials, acts of terrorism, or the stability or availability of the Internet or a portion thereof.
- f. **Waivers.** The waiver of any one breach, default or right granted under this Agreement will not constitute the waiver of any subsequent breach, default or right granted. Any provision of this Agreement held to be illegal or unenforceable will be deemed amended to conform to applicable laws or regulations, or if it cannot be so amended without materially altering the intention of the parties, it will be stricken and the remainder of this Agreement will continue in full force and effect.

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- g. **Use of the Services.** Subject to the provisions contained herein, SkillSurvey hereby grants to Subscriber the right, to be exercised only by Subscriber's authorized end users to access those portions of a SkillSurvey website as may be designated from time to time by SkillSurvey and to use those portions of the website for the purpose of ordering and receiving the Services and/or Software and the reports and other data generated in connection with the Services. Such rights of access and use will terminate upon expiration or termination of the Agreement or as may be otherwise provided in this Agreement.
- h. **U.S. Export Law.** Subscriber acknowledges that the Services are subject to U.S. export control laws and regulations. Subscriber represents that it is not a citizen of an embargoed country or prohibited end user under applicable U.S. export and anti-terrorism laws, regulations and lists. Subscriber will not use, export or allow a third party to use or export the Services in any manner that would violate applicable law, including but not limited to applicable export control laws and regulations.
- i. **SkillSurvey Materials.** Notwithstanding anything in this Agreement or any Order Form to the contrary, SkillSurvey shall own and retain all right, title and interest in and to its Services, Software, tools, technologies, processes, systems, platforms, techniques, algorithms, source code, object code, materials, equipment, templates, programs, report formats, report structures, inputs and outputs, methodologies and technical information, know-how or other materials and the intellectual property rights therein including, but not limited to, any modifications, customizations, improvements, enhancements or derivative works of or to the foregoing.