

**AMENDMENT #1 TO PROFESSIONAL SERVICES AGREEMENT
COUNTY OF MONTEREY & PROCURE AMERICA**

THIS AMENDMENT is made to the AGREEMENT for Time of Use Rate Optimization Study implementation services by and between **PROCURE AMERICA**, hereinafter “CONTRACTOR”, and the County of Monterey, a political subdivision of the State of California, hereinafter referred to as “County”.

WHEREAS, the County and CONTRACTOR wish to amend the AGREEMENT to add additional services and to increase the total amount of the AGREEMENT due to the addition of services.

NOW THEREFORE, the County and CONTRACTOR hereby agree to amend the AGREEMENT in the following manner:

1. Section 2., “PAYMENTS BY THE COUNTY” shall be amended by removing, “*The total amount payable by County to CONTRACTOR under this Agreement shall not exceed the sum of \$100,000.*” and replacing it with “*The total amount payable by County to CONTRACTOR under this AGREEMENT shall not exceed \$350,000*”
2. EXHIBIT A – Scope of Services shall be amended by amending services as per EXHIBIT A1 Revised per Amendment #1 attached hereto.
3. A copy of the AMENDMENT shall be attached to the original AGREEMENT executed by the County on July 7, 2020.

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IN WITNESS WHEREOF, the parties have executed this AMENDMENT on the day and year written below.

MONTEREY COUNTY

Contracts/Purchasing Officer

Dated: _____

Approved as to Fiscal Provisions:

Deputy Auditor/Controller

Dated: _____

Approved as to Liability Provisions:

Risk Management

Dated: _____

Approved as to Form:

Deputy County Counsel

Dated: _____

CONTRACTOR

DocuSigned by:

By: *Fred*

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Signature of Chair, President, or
Vice-President

Fred CEO

Printed Name and Title

Dated: 8/23/2021 | 10:19 AM PDT

DocuSigned by:

By: *Fred*

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(Signature of Secretary, Asst. Secretary, CFO,
Treasurer or Asst. Treasurer)*

Fred secretary

Printed Name and Title

Dated: _____

*INSTRUCTIONS: If CONTRACTOR is a corporation, including limited liability and non-profit corporations, the full legal name of the corporation shall be set forth above together with the signatures of two specified officers. If CONTRACTOR is a partnership, the 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.

EXHIBIT-A 1

**To Agreement by and between
CAO hereinafter referred to as “County”
AND
PROCURE AMERICA 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 or incidental to the performance of work, as set forth below:

I. INTRODUCTION: Contractor shall provide County with two separate program option (Basic and Basic Plus) for Cost Recovery and Expenses Reduction Services under this Scope of Services for obtaining cost savings/refunds through audits and assessments relating to billing invoices and taxes. Contractor shall review, audit, and implement applicable billing rates amongst all County accounts in an effort to provide Cost Recovery and Reduction Services.

In an effort to reduce current billing costs and ensure all rates are secured and correct amongst service providers, Contractor will provide to the County expertise in billing audits with the primary goal of cost reduction. Contractor will review and audit in depth County accounts to recover overpayment and correct billing rates, calculation methods and tariffs including taxes.

The County has multiple contracts with service providers for supply of the following:

- Utilities
- Waste & Recycling
- Telecommunications
- Document Management
- Treasury Services
- Shipping & Logistics

II. PROGRAM OPTIONS:

A. BASIC PROGRAM – BILL AUDIT (Contract to invoice compliance review):

1. In this service Contractor shall conduct a review of the target expense category’s supplier contract with the “County” to outline the cost structures, terms and conditions.

2. Contractor would then deliver a report back to “County” with their findings and subsequent recovery plan.
3. In the event that Contractor identifies billing or contract errors, Contractor would work with the “County” and the supplier to rectify the discrepancy and settle the account accordingly.

B. BASIC PLUS PROGRAM: - ENTERPRISE STRATEGIC PLAN(ESP):

1. This program includes all the services outlined in the “Basic Program” and the creation of a custom strategic sourcing program that is designed to support the “County’s” short, medium and long term goals as it pertains to the subject expense category(s).
 - a. The specific areas of focus in an ESP are:
 - i. Service Level Management
 - ii. Complete service and or equipment inventory
 - iii. Expense Transparency
 - iv. Vendor Administration
 - v. RFP and or Solicitation Support
 - vi. Net Cost Reduction
 - vii. Implementation of ESP
 - viii. Manage Institutional Change Migration
2. ESP report would outline the go forward strategic plan, action steps, deliverable milestones and program outcome

All written reports required under this Agreement must be delivered to Sustainability Program Manager County's Contract Manager, in accordance with the schedule above.

III. GENERAL CONTRACTOR REQUIREMENTS:

- A. Upon County request, Contractor will conduct deep dive analytics (Basic and Basic Plus-ESP).
- B. Contractor shall use its' best efforts to obtain cost savings/refunds for County's benefit by analyzing County's policies, procedures, service provider contracts, past invoices and other pertinent information as it relates to the above selected expense categories set for review (Basic and Basic Plus-ESP).
- C. Contractor will further gather information as to County's needs (past and present) from County's service providers so as to build a solution that not only lowers cost, but also matches County's operational requirements and expectations (Basic Plus-ESP).
- D. Contractor will provide progress reports throughout the audit review, designated deliverable dates will be determined based on review timeline (Basic Plus-ESP).
- E. After analyzing County current spending patterns, Contractor shall provide County with a strategic sourcing report outlining Contractor's observations and recommendations. Contractor's report will include a review of operations, cost reduction recommendations and potential service level enhancements. Contractor will educate County designated staff on best practices related to the applicable review (Basic Plus-ESP).
- F. Contractor will review County's invoicing and deliverables to ensure accountability by County's service providers with respect to the spirit and intent of the Contract between County and the third party service provider. The review will take into account service types, levels, cost controls and overall County satisfaction (Basic and Basic Plus-ESP).
- G. Contractor will continue ongoing services with County to anticipate changes in service needs to ensure that the proper service provider, contract and procedures are in place to address County's go forward requirements (Basic Plus-ESP).
- H. Contractor report will include a full catalogue of all meters and accounts surveyed and will document the Established Rates for each service or product chosen for review and outline the methodology for Contractor's findings. County and Contractor will discuss, agree and document the Established Rates for the targeted service or product (Basic Plus-ESP).
- I. Contractor may discover over billing, credits, rebates, ongoing savings or other sources of revenue. This income is to be considered expense reduction for purposes of this Contract and will be accounted for in the same manner as the expense reduction savings (Basic and Basic Plus-ESP).
- J. Contractor may have the ability to recover rebates or other compensation by service providers. Contractor shall disclose this compensation to the County and both Parties

shall share this revenue as savings, in accordance with “Payment Provisions”, after revenue is received by the County (Basic and Basic Plus-ESP).

- K. It may be necessary to institute cost reduction strategies within a specific expense category in stages. If this occurs, and upon County approval, each stage of implementation will be viewed with its’ own billing cycle (Basic Plus-ESP).
- L. Contractor acknowledges that all information supplied by County shall be kept confidential. Contractor, its subcontractors, employees, or agents shall not disclose such information to any third parties other than Contractor’s subcontractors, employees, or agents on a need-to-know basis for the purpose of Contract performance and to other third parties as required for providing services under this Contract. Contractor shall not use any information, documents, or data provided by County for any proprietary purposes and shall not copy, sell, exchange, disclose, or provide to others, or use any information, documents, or data reasonably related to this Contract for its own proprietary interests (Basic and Basic Plus-ESP).
- M. Contractor shall perform all Cost Recovery and Reduction Services required under this Contract in conformity with professional standards, and shall provide qualified personnel (licensed, if applicable) to meet such standards (Basic and Basic Plus-ESP).
- N. **Ownership of County Data** - Contractor acknowledges and agrees that all information supplied by County to Contractor (hereinafter, “County Data”) shall remain the property of County. The County Data shall not be used by Contractor other than in connection with providing the services pursuant to this Contract. County Data shall not be disclosed, sold, assigned, leased or otherwise provided to third parties by Contractor, or commercially exploited by or on behalf of Contractor, its employees, officers, agents, subcontractors, invitees, or assigns in any respect. Contractor shall not delete or destroy any County Data or media on which County Data resides without prior written authorization of County. At no cost to County, Contractor shall, upon County request, promptly return to County, in the format and on the media in use as of the date of the request, any and all requested portion of any County Data it may possess or control as well as all work product including exploratory information (Basic and Basic Plus-ESP).
- O. It shall be Contractor’s responsibility to ensure compatibility of County’s data files and transmittal medium to Contractor’s computer system. Contractor shall bear all costs, if necessary, for data conversion to make County’s computer system compatible with that of Contractor’s and any incidental costs related to the data transfer. Contractor shall promptly inform County of any problems and/or issues with any data conversion or transfer of County’s data files (Basic and Basic Plus-ESP).
- P. Contractor is responsible for ensuring that all transmittals to County are compatible with County’s ability to record and read such data. Any and all corrupted or otherwise defective data shall be replaced by Contractor at no cost, additional or otherwise, to County (Basic and Basic Plus-ESP).
- Q. During the review, Contractor shall notify the County of any compliance concerns

with current and upcoming applicable laws related to provider services (specified in I.1-6 above); this shall be part of the review (Basic Plus-ESP).

- R. During the term of this Contract, Contractor understands that despite Contractor(s) recommendations, suggestions, potential suppliers and other recommendations; County has the right not to proceed with any or all said recommendations (Basic and Basic Plus-ESP).

II. COUNTY'S REQUIREMENTS FOR BOTH PROGRAMS BASIC AND BASIC PLUS-ESP:

- A. County shall provide all required documents, invoices, contracts and staff consultation time to Contractor in order to conduct the expense reduction review.
- B. During the review process, County, to the best of its ability, will not renegotiate, amend or extend in place contracts or introduce operational procedures/changes that will effect cost/pricing and or contractual obligations of the County to the service provider.

III. SAVINGS/REFUND VERIFICATION DOCUMENTATION:

- A. Contractor will submit monthly or at County's discretion verifiable documentation that the correction/retroactive refund/credit/recommendation has been accomplished and savings were implemented. A detailed explanation of savings will be presented by Contractor to clarify and further corroborate the calculated savings (Basic and Basic Plus-ESP). Those savings shall be "unbundled" meaning transmission and demand charges shall be presented separately from generation charges. Any savings that occur due to changes in Central Coast Community Energy rates that the County would otherwise have automatically been enrolled in will not be shared with the Contractor.

PAYMENT PROVISIONS

- I. **COMPENSATION:** This is a usage Contract between County and Contractor to provide Cost Recovery and Reduction Services, as needed and as set forth in Exhibit A, "Scope of Services."

Contractor agrees to accept the specified compensation as set forth in this Contract as full remuneration for performing all services and furnishing all staffing, labor, vehicles, equipment, tools, materials, overhead, travel, etc. required, for any reasonably unforeseen difficulties which may arise or be encountered in the execution of the services until acceptance, for risks connected with the services, and for performance by Contractor of all its duties and obligations hereunder. There will be no up-front fees and Contractor shall only be compensated as set forth herein below for work performed in accordance with the Scope of Services. **County shall have no obligation to pay any sum in excess of the Fee specified herein below unless authorized by amendment in accordance with Articles "C" and "P" of the County Contract Terms and Conditions.**

- II. **PRICING:** County will pay fees at the following percentage rate of cost savings/refunds, per audit review, after County approves and receives Contractor recommendations in accordance with the provisions of this Contract.

1. **COST REDUCTION AND RECOVERY SERVICE FEES*:**

A. BASIC PROGRAM – REVIEW LEVEL: Bill Audit

30 % of actual cost recovered each month, for twelve (12) consecutive months.

B. BASIC PLUS PROGRAM – REVIEW LEVEL: Enterprise Strategic Plan

30 % if the County elects to commission an Enterprise Strategic Plan (ESP) for the targeted expense category(s) for sixty (60) consecutive months.

***Fees will be paid based on the cost savings/refunds identified by the Contractor and approved by the County.**

- III. **PRICE INCREASES/DECREASES:** No price increases will be permitted during the term of this Contract. All price decreases will automatically be extended to the County.
- IV. **FIRM DISCOUNT AND PRICING STRUCTURE:** Contractor guarantees that prices quoted are equal to or less than prices quoted to any other local, State or Federal government entity for services of equal or lesser scope. Contractor agrees that no price increases shall be passed along to the County during the term of this Contract not otherwise specified and provided for within this Contract.
- V. **INVOICING INSTRUCTIONS:** The Contractor shall submit invoices to County on Contractor's letterhead. Each invoice shall have a unique number and shall include, at minimum, the following information:
- A. Contractor's name and address (as specified in this Contract)
- B. Contractor's remittance address, if different from (A), above

- C. Name of County department/contact person
- D. Contract number (PO, CT or MA Number) must be referenced on all invoices
- E. Delivery/service address
- F. Service Date
- G. Contractor's Tax Identification Number (TIN) or Employer's Identification Number (EIN)
- H. Description of Services
- I. Total dollar amount of invoice

PAYMENT PROVISIONS

B.1 COMPENSATION/ PAYMENT

County shall pay an amount not to exceed \$350,000 for the performance of all things necessary for or incidental to the performance of work as set forth in the Scope of Work. CONTRACTOR'S compensation for services rendered shall be based on the following rates or in accordance with the following terms:

There shall be no travel reimbursement allowed during this Agreement.

B.2 CONTRACTORS BILLING PROCEDURES

NOTE: Payment may be based upon satisfactory acceptance of each deliverable, payment after completion of each major part of the Agreement, payment at conclusion of the Agreement, etc.

County may, in its sole discretion, terminate the contract or withhold payments claimed by CONTRACTOR for services rendered if CONTRACTOR fails to satisfactorily comply with any term or condition of this Agreement.

No payments in advance or in anticipation of services or supplies to be provided under this Agreement shall be made by County.

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.

DISALLOWED COSTS: CONTRACTOR is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its subcontractors.