

CITY OF STOCKTON
STANDARD AGREEMENT

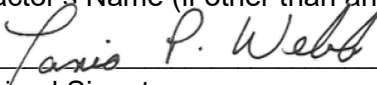
ATTACHMENT A

Agreement Number:

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1. This Agreement is entered into between the City of Stockton ("City") and Deloitte & Touche LLP ("Contractor") to provide consulting services as set forth in Exhibit A to this Agreement.
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2. The term of this Agreement is as follows, unless amended as described in Exhibit A and Exhibit C section 8:
Commences on: Terminates on: 12/31/2021
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3. The maximum not to exceed amount to be paid to Contractor for the term of this Agreement, including if authorized, reimbursement of expenses, is: \$ 220,000.00
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4. The complete Agreement consists of all the following Agreement documents which by reference are incorporated and made a part of this Agreement. The parties agree to comply with the terms and conditions of this Agreement.
- (a) Exhibit A – Statement of Work
 - (b) Exhibit B – Insurance
 - (c) Exhibit C – General Terms & Conditions
 - (d) Exhibit D – Professional Services Special Terms & Conditions
 - (e) Exhibit E – Compensation Schedule
 - (f) Exhibit F – Timeline
 - (g) Exhibit G - Special Funding Terms & Conditions (If applicable check box) YES

IN WITNESS WHEREOF, the authorized parties have executed this Agreement.

CONTRACTOR

Deloitte & Touche LLP
Contractor's Name (if other than an individual, state whether a corporation, partnership, etc.):
 7/13/2021
Authorized Signature Date
Tania Webb, Managing Director
Printed Name and Title of Person Signing
555 Mission Street, San Francisco CA 94105
Address

CITY OF STOCKTON

Harry Black, City Manager Date

ATTEST:

Eliza R. Garza CMC, City Clerk

APPROVED AS TO FORM:
John M. Luebberke, City Attorney

BY:

EXHIBIT A

STATEMENT OF WORK

1. Project Objectives

- 1.1 The City of Stockton (“City”) is seeking consulting services with the development of an economic development strategic action plan.
- 1.2 Deloitte & Touche LLP (“Contractor”) has been selected to provide those consulting services through December 31, 2021.

2. Project Scope

- 2.1 Develop a “living and breathing” Activation Roadmap to first align and then sustain purposeful action by residents, businesses, and public leaders over time.
- 2.2 The Activation Roadmap will define targeted investments / actions based on shared cross-sectoral partnerships guided by a commitment to diversity, equity and inclusion in articulating the objectives / actions to the Roadmap, and throughout its development process.
- 2.3 Contractor shall undertake a three-phased approach to analyze the current Stockton economic landscape and opportunities to activate key industries and assets, as well as provide clear recommendations to develop the Activation Roadmap (the Economic Development Strategic Action Plan). Contractor will leverage Deloitte’s expertise to analyze Stockton’s market opportunities, growth potential, equity considerations, and strategic choices. Additionally, stakeholder engagement and co-design methodologies will help create a shared vision for Stockton’s future prosperity.

3. Major Deliverables

- 3.1 “Deep dive” on Stockton context, opportunities, and challenge areas resulting in:
 - Opportunities / challenges identified and gaps analysis conducted
 - Stakeholder / equity engagement plan developed
 - Focus group / workshop sessions designed / scheduled
- 3.2 Conduct workshops with key City, business and community stakeholders, develop initial investment areas, and prepare for Greenhouse resulting in:

- Workshops completed; findings synthesized
 - Draft outline of the Activation Roadmap, including initial areas / initiatives
 - Greenhouse designed / scheduled
 - KPIs defined using data-driven insights, including equity considerations
- 3.3 Hold Greenhouse and co-create Activation Roadmap to help implement Stockton's 2030 Vision resulting in:
- Greenhouse Lab completed
 - Activation Roadmap (Economic Development Strategic Action Plan) completed, with finalized investment areas / initiatives

4. Tasks That Support the Deliverables

- 4.1 Contractor shall gather data, deploy Data USA, and utilize / implement other analytics.
- 4.2 Contractor shall review / assess Stockton's priorities and evaluate key opportunity and challenge areas.
- 4.3 Contractor shall conduct outreach with key stakeholders (e.g., City leaders, businesses, residents)
- 4.4 Contractor shall develop / organize focus group sessions, key content.
- 4.5 Contractor shall hold focus groups / workshops with key stakeholders in the three focus areas:
- 4.5.1 Entrepreneurship & The Future of Business
 - 4.5.2 Inclusive Economic & The Future of Work
 - 4.5.3 Smart and Resilient Infrastructure
- 4.6 Contractor shall develop draft outline of the Activation Roadmap, defining initial investment areas / initiatives and marketing & branding "HEAT" messaging (from focus groups / workshops).
- 4.7 Contractor shall incorporate Recovery Plan inputs into Activation Roadmap.
- 4.8 City and Contractor shall define the stakeholders for all labs / Greenhouses.
- 4.9 Contractor shall prepare for the Greenhouse Lab and decisions areas (using initial investment areas). The Greenhouse Lab will be the main 1-2 day leadership convening for defining a clear vision, strategy, and

roadmap for Stockton's economic development, encouraging stakeholder and resident participation.

4.10 Contractor shall hold Greenhouse Lab.

4.11 City and Contractor shall co-create an Activation Roadmap (Economic Development Strategic Action Plan), with finalized investment areas / initiatives.

5. Criteria of Acceptance for Deliverables

5.1 Develop an Activation Roadmap (Economic Development Strategic Action Plan) with defined goals, target investments, and action items based on shared cross-sectoral partnerships that approved and adopted by the Stockton City Council.

6. Notices

Pursuant to Exhibit C – General Terms and Conditions, Paragraph 15 – Notices, the mailing address for all required notices is as follows:

City: City of Stockton
Attn: City Manager
425 N. El Dorado Street
Stockton, CA 95202

Contractor: Deloitte & Touche LLP
Attn: Tania Webb
555 Mission Street
San Francisco, CA 94105

7. Key Personnel

Carrie Wright, Director of Economic Development, City of Stockton
Carrie.Wright@stocktonca.gov

Janice Miller, Assistant Director of Economic Development, City of Stockton
Janice.Miller@stocktonca.gov

Tania Webb, Managing Partner, Deloitte & Touche LLP, taniawebb@deloitte.com

Steve Hamilton, Project Manager / Infrastructure / Economics Lead, Deloitte & Touche LLP, shamilton@deloitte.com

9. Option to Renew.

The term of the Agreement may be extended up to 6 months by a written amendment executed by both parties. However, the total term of the Agreement including the extended term shall not exceed 1 year.

NOTE: The City of Stockton is now using the online insurance program PINS Advantage. Once you have been awarded a contract you will receive an email from the City's online insurance program requesting you to forward the email to your insurance provider(s). Please see attached flyer regarding PINS Advantage.

EXHIBIT B

INSURANCE REQUIREMENTS FOR CONSULTING SERVICES

Consultant shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, or employees.

MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

1. Commercial General Liability (CGL): Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **\$1,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.

2. Automobile Liability: Insurance Services Office Form Number CA 0001 covering, Code 1 (any auto), or if Consultant has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than **\$1,000,000** per accident for bodily injury and property damage.

3. Workers' Compensation insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than **\$1,000,000** per accident for bodily injury or disease.

(Not required if Consultant provides written verification it has no employees)

4. Professional Liability (Errors and Omissions) Insurance appropriate to the Consultant's profession, with limit no less than **\$1,000,000** per occurrence or claim, \$2,000,000 aggregate. (If Claims-made, see below.)

The requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this Agreement; No representation is made that the minimum insurance requirements of this agreement are sufficient to cover the obligations of the Consultant under this agreement.

Limits of Insurance

The limits of insurance required in this agreement may be satisfied by a combination of

primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.

Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

Additional Insured Status

The City of Stockton, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Consultant including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Consultant's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of **both** CG 20 10, CG 20 26, CG 20 33, or CG 20 38; **and** CG 20 37 if a later edition is used). Additional insured Name of Organization shall read "City of Stockton, its officers, officials, employees, and volunteers." Policy shall cover City of Stockton, its officers, officials, employees, and volunteers for all locations work is done under this contract.

Primary Coverage

The Additional Insured coverage under the Consultant's policy shall be "primary and non-contributory" and will not seek contribution from the City's insurance or self-insurance and shall be at least as broad as CG 20 01 04 13. The City of Stockton does not accept endorsements limiting the Consultant's insurance coverage to the sole negligence of the Named Insured.

Notice of Cancellation

Each insurance policy required above shall state that **coverage shall not be canceled, except with notice to the City of Stockton** unless replacement coverage meeting the terms and conditions hereunder is obtained without lapse.

Waiver of Subrogation

Consultant hereby grants to City of Stockton a waiver of any right to subrogation which any insurer of said Consultant, excluding Professional Liability may acquire against the City of Stockton by virtue of the payment of any loss under such insurance.

Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City of Stockton has received a waiver of subrogation endorsement from the insurer. **The Workers' Compensation policy shall be endorsed with a waiver of subrogation** in favor of the City of Stockton for all work performed by the Consultant, its employees, agents and subcontractors.

Self-Insured Retentions

All Self-insured retentions must be disclosed to Risk Management for approval and shall not reduce the limits of liability. The City of Stockton may require the Consultant to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or City of Stockton.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, or the equivalent rating from another nationally recognized ratings provider unless otherwise acceptable to the City of Stockton.

Claims Made Policies (note – applicable only to professional liability)

If any of the required policies provide coverage on a claims-made basis:

1. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained and evidence of insurance must be provided ***for at least three (3) years after completion of the contract of work.***
3. If coverage is canceled or non-renewed, and not ***replaced with another claims-made policy form with a Retroactive Date*** prior to the contract effective date, the Consultant must purchase "extended reporting" coverage for a minimum of ***three (3) years*** after completion of contract work.

Verification of Coverage

Consultant shall furnish the City of Stockton with original industry standard ACORD certificates and amendatory blanket endorsements effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the City of Stockton Risk Services before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Consultant's obligation to provide them. The City of Stockton reserves the right to require endorsements required by these specifications, at any time.

Subcontractors

Consultants shall require and verify that all subcontractors, or other parties hired for this work, purchase and maintain coverage for indemnity and insurance requirements as least as broad as specified in this agreement to the extent they apply to the scope of the subcontractor's work with the same certificate of insurance requirements and naming as

additional insureds all parties to this contract. Consultant shall include the following language in their agreement with Subcontractors: Subcontractors hired by Consultant agree to be bound to Consultant and City in the same manner and to the same extent as Consultant is bound to City under the contract documents and provide a valid certificate of insurance and the required endorsements included in the agreement as proof of compliance prior to commencement of any work and to include this same requirement for any subcontractors they hire for this work. A copy of the owner contract document indemnity and insurance provisions will be furnished to the subcontractor upon request. Consultant shall provide proof of such compliance and verification to the City upon request.

Special Risks or Circumstances

City of Stockton reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

Certificate Holder Address

Proper address for mailing certificates, endorsements and notices shall be:

City of Stockton Attn: City Risk Services
400 E Main Street, 3rd Floor – HR
Stockton, CA 95202

EXHIBIT C
GENERAL TERMS AND CONDITIONS

1. **Goods, Equipment and Services.** Subject to the terms and conditions set forth in this Agreement, Contractor shall provide to City the services described in Exhibit A of the Agreement. Contractor shall provide said services at the time, place and in the manner specified in Exhibit A of the Agreement.

2. **City Assistance, Facilities, Equipment and Clerical Support.** Except as set forth in Exhibit A, Contractor shall, at its sole cost and expense, furnish and maintain all facilities and equipment that may be required for furnishing services pursuant to this Agreement. If applicable, City shall furnish to Contractor only the facilities and equipment listed in Exhibit A to the Agreement.

3. **Compensation.** City shall pay Contractor for services rendered pursuant to this Agreement as described more particularly in Exhibit A and Exhibit E to the Agreement.

3.1 Invoices submitted by Contractor to City must contain a brief description of work performed, time spent and City reference number. Within thirty (30) days of receipt of Contractor's invoice, City will review invoice, and if correct makepayment on approved invoice. If payment is not received within such period, Contractor may suspend or terminate the services upon ten (10) days written notice to City.

3.2 Upon completion of work and acceptance by City, Contractor shall have sixty (60) days in which to submit final invoicing for payment. An extension may be granted by City upon receiving a written request thirty (30) days in advance of said time limitation. The City shall have no obligation or liability to pay any invoice for work performed which the Contractor fails or neglects to submit within sixty (60) days, or any extension thereof granted by the City, after the work is accepted by the City.

4. **Sufficiency of Contractor's Work.** All Contractor services, work, and deliverables shall be performed in a good and workmanlike manner with due diligence in accordance with the degree of skill normally exercised by similar contractors supplying services and work of a similar nature, and in conformance with laws, codes and professional standards applicable to Contractor's performance of the services. Contractor's work shall be adequate and sufficient to meet the purposes of this Agreement.

5. **Ownership of Work.** Upon full payment and subject to the terms herein, all reports, work product, all other documents completed or partially completed by Contractor or its approved subcontractors for delivery to the City, in its performance of the services under this Agreement ("Deliverables") shall become the property of the City, provided that any partially completed Deliverables shall be provided on an as-is basis,

without warranty of any kind. Upon full payment and subject to the terms herein, any and all copyrightable subject matter in all Deliverables is hereby assigned to the City and the Contractor and its approved subcontractors agree to execute any additional documents that may be necessary to evidence such assignment. All Deliverables shall be delivered to the City upon completion or termination of the work under this Agreement. If any Deliverables are lost, damaged or destroyed before final delivery to the City, the Contractor shall replace them at its own expense. Contractor and its approved subcontractors shall keep Deliverables confidential. Deliverables shall not be used for purposes other than performance of services under this Agreement and shall not be disclosed to anyone not connected with these services, unless the City provides prior written consent. Notwithstanding the foregoing, Contractor and its subcontractors retain all right in and to all Contractor IP that may be included in the Deliverables. Upon full payment and subject to the terms herein, Contractor grants to the City the right to use, for the City's government purposes, any Contractor IP included in the Deliverables in connection with its use of the Deliverables. "Contractor IP" means all IP created prior to or independently of the performance of the Services, or created by Contractor or its subcontractors as a tool for their use in performing the Services, plus any modifications or enhancements thereto and derivative works based thereon.

6. Timeliness. Notwithstanding any other provision of this Agreement or Exhibit A, all performance dates for the services shall be regarded only as estimates. Nonetheless, Contractor shall utilize diligent efforts to meet such dates and shall notify City promptly if Contractor encounters significant delays in completing the Services

7. Changes. Both parties to this Agreement understand that it may become desirable or necessary during the term of this Agreement for City to modify the scope of services provided for under this Agreement. Any material extension or change in the scope of work shall be discussed with City and the change and cost shall be memorialized in a written amendment to the original contract prior to the performance of the additional work. Until the amendment is so executed, City will not be responsible to pay any charges Contractor may incur in performing such additional services, and Contractor shall not be required to perform any such additional services.

8. Amendment. No variation of the terms of this Agreement shall be valid unless an amendment is made in writing and signed by both parties.

9. Contractor's Status.

9.1 In performing the obligations set forth in this Agreement, Contractor shall have the status of an independent contractor and Contractor shall not be considered to be an employee of the City for any purpose. All persons working for or under the direction of Contractor are its agents and employees and are not agents or employees of City. Contractor by virtue of this Agreement, has no authority to bind or incur any obligation on behalf of City. Except as expressly provided in Exhibit A, Contractor has no authority or responsibility to exercise any rights or power vested in the City. No agent, officer or employee of the City is to be considered an employee of the Contractor. It is

understood by both Contractor and City that this Agreement shall not be construed or considered under any circumstances to create an employer-employee relationship or a joint venture.

9.2 Contractor shall determine the method, details and means of performing the work and services to be provided by Contractor under this Agreement. Contractor shall be responsible to City only for the requirements and results specified in this Agreement and, except as expressly provided in this Agreement, shall not be subjected to City's control with respect to the physical action or activities of Contractor in fulfillment of this Agreement. Contractor has control over the manner and means of performing the services under this Agreement. If necessary, Contractor has the responsibility for employing other persons or firms to assist Contractor in fulfilling the terms and obligations under this Agreement.

9.3 If in the performance of this Agreement any third persons are employed by Contractor, such persons shall be entirely and exclusively under the direction, supervision and control of Contractor. All terms of employment including hours, wages, working conditions, discipline, hiring and discharging or any other term of employment or requirements of law shall be determined by the Contractor.

9.4 It is further understood and agreed that Contractor must issue W-2 forms or other forms as required by law for income and employment tax purposes for all of Contractor's assigned personnel under the terms and conditions of this Agreement.

10. Subcontractor.

10.1 Subcontractors shall not be recognized as having any direct or contractual relationship with City. Contractor shall be responsible for the work of subcontractors, which shall be subject to the provisions of this Agreement. Subcontractors will be provided with a copy of the Agreement and be bound by its terms. Contractor is responsible to City for the acts and omissions of its subcontractors and persons directly or indirectly employed by them.

10.2 If in the performance of this Agreement any third persons are employed by Contractor, such persons shall be entirely and exclusively under the direction, supervision and control of Contractor. All terms of employment including hours, wages working conditions, discipline, hiring, and discharging or any other term of employment or requirement of law shall be determined by Contractor.

10.3 It is further understood and agreed that Contractor must issue W-2 forms or other forms as required by law for income and employment tax purposes for all of Contractor's personnel.

11. Termination.

11.1 Termination for Convenience of City. The City may terminate this Agreement at any time by mailing a thirty (30) days advance notice in writing to Contractor. The Agreement shall then be deemed terminated, and no further work shall be performed by Contractor. If the Agreement is so terminated, the Contractor shall be paid for the services performed up to the time the notice of termination is received.

11.2 Should either party default in the performance of this Agreement or materially breach any of its provisions, the other party, at that party's option, may terminate this Agreement by giving thirty (30) days prior written notification to the other party. In the event of any termination for default or material breach, the breaching party shall have the right to cure the breach within the notice period.

11.3 Funding- Non-Appropriation. It is mutually understood between the Parties that payment to the Contractor for performance shall be dependent upon the availability of appropriations by the City Council for the purposes of this Agreement. No legal liability on the part of the City for any payment may arise under this Agreement until funds are made available and until the Contractor has received funding availability, which will be confirmed in writing. If funding for any fiscal year is reduced or deleted, or if the City loses funding for any reason, the City, in its sole discretion, shall have the option to either (a) cause this Agreement to be canceled or terminated pursuant to applicable provisions of the Agreement; or (b) offer to amend the Agreement to reflect the reduced funding for this Agreement.

12. Non-Assignability. The Contractor shall not assign, sublet, or transfer this Agreement or any interest or obligation in the Agreement without the prior written consent of the City. Contractor shall be solely responsible for reimbursing subcontractors.

13. Indemnity and Hold Harmless. To the fullest extent permitted by law, Contractor shall hold harmless, defend at its own expense, and indemnify the City of Stockton, its officers, employees, agents, and volunteers, against any and all liability, claims, losses, damages, or expenses, including reasonable attorney's fees, attributable to third party claims solely for bodily injury, death or physical damage to real or tangible personal property, to the extent directly and proximately caused by the negligence or intentional misconduct of contractor or its officers, agents, or employees in rendering services under this contract; excluding, however, such liability, claims, losses, damages, or expenses arising from the City of Stockton's sole negligence or willful acts. The duty to defend and the duty to indemnify are separate and distinct obligations. The indemnification obligations of this section shall survive the termination of this agreement.

14. Insurance. During the term of this Agreement, Contractor shall maintain in full force and effect at its own cost and expense the insurance coverage as set forth in the attached Exhibit B to this Agreement and shall otherwise comply with the other provisions of Exhibit B to this Agreement.

15. Notices. All notices herein required shall be in writing and shall be sent by certified or registered mail, postage prepaid, addressed in Exhibit A to this Agreement.

16. Conformance to Applicable Laws. Contractor shall comply with all Federal, State, and Municipal laws, rules, and ordinances applicable to it in its performance of the services under this Agreement. Contractor shall not discriminate in the employment of persons or in the provision of services under this Agreement on the basis of any legally protected classification, including race, color, national origin, ancestry, sex or religion of such person.

17. Licenses, Certifications and Permits. Prior to the City's execution of this Agreement and prior to the Contractor's engaging in any operation or activity set forth in this Agreement, Contractor shall obtain a City of Stockton business license, which must be kept in effect during the term of this Agreement. Contractor covenants that it has obtained all certificates, licenses, permits and the like required to perform the services under this Agreement. Such licenses, certificates and permits shall be maintained in full force and effect during the term of this Agreement.

18. Records and Audits. Contractor shall maintain all billing and payment records regarding this Agreement and the services performed for a period of three (3) years from the date that final payment is made. At any time during normal business hours, such records shall be made available to the City to inspect and audit. To the extent Contractor renders services on a time and materials basis, Contractor shall maintain complete and accurate billing and payment records, in a form prescribed by City or, if not prescribed by City, in accordance with standard accounting principles, such records to include, but not be limited to, time sheets and job summaries.

19. Confidentiality. Contractor shall exercise reasonable precautions to prevent the unauthorized disclosure and use of City confidential information. City hereby consents to Contractor disclosing such information (i) as expressly set forth in Exhibit A; (ii) to contractors providing administrative, infrastructure and other support services to the receiving party and subcontractors providing services in connection with Exhibit A, in each case, whether located within or outside of the United States, provided that they have agreed to be bound by confidentiality obligations similar to those in this sub-Section; (iii) as may be required by law or regulation, or to respond to governmental inquiries, or in accordance with applicable professional standards or rules, or in connection with litigation pertaining to this Agreement or Exhibit A; or (iv) to the extent such information (A) is or becomes publicly available other than as the result of a disclosure in breach hereof, (B) becomes available to Contractor on a nonconfidential basis from a source that Contractor believes is not prohibited from disclosing such information to the receiving party, (C) is already known by Contractor without any obligation of confidentiality with respect thereto, or (D) is developed by Contractor independently of any disclosures made to the receiving party hereunder.

20. Conflicts of Interest. Contractor covenants that other than this Agreement, Contractor has no financial interest with any official, employee or other representative of the City. Contractor represents that, as of the date of Contractor's execution of the applicable Exhibit A, it is not aware of any agreement with a third party that presents a

conflict of interest that would render Contractor unable to perform the services.. If such an interest arises, Contractor shall promptly notify the City.

21. Waiver. In the event either City or Contractor at any time waive any breach of this Agreement by the other, such waiver shall not constitute a waiver of any other or succeeding breach of this Agreement, whether of the same or of any other covenant, condition or obligation. No payment, partial payment, acceptance, or partial acceptance by City shall operate as a waiver on the part of City of any of its rights under this Agreement.

22. Governing Law. California law shall govern any legal action pursuant to this Agreement with venue for all claims in the Superior Court of the County of San Joaquin, Stockton Branch or, where applicable, in the Federal District Court of California, Eastern District, Sacramento Division.

23. No Personal Liability. No official or employee of City shall be personally liable to Contractor in the event of any default or breach by the City or for any amount due Contractor.

24. Severability. If any portion of this Agreement or application thereof to any person or circumstance shall be declared invalid by a court of competent jurisdiction or if it is found in contravention of any federal, state or city statute, ordinance or regulation the remaining provisions of this Agreement or the application thereof shall not be invalidated thereby and shall remain in full force and effect to the extent that the provisions of this Agreement are severable.

25. Non-Discrimination. During the performance of this Agreement, Contractor and its officers, employees, agents, representatives or subcontractors shall not unlawfully discriminate in violation of any federal, state, or local law, rule or regulation against any employee, applicant for employment or person receiving services under this Agreement because of race, religion, color, national origin, ancestry, physical or mental disability, medical condition (including genetic characteristics), marital status, age, political affiliation, sex or sexual orientation, family and medical care leave, pregnancy leave, or disability leave. Contractor and its officers, employees, agents, representative or subcontractors shall comply with all applicable Federal, State and local laws and regulations related to non-discrimination and equal opportunity, including without limitation the City's nondiscrimination policy; the Fair Employment and Housing Act (Government Code sections 12990 (et seq.); California Labor Code sections 1101, 1102 and 1102.1; the Federal Civil Rights Act of 1964 (P.L. 88-352), as amended; and all applicable regulations promulgated in the California Code of Regulation or Code of Federal Regulations. Title VI of the Civil Rights Act of 1964 requires that "no person in the United States shall, on the grounds of race, color, or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance." (42 USC Section 2000d). <http://www.dol.gov/oasam/regs/statutes/titlevi.htm>. The City requires compliance with the requirements of Title VI in all of its programs and activities regardless of funding

source.

26. Force Majeure. Neither party shall be responsible for delays or failures in performance resulting from acts of God, acts of civil or military authority, terrorism, fire, flood, strikes, war, epidemics, pandemics, shortage of power or other acts or causes reasonably beyond the control of that party. The party experiencing the force majeure event agrees to give the other party notice promptly following the occurrence of a force majeure event, and to use diligent efforts to re-commence performance as promptly as commercially practicable.

27. Taxes and Charges. Contractor shall be responsible for payment of all taxes, fees, contributions or charges applicable to the conduct of the Contractor's business.

28. Cumulative Rights. Any specific right or remedy provided in this Agreement will not be exclusive but will be cumulative of all other rights and remedies to which may be legally entitled.

29. Advice of Attorney. Each party warrants and represents that in executing this Agreement, it has received independent legal advice from its attorneys or the opportunity to seek such advice.

30. Heading Not Controlling. Headings used in this Agreement are for reference purposes only and shall not be considered in construing this Agreement.

31. Entire Agreement, Integration, and Modification.

31.1 This Agreement represents the entire integrated agreement between Contractor and the City; supersedes all prior negotiations, representations, or agreements, either written or oral between the parties and may be amended only by a written Amendment signed by the Contractor and City Manager.

31.2 All Exhibits to this Agreement and this Agreement are intended to be construed as a single document.

32. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original. All counterparts shall be construed together and shall constitute one agreement.

33. Authority. The individual(s) executing this Agreement represent and warrant that they have the legal capacity and authority to do so on behalf of their respective legal entities.

34. Limitation on Damages. Each party to this Agreement, its affiliates and

subcontractors, and their respective personnel shall not be liable to the other party for any claims, liabilities, or expenses relating to or in connection with this Agreement ("Claims") for an aggregate amount in excess of the fees paid by City to Contractor under the Exhibit A, except (i) to the extent resulting from their recklessness, bad faith or intentional misconduct, or (ii) for payment for Services performed. In no event shall a party to this Agreement, its affiliates or subcontractors, or their respective personnel be liable to the other party for any loss of use, data, goodwill, revenues or profits (whether or not deemed to constitute a direct Claim), or any consequential, special, indirect, incidental, punitive, or exemplary loss, damage, or expense relating to or in connection with this Agreement. The terms of this Section shall not apply to any Claim for which one party has an express indemnification obligation under this Agreement. In circumstances where any limitations or exculpations set forth herein are unavailable, the aggregate liability of a party to this Agreement, its affiliates and subcontractors, and their respective personnel for any Claim shall not exceed an amount that is proportional to the relative fault that their conduct bears to all other conduct giving rise to such Claim.

EXHIBIT D

PROFESSIONAL SERVICES SPECIAL TERMS AND CONDITIONS

1. **Definitions.** The following words and phrases have the following meanings for purposes of this Agreement:

1.1 "Services" means, collectively, the services, duties and responsibilities described in Exhibit A of this Agreement.

1.2 "Deliverable" means quantifiable documents as described in Exhibit A that will be provided upon completion of a project.

2. **General.** The following terms and conditions are applicable for the Professional Services only. The special conditions shall be read in conjunction with the Standard Agreement, General Terms and Conditions ("GTC") Exhibit C, and all other Exhibits identified in the Standard Agreement.

2.1 Where any portion of the GTC is in conflict to or at variance with any provisions of the Special Conditions of the Agreement, then unless a different intention stated, the provision(s) of the Special Conditions of the Agreement shall be deemed to override the provision(s) of GTC only to the extent that such conflict or variations in the Special Conditions of the Agreement are not possible of being reconciled with the provisions of the GTC.

2.2 In the case of modification of a part or provision of the GTC, the unaltered part or provision, or both shall remain in effect. The Special Conditions shall relate to a particular project and be peculiar to that project but shall not weaken the character or intent of the GTC.

3. **Time for Performance.**

3.1 Contractor shall perform the services according to the schedule contained in Exhibit F.

3.2 Neither Contractor nor Contractor's agents, employees nor subcontractors are entitled to any damages from the City, nor is any party entitled to be reimbursed by the City, for damages, charges or other losses or expenses incurred by Contractor by reason of delays or hindrances in the performance of the Services solely attributable to Contractor.

4. **Standard of Performance.** In addition to Exhibit C, Section 4 and 17, Contractor agrees as follows:

4.1 Contractor's Services shall be performed in accordance with generally accepted professional practices and principles and in a manner consistent with the level of care and skill ordinarily exercised by members of Contractor's profession currently practicing under similar conditions. Contractor shall comply with the laws and regulations applicable to it in its performance of the services. By delivery of completed work, Contractor certifies that the work conforms to the requirements of this Agreement. If Contractor is retained to perform services requiring a license, certification, registration or other similar requirement under California law, Contractor shall maintain that license, certification, registration or other similar requirement throughout the term of this Agreement.

4.2 Contractor shall assure that all services that require the exercise of professional skills or judgment are accomplished by professionals qualified and competent in the applicable discipline and appropriately licensed, if required by law. Contractor must provide copies of any such licenses. Contractor remains responsible for the professional and technical accuracy of all Services or Deliverables furnished, whether by Contractor or its subcontractors or others on its behalf. All Deliverables must be prepared in a form and content that conforms to the requirements in Exhibit At and delivered in a timely manner consistent with the requirements of this Agreement.

4.3 If Contractor fails to comply with the foregoing standards, Contractor must perform again, at its own expense, all Services required to be re-performed as a direct result of that failure. Any review, approval, acceptance or payment for any of the Services by the City does not relieve Contractor of its responsibility for the professional skill and care and technical accuracy of its Services and Deliverables. This provision in no way limits the City's rights against Contractor either under this Agreement, at law or in equity.

5. Compensation.

5.1 In addition to Section 3 Compensation in Exhibit C – GTC, the Contractor shall be compensated for the services provided under this Agreement as follows:

5.1.1 Contractor shall be compensated for services rendered and accepted under this Agreement and shall be paid monthly, in arrears on a not to exceed basis, based upon the rates set forth in Exhibit E attached hereto and made a part of this Agreement. Contractor may vary the compensation for each task in Exhibit E provided that the total project compensation listed in Exhibit E and the Standard Agreement is not exceeded.

6. Personnel.

6.1 None of the work or services covered by this Agreement shall be subcontracted without the prior written approval of the City. City hereby consents to Contractor subcontracting any portion of the services to any Deloitte affiliated entity.

Any work or services subcontracted hereunder shall be specified by written agreement and shall be subject to each applicable provision of this Agreement. Contractor shall provide subcontractor a copy of this fully executed Agreement.

6.2 Contractor agrees to assign only competent personnel according to the reasonable and customary standards of training and experience in the relevant field to perform services under this Agreement. The payment made to Contractor pursuant to this Agreement shall be the full and complete compensation to which Contractor and Contractor's officers, employees, agents, and subcontractors are entitled for performance of any work under this Agreement. Neither Contractor nor Contractor's officers or employees are entitled to any salary or wages, or retirement, health, leave or other fringe benefits applicable to employees of the City. The City will not make any federal or state tax withholdings on behalf of Contractor. The City shall not be required to pay any workers' compensation insurance on behalf of Contractor. Contractor shall pay, when and as due, any and all taxes incurred as a result of Contractor's compensation hereunder, including estimated taxes, and shall provide City with proof of such payments upon request.

6.3 Key Personnel: Because of the special skills required to satisfy the requirements of this Agreement, except in the event of disability, illness, grave personal circumstances or separation from service, Contractor shall not reassign or replace key personnel without the written consent of the City, which consent the City will not unreasonably withhold. "key personnel" means those job titles and the persons assigned to those positions in accordance with the provisions of this Agreement. The City may at any time in writing notify Contractor that the City will no longer accept performance of Services under this Agreement by one or more Key Personnel listed. Upon that notice Contractor shall promptly suspend the services of the key person or persons and must replace him or them in accordance with the terms of this Agreement. A list of key personnel is found in Exhibit A, Scope of Services.

7. Reports and Information.

Contractor shall at such times and in such forms as the City may require furnish the City such periodic reports as it may request pertaining to the work or services undertaken pursuant to this Agreement, the costs and obligations incurred or to be incurred in connection therewith, and any other matters are covered by this Agreement as specified in Exhibit A and Exhibit E.

8. Deliverables.

Contractor shall prepare or provide to the City the Deliverables. " The City may reject Deliverables that do not materially conform with the requirements of Exhibit A. If the City determines that Contractor has failed to comply with the foregoing standards, it has ten (10) days from the discovery to notify Contractor of the deficiency preventing

approval. If Contractor does not correct the deficiency within ten (10) days after receipt of notice from the City specifying the deficiency, then the City, by written notice, may be entitled to withhold that portion of fees payable that are attributable to services giving rise to the Deliverable in question. Partial or incomplete Deliverables may be accepted for review only when required for a specific and well-defined purpose and when consented to in advance by the City, provided that any partial or incomplete Deliverables shall be provided on an as-is basis, without warranty of any kind.

EXHIBIT E

COMPENSATION SCHEDULE

The Contractor shall be compensated for the services identified in Exhibit A, Exhibit C, and Exhibit D to this Agreement as follows:

1. **Project Price**

1.1 The fixed price the Contractor shall be paid on this Agreement is Two Hundred Twenty Thousand Dollars and No Cents (\$220,000.00) (hereafter the “fixed fee” amount). The “fixed fee” amount includes all payments to be made pursuant to this Agreement, including City approved reimbursable expenses, if any. Nothing in this Agreement requires the City to pay for work that does not meet the Standard of Performance identified in Exhibit D section 4 or other requirements of this Agreement.

1.2 The Contractor shall be entitled to receive payments for its work performed pursuant to the Agreement. The City will pay Contractor based on invoices for acceptable work performed, approved, and in accordance with the schedule provided below. Thereafter, Contractor must complete services based on the Agreement without additional compensation unless there is a material change to the Statement of Work and Scope by a written Amendment.

2. **Task Price.** Below is the price for the services as described in Exhibit A of this Agreement.

Task	Anticipated Invoice Milestone	Invoice Amount
Assess	Four (4) weeks after project kick off	\$73,333.33
Build	Eight weeks after project kick off	\$73,333.33
Activate	Upon project completion	\$73,333.33
TOTAL PRICE		\$220,000.00

3. **Invoice to Address.** Each invoice submitted shall identify the specific task(s) listed in Exhibit A and this Exhibit, and the completed work product/deliverable for the agreed upon price listed in this Exhibit. Invoices shall be submitted through the City’s online vendor portal, Tyler Munis, and addressed to the below address:

City of Stockton Economic Development Department
 Attention: Economic Development
 425 N. El Dorado Street
 Stockton, CA 95202

EXHIBIT F

TIMELINE

1. Consultant shall complete the requested services identified in Exhibit A as follows:

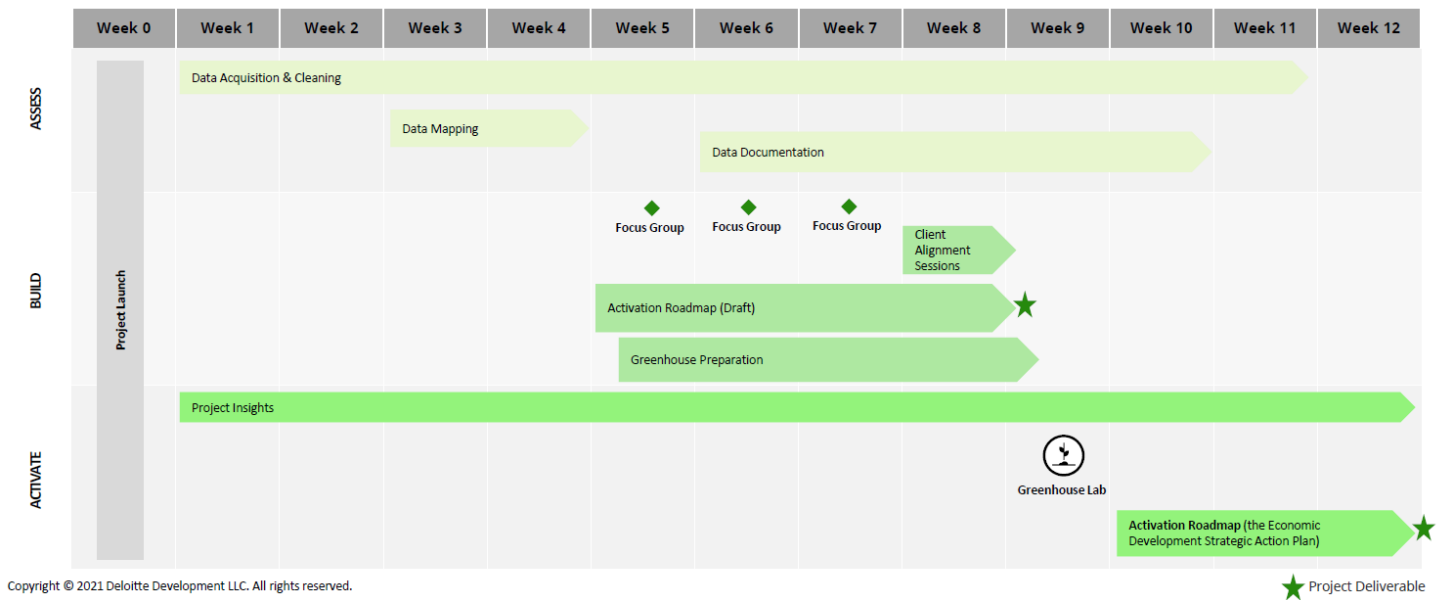
1.1 TIMELINE FOR COMPLETION OF WORK

Exhibit G

SPECIAL FUNDING TERMS AND CONDITIONS

Not applicable.

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