AGREEMENT BETWEEN THE COUNTY OF SANTA CLARA
AND ARNERICH MASSENA, INC., FOR INVESTMENT
CONSULTING SERVICES FOR THE DEFINED
CONTRIBUTION PLANS COMMITTEE

This Agreement ("Contract") is made effective June 5, 2012, by and between the County of
Santa Clara ("County"), and Arnerich Massena, Inc., ("Contractor"), a SEC-registered investment
advisory firm, to provide investment consulting services to the County's Defined Contribution Plans
Committee ("Committee").

County desires to retain an investment advisory firm to provide services in investment
consulting and plan administration to the 457(b) and 401(a) plans administered by the Committee,
and Contractor has experience and expertise necessary to provide such services.

THEREFORE, the parties agree as follows:

1. Nature of Services; Fiduciary Relationship.

Contractor shall provide to County the services described in Exhibit A, Scope of Services,
which is attached hereto and incorporated herein by this reference. Contractor shall further provide
to County the services described in Exhibits B, C, and D, which are attached hereto and
incorporated herein by this reference, as follows:

a. Exhibit B: County of Santa Clara RFP Response #ESA 2012-001, dated
February 2012;

b. Exhibit C: Finalist Interview, dated March 27, 2012; and


Contractor agrees the provision of services described in this Section 1 creates a fiduciary
relationship with the County and the Defined Contribution Plans Committee.

2. Term of Contract.

This Contract is effective from June 5, 2012, to and including May 31, 2015, unless
terminated earlier in accordance with Section 4. The County shall have an option to enter into two
(2) one (1) year renewals of this Contract by written amendment.

3. Compensation.

A. Contractor shall be compensated for services provided under this Contract in
accordance with the Scope of Services included in Exhibit A.

B. Contractor shall provide County with quarterly invoices which shall be accompanied
by a detailed summary of activities undertaken over the course of the preceding quarter. Contractor
shall submit the quarterly invoices within 15 days of the last day of the billing period. Undisputed invoices shall be paid by County within 30 days of receipt. Invoices shall be sent to:

Kathleen Barber  
County of Santa Clara  
Defined Contribution Plans Committee  
70 West Hedding Street, 8th Floor, East Wing  
San Jose, California 95110

C. Compensation paid under this Contract shall not exceed Ninety Five Thousand Dollars ($95,000.00) per year for consulting services, including all anticipated travel expenses and/or miscellaneous expenses, for a total contract maximum of Two Hundred Eighty Five Thousand Dollars ($285,000.00) for the three (3) year contract period.

4. Termination.

A. Termination Without Cause. The County may terminate this Contract without cause by giving the Contractor thirty (30) days written notice.

B. Termination for Cause. If Contractor fails to perform any of its material obligations under this Contract, in addition to all other remedies provided by law, the County may terminate this Contract immediately upon written notice. Such notice shall specify the reason for termination and shall indicate the effective date of such termination.

C. This Contract is contingent on the appropriation of sufficient funding by the County for the services covered by this Contract. If funding is reduced or deleted by the County for purposes of this Contract, the County has the option to either terminate this Contract with no liability occurring to the County or to offer an amendment to the Contract indicating the reduced amount.

D. In the event of termination, Contractor shall deliver to County copies of all reports and other work performed by Contractor under this Contract and upon receipt, Contractor shall be paid for all services performed and all reimbursable expenses incurred to the date of termination.

5. Project Managers.

Contractor designates Howard Biggs as Contractor's Project Manager for the purpose of performing the services under this Contract. County designates the Employee Benefits Director as its Project Manager for the purpose of managing the services performed under this Contract.

6. Conflicts of Interest.

Contractor shall at all times avoid conflict of interest or the appearance of conflict of interest in the performance of this Contract. Contractor shall disclose any such conflict of interest, or potential conflict of interest, which exists or arises at any time during the term of this Contract. County shall have the right to treat any violation of this Section as a material breach of this Contract, and shall have the right to terminate the Contract and pursue any and all legal or equitable
remedies for breach of this Contract. If Contractor makes or participates in making governmental decisions in its scope of work, Contractor shall complete a Form 700 Conflict of Interest Form and file it with the Clerk of the Board.

7. **Indemnification/Insurance.**

Contractor’s indemnification and insurance obligations with respect to this Contract are set forth in Exhibit E, attached hereto and incorporated herein by this reference.

8. **Contracting Principles.**

This Agreement is a Type I service contract, subject to the Resolution of Contracting Principles adopted by the Board of Supervisors on October 28, 1997. Accordingly, Contractor shall comply with all of the following:

a. Contractor shall, during the term of this contract, comply with all applicable federal, state, and local rules, regulations, and laws.

b. Contractor shall maintain financial records adequate to show that County funds paid under the contract were used for purposes consistent with the terms of the contract. These records shall be maintained during the term of this contract and for a period of three (3) years from termination of this contract or until all claims, if any, have been resolved, whichever period is longer, or longer if otherwise required under other provisions of this contract.

The failure of Contractor to comply with this Section or any portion thereof may be considered a material breach of this contract and may, at the option of the County, constitute grounds for the termination and/or non-renewal of the contract. Contractor shall be provided reasonable notice of any intended termination or non-renewal on the grounds of noncompliance with this Section, and the opportunity to respond and discuss the County’s intended action.

9. **Ownership and Return of Documents and Information; Confidentiality.**

Contractor shall not apply for, or claim, or facilitate any application or claim for, any intellectual property rights over material produced, created, modified, transmitted or received, in whole or in part, exclusively for the County in connection with the performance of the Contract herein.

All material, including reports, data, summaries, plans, projections and evaluations and other documents, produced, created, or modified exclusively for the County in connection with this Contract shall be the property of the County. The County shall have the unrestricted authority and right to publish, disclose, distribute and otherwise use, in whole or in part, any and all such materials.

Contractor shall return to County all materials in its possession, custody or control in connection with this Contract, including, without limitation, material referred to in the above paragraphs, immediately upon request by the County. The material returned shall include all originals and copies; provided, however, that Contractor may retain copies necessary to comply
with its document retention policies and regulatory requirements.

Contractor shall not disclose to any third party any and all confidential information disclosed by the County to Contractor, or information produced, created or modified in connection with, the performance of this Contract. This information may be in written, graphic, oral or other tangible or intangible forms, and may include, without limitation, specifications, samples, records, data, computer programs, drawings, diagrams, models, County and firm names, business or marketing plans, studies, analysis, projections, reports, responses to any requests for proposals, evaluation score sheets, evaluation criteria, evaluation results, evaluation methodologies, communications by or to attorneys (including attorney-client privileged communication), memos or other materials prepared by attorneys or under their direction (including work product), and software systems and processes. This information includes all information not readily available to the public even if the information is not specifically marked unless County advises Contractor otherwise in writing.

County shall have the right to treat any violation of this Section as a material breach of this Contract. This Section shall survive termination of the Contract regardless of the nature and/or timing of the termination. Disclosure by Contractor of any such confidential information of County to a state or federal regulatory body with jurisdiction over Contractor during a routine regulatory examination shall not constitute a violation of this Section.

10. **County No-Smoking Policy.**

Contractor and its employees, agents and subcontractors, shall comply with the County’s No Smoking Policy, as set forth in the Board of Supervisors Policy Manual section 3.47 (as amended from time to time), which prohibits smoking: (1) at the Santa Clara Valley Medical Center Campus and all County-owned and operated health facilities; (2) within 30 feet surrounding County-owned buildings and leased buildings where the County is the sole occupant; and (3) in all County vehicles.

11. **Beverage Nutritional Criteria Policy.**

Contractor shall not use County funds to purchase beverages that do not meet the County's nutritional beverage criteria. The six categories of nutritional beverages that meet these criteria are (1) water with no additives; (2) 100% fruit juices with no added sugars, artificial flavors or colors (limited to a maximum of 10 ounces per container); (3) dairy milk, non-fat, 1% and 2% only, no flavored milks; (4) plant derived (i.e., rice, almond, soy, etc.) milks (no flavored milks); (5) artificially-sweetened, calorie-reduced beverages that do not exceed 50 calories per 12-ounce container (teas, electrolyte replacements); and (6) other non-caloric beverages, such as coffee, tea, and diet sodas. These criteria may be waived in the event of an emergency or in light of medical necessity.

12. **Assignment of Clayton Act, Cartwright Act Claims.**

Contractor hereby assigns to the County all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the Contractor for sale
to the County pursuant to this Agreement.

13. **Nondiscrimination.**

Contractor shall comply with all applicable Federal, State, and local laws and regulations including Santa Clara County’s equal opportunity requirements. Such laws include but are not limited to the following: Title VII of the Civil Rights Act of 1964 as amended; Americans with Disabilities Act of 1990; The Rehabilitation Act of 1973 (Sections 503 and 504); California Fair Employment and Housing Act (Government Code sections 12900 et seq.); and California Labor Code sections 1101 and 1102. Contractor shall not discriminate against any subcontractor, employee, or applicant for employment because of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status in the recruitment, selection for training including apprenticeship, hiring, employment, utilization, promotion, layoff, rates of pay or other forms of compensation. Nor will Contractor discriminate in provision of services provided under this contract because of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status.

14. **California Public Records Act Indemnity.**

The County is a public agency subject to the disclosure requirements of the California Public Records Act (CPRA). If the County receives a CPRA request for documents (as defined by the CPRA) and said request relates to the Deliverables and/or services provided pursuant to this Agreement, the County will notify Contractor of the request and confer with Contractor regarding an appropriate response to said request. If Contractor contends that any documents are Contractor's confidential or proprietary material, not subject to the CPRA, and/or exempt from the CPRA, and Contractor wishes to prevent disclosure of said documents, Contractor shall instruct County to withhold said documents. If Contractor fails to respond to County in writing prior to the County's deadline for responding to the CPRA request, the County may disclose the requested information under the CPRA without liability to the County. Contractor shall defend, indemnify and hold the County harmless against any claim, action or litigation (including, but not limited to, all judgments, costs, fees, and reasonable attorney's fees) that may result from denial of a CPRA request.

15. **HIPAA.**

Contractor shall comply with the requirements pursuant to the Health Insurance Portability and Accountability Act (HIPAA) of 1996.

16. **Notices.**

All notices required by this Contract shall be deemed given when in writing and delivered personally or deposited in the United States mail, postage prepaid, return receipt requested, addressed to the other party at the address set forth below or at such other address as the party may designate in writing in accordance with this section:
To Contractor:  Howard Biggs
Arnerich Massena, Inc.
2045 NE Martin Luther King Jr. Road
Portland, Oregon  97212

To the County:  Kathleen Barber
County of Santa Clara
Defined Contribution Plans Committee
70 West Hedding Street, 8th Floor, East Wing
San Jose, California  95110

17.  Governing Law and Venue.

This Contract has been executed and delivered in, and shall be construed and enforced in accordance with, the laws of the State of California. In the event that suit is brought by either party, the parties agree that trial of such action shall be exclusively vested in a state court in the County of Santa Clara or, if federal jurisdiction is appropriate, in the United States District Court for the Northern District of California, San Jose, California.

18.  Assignment.

Contractor has been selected to perform services under this Contract based upon the qualifications and experience of Contractor’s personnel. Contractor may not assign this Contract or the rights and obligations hereunder without the specific written consent of the County.


Contractor shall perform all work and services described as an independent contractor and not as an officer, agent, servant or employee of County. None of the provisions of this Contract is intended to create, nor shall be deemed or construed to create, any relationship between the parties other than that of independent parties contracting with each other for purpose of effecting the provisions of this Contract. The parties are not, and shall not be construed to be in a relationship of joint venture, partnership or employer-employee. Neither party has the authority to make any statements, representations or commitments of any kind on behalf of the other party, or to use the name of the other party in any publications or advertisements, except with the written consent of the other party or as is explicitly provided herein. Contractor shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors, and subcontractors, if any.

20.  Entire Agreement.

This document represents the entire agreement between the parties with respect to the subject matter hereof. All prior negotiations and written and/or oral agreements between the parties with respect to the subject matter of this Agreement are merged into this Contract.


This Contract may be amended only by an instrument signed by the parties.
22. **Counterparts.**

   This Contract may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

23. **Severability.**

   If any provision of this Contract is found by a court of competent jurisdiction to be void, invalid or unenforceable, the same will either be reformed to comply with applicable law or stricken if not so conformable, so as not to affect the validity or enforceability of this Contract.

24. **Waiver.**

   No delay or failure to require performance of any provision of this Contract shall constitute a waiver of that provision as to that or any other instance. Any waiver granted by a party must be in writing, and shall apply to the specific instance expressly stated.
25. Construction.

This Contract was drafted jointly by the parties. They intend that any legal principle favoring construction of language for or against the drafter in case of dispute does not apply to this Contract.

IN WITNESS WHEREOF, County and Contractor have executed this Contract as of the date above written.

COUNTY OF SANTA CLARA

GEORGE SHIRAKAWA
President, Board of Supervisors
Date:

ARNERICH MASSENA, INC.

D. SCOTT DUNBAR
Director of Institutional Services
Date:

ATTEST:

LYNN SEGADANY
Interim Clerk of the Board of Supervisors

APPROVED AS TO FORM AND LEGALITY:

LARRY A. KURO
Deputy County Counsel

Exhibits to this Contract:
Exhibit A: Scope of Services
Exhibit B: County of Santa Clara RFP Response #ESA 2012-001
Exhibit C: Finalist Interview
Exhibit D: Best and Final Offer
Exhibit E: Indemnity and Insurance Requirements
EXHIBIT A

SCOPE OF SERVICES

Contractor shall provide services for investment consulting and plan administration for the 457(b) and 401(a) plans administered by the Committee, as follows:

1. Investment Consulting.

   A. Investment Performance Monitoring

      1. Conduct at a minimum semi-annual fund performance reviews for each fund including but not limited to:

         a. Overview of general market conditions
         b. Overview of the Plan’s portfolio, including investment style and Plan expenses
         c. Comparison of Plan investments in each asset category to appropriate benchmarks
         d. Historical performance returns, major holdings, sector weightings, manager information, portfolio statistics (ratings, asset size, etc.) of the funds
         e. Manager and/or fund investment strategy changes
         f. Providing information on market theories and risk measurement
         g. Provide recommendations with regard to proxy votes relating to Plan investments

   B. Investment Option Selection

      1. Provide ongoing assistance with investment options, including, but not limited to:

         a. Informing the Defined Contribution Plans Committee ("Committee") of industry and plan trends, and new investment products, including but not limited to, guaranteed income products and Roth 457's
         b. Review performance to see that it continues to be in line with the funds benchmark and peers, and that under- and out-performance is clearly explained
         c. Monitor investment philosophy and process to ensure managers are remaining true to their discipline
         d. Manager continuity of the team for stability, along with growth and management of the firm itself
e. Assist with the adding and dropping of investment options, including Life cycle and Lifestyle Funds
f. Monitor and review stable value fund performance
g. Attend at a minimum quarterly committee meetings

2. Plan Administration.

A. Plan Design

1. The consultant shall provide expert advice and analysis with respect to the following:

   a. Proposed or actual legislation and regulations affecting 401/457 plans
   b. Keep the Committee advised of industry trends
   c. Review of revenue share accounting
   d. Plan Document review
   e. Meet with the Committee at least once a year to conduct a comprehensive review of the Investment Policy Statement (IPS) and recommend any needed changes; update language as necessary

B. Communications

1. The consultant shall provide assistance with communications including:

   a. Design and review of communications materials promoting the Plan or educating participants regarding various aspects of the Plan
   b. Development of marketing strategies for the Plan. Marketing may be geared towards encouraging participation in the Plan as well as educating participants regarding various aspects of the Plan
   c. Development and evaluation of participant assessments such as surveys and customer satisfaction evaluations

C. Education and Training, and General Plan Consulting

1. Provide expert comprehensive guidance to the Committee to assist in their administration of the Plan, including but not limited to:

   a. Attending quarterly Committee meetings and special meetings, if needed
b. Advising Committee of key trends and recent developments in fiduciary responsibility and recommendations to improve plan structure and administration

c. Provide recommendations to ensure fulfilling fiduciary responsibility

d. Providing information to the Committee of proposed or passed legislation affecting or related to 457/401 plans, as well as issued letters, opinions and interpretive bulletins by the Department of Labor

e. At least every other year conduct a compliance review of the Plan
EXHIBIT B

On file with the Clerk of the Board

Arnerich Massena
Building Better Portfolios

County of Santa Clara
RFP Response #ESA 2012-001

February 2012

Presented by
Arnerich Massena, Inc.
March 27, 2012

Finalist Interview

Deferred Compensation Plan

County of Santa Clara

Building Better Portfolios

American Massena

Approved
EXHIBIT D

Arnerich Massena
Building Better Portfolios

April 18, 2012

Kathleen Barber
County of Santa Clara Defined Contribution Plans Committee
Employee Benefits
70 West Hedding Street, East Wing, 8th Floor
San Jose, CA 95110

Subject: Investment Consulting Services

Dear Ms. Barber,

We have received your request for a best and final offer, including a description of additional services requested by the Deferred Compensation Plans Committee. In response, we will agree to incorporate/include the following components you requested in our bid with no additional increase in price.

- Review of recordkeeping contract with ICMA-RC and the services outlined compared to the services provided
- Review timing and effectiveness of recordkeeper administrative processing, such as application of contributions, payment of distributions, statement issuances, etc.
- Review calculation of fees collected compared to amounts provided for under contract
- Review of any applicable system or processing updates made by recordkeeper based on regulatory changes

As per the request, we will schedule these services to be accomplished in the first year of the contract. We are glad to update our bid to add these services and we have made no increase in our proposed fee.

Thank you for consideration of our revised proposal and please feel free to contact us with any questions you may have.

Best regards,

D. Scott Dunbar
Howard Biggs
Director, Institutional Services
Howard Biggs
sdunbar@am-a.com
Director, Corporate and Non-profit Services
hbiggs@am-a.com
800/929-5179
800/929-5179

2045 NE Martin Luther King Jr. Blvd., Portland, OR 97212 • 800.929.5179 • www.arnerichmassena.com
EXHIBIT E

INSURANCE REQUIREMENTS FOR
PROFESSIONAL SERVICES CONTRACTS
(e.g. Medical, Legal, Financial services, etc.)

Indemnity

The Contractor shall indemnify, defend, and hold harmless the County of Santa Clara (hereinafter "County"), its officers, agents and employees from any claim, liability, loss, injury or damage arising out of, or in connection with, performance of this Agreement by Contractor and/or its agents, employees or sub-contractors, excepting only loss, injury or damage caused by the sole negligence or willful misconduct of personnel employed by the County. It is the intent of the parties to this Agreement to provide the broadest possible coverage for the County. The Contractor shall reimburse the County for all costs, attorneys' fees, expenses and liabilities incurred with respect to any litigation in which the Contractor is obligated to indemnify, defend and hold harmless the County under this Agreement.

Insurance

Without limiting the Contractor's indemnification of the County, the Contractor shall provide and maintain at its own expense, during the term of this Agreement, or as may be further required herein, the following insurance coverages and provisions:

A. 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, a certified copy of the policy or policies shall be provided by the Contractor upon request.

This verification of coverage shall be sent to the requesting County department, unless otherwise directed. The Contractor shall not receive a Notice to Proceed with the work under the Agreement until it has obtained all insurance required and such insurance has been approved by the County. This approval of insurance shall neither relieve nor decrease the liability of the Contractor.

B. Qualifying Insurers

All coverages, 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- V, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by the County's Insurance Manager.

RFP-DCP InvCons 12_2011
C. Notice of Cancellation

All coverage as required herein shall not be canceled or changed so as to no longer meet the specified County insurance requirements without 30 days' prior written notice of such cancellation or change being delivered to the County of Santa Clara or their designated agent.

D. Insurance Required

1. **Commercial General Liability Insurance** - for bodily injury (including death) and property damage which provides limits as follows:
   - a. Each occurrence - $5,000,000
   - b. General aggregate - $5,000,000
   - c. Personal Injury - $5,000,000

2. **General liability coverage shall include:**
   - a. Premises and Operations
   - b. Personal Injury liability
   - c. Severability of interest

3. **General liability coverage shall include the following endorsement, a copy of which shall be provided to the County:**

   **Additional Insured Endorsement**, which shall read:

   "County of Santa Clara, and members of the Board of Supervisors of the County of Santa Clara, and the officers, agents, and employees of the County of Santa Clara, individually and collectively, as additional insureds."

   Insurance afforded by the additional insured endorsement shall apply as primary insurance, and other insurance maintained by the County of Santa Clara, its officers, agents, and employees shall be excess only and not contributing with insurance provided under this policy. Public Entities may also be added to the additional insured endorsement as applicable and the contractor shall be notified by the contracting department of these requirements.
4. **Automobile Liability Insurance**

For bodily injury (including death) and property damage which provides total limits of not less than one million dollars ($1,000,000) combined single limit per occurrence applicable to owned, non-owned and hired vehicles.

5. **Workers' Compensation and Employer's Liability Insurance**

a. Statutory California Workers' Compensation coverage including broad form all-states coverage.

b. Employer's Liability coverage for not less than one million dollars ($1,000,000) per occurrence.

6. **Professional Errors and Omissions Liability Insurance**

a. Coverage shall be in an amount of not less than ten million dollars ($10,000,000) per occurrence/aggregate.

b. If coverage contains a deductible or self-retention, it shall not be greater than fifty thousand dollars ($50,000) per occurrence/event.

c. Coverage as required herein shall be maintained for a minimum of two years following termination or completion of this Agreement.

7. **Claims Made Coverage**

If coverage is written on a claims made basis, the Certificate of Insurance shall clearly state so. In addition to coverage requirements above, such policy shall provide that:

a. Policy retroactive date coincides with or precedes the Consultant's start of work (including subsequent policies purchased as renewals or replacements).

b. Policy allows for reporting of circumstances or incidents that might give rise to future claims.

E. **Special Provisions**

The following provisions shall apply to this Agreement:

1. The foregoing requirements as to the types and limits of insurance coverage to be maintained by the Contractor and any approval of said insurance by the County or its insurance consultant(s) are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Contractor pursuant to this Agreement, including but not limited to the provisions concerning indemnification.

2. The County acknowledges that some insurance requirements contained in this Agreement may be fulfilled by self-insurance on the part of the Contractor.
However, this shall not in any way limit liabilities assumed by the Contractor under this Agreement. Any self-insurance shall be approved in writing by the County upon satisfactory evidence of financial capacity. Contractors obligation hereunder may be satisfied in whole or in part by adequately funded self-insurance programs or self-insurance retentions.

3. Should any of the work under this Agreement be sublet, the Contractor shall require each of its subcontractors of any tier to carry the aforementioned coverages, or Contractor may insure subcontractors under its own policies.

4. The County reserves the right to withhold payments to the Contractor in the event of material noncompliance with the insurance requirements outlined above.

F. Fidelity Bonds. (Required only if contractor will be receiving advanced funds or payments)

Before receiving compensation under this Agreement, Contractor will furnish County with evidence that all officials, employees, and agents handling or having access to funds received or disbursed under this Agreement, or authorized to sign or countersign checks, are covered by a BLANKET FIDELITY BOND in an amount of AT LEAST fifteen percent (15%) of the maximum financial obligation of the County cited herein. If such bond is canceled or reduced, Contractor will notify County immediately, and County may withhold further payment to Contractor until proper coverage has been obtained. Failure to give such notice may be cause for termination of this Agreement, at the option of County.