



County of Santa Clara
Office of the County Executive
Procurement Department
2310 N. First Street Suite 201
San Jose, CA 95131-1040
Telephone 408-491-7400 • Fax 408-491-7496

**FIFTH AMENDMENT TO AGREEMENT 5500002708
BY AND BETWEEN
THE COUNTY OF SANTA CLARA AND KRONOS, INC.**

This is the Fifth Amendment to the Agreement between the County of Santa Clara (County) and Kronos Incorporated (Kronos) (Contractor) entered into on February 17, 2016 to provide Kronos Workforce Management System hardware and software, and related maintenance, support and services for the County.

This Agreement is covered under the Legislative file #93650 dated October 9, 2018 providing for the Delegation of Authority to the Chief Executive Officer relating to the purchase of Hospitals and Related Assets. County may terminate this Agreement with Contractor at any time with written notice to Contractor.

This Agreement is amended as follows effective March 25, 2019:

1. Key Provision, **AGREEMENT TERM** is revised to read: "This Agreement is extended for a twelve-month period through March 18, 2020, unless terminated earlier or otherwise amended."
2. Key Provision, **PURPOSE**, is revised to read: "To establish a contract with Kronos Incorporated to provide hardware, software and related maintenance, support and services for COUNTY Kronos Time and Attendance System at all locations including, but not limited to the following locations:

St. Louise Regional Hospital
9400 No Name Uno
Gilroy, CA 95020

O'Connor Hospital
2105 Forest Avenue
San Jose, CA 95128"

3. **Exhibit A, COUNTY OF SANTA CLARA eSTANDARD TERMS AND CONDITIONS FOR AGREEMENT FOR GOODS AND RELATED SERVICES** is revised to add:

**"68. COMPLIANCE WITH ALL LAWS AND REGULATIONS INCLUDING
NONDISCRIMINATION, EQUAL OPPORTUNITY, AND WAGE THEFT PREVENTION**
Contractor's violation of this provision shall be deemed a material default by Contractor, giving County a right to terminate the Agreement. Examples of such Regulations include but are not

limited to California Occupational Safety and Health Act of 1973, Labor Code §6300 *et seq.* the Fair Packaging and Labeling Act and the standards and regulations issued there under.

- (1) Compliance with All Laws. Contractor shall comply with all applicable Federal and State laws, regulations and rules (collectively, "Laws"), including but not limited to the non-discrimination, equal opportunity, and wage and hour Laws referenced in the paragraphs below.

- (2) Compliance with Non-Discrimination and Equal Opportunity Laws: Contractor shall comply with all applicable Laws concerning nondiscrimination and equal opportunity in employment and contracting, including but not limited to the following: Santa Clara County's policies for contractors on nondiscrimination and equal opportunity; Title VII of the Civil Rights Act of 1964 as amended; Americans with Disabilities Act of 1990; the Age Discrimination in Employment Act of 1967; the Rehabilitation Act of 1973 (Sections 503 and 504); the Equal Pay Act of 1963; California Fair Employment and Housing Act (Government Code sections 12900 *et seq.*); California Labor Code sections 1101, 1102, and 1197.5; and the Genetic Information Nondiscrimination Act of 2008. In addition to the foregoing, Contractor shall not discriminate against any subcontractor, employee, or applicant for employment because of age, race, color, national origin, ancestry, religion, sex, gender identity, gender expression, sexual orientation, mental disability, physical disability, medical condition, political belief, organizational affiliation, or marital status in the recruitment, selection for training (including but not limited to apprenticeship), hiring, employment, assignment, promotion, layoff, rates of pay or other forms of compensation. Nor shall Contractor discriminate in the provision of services provided under this contract because of age, race, color, national origin, ancestry, religion, sex, gender identity, gender expression, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status.

- (3) Compliance with Wage and Hour Laws: Contractor shall comply with all applicable wage and hour Laws, which may include but are not limited to, the Federal Fair Labor Standards Act, the California Labor Code, and, if applicable, any local Minimum Wage, Prevailing Wage, or Living Wage laws.

- (4) Definitions: For purposes of this Section, the following definitions shall apply. A "Final Judgment" shall mean a judgment, decision, determination, or order (a) which is issued by a court of law, an investigatory government agency authorized by law to enforce an applicable Law, an arbiter, or arbitration panel and (b) for which all appeals have been exhausted or the time period to appeal has expired. For pay equity Laws, relevant investigatory government agencies include the federal Equal Employment Opportunity Commission, the California Division of Labor Standards Enforcement, and the California Department of Fair Employment and Housing. Violation of a pay equity Law shall mean unlawful discrimination in compensation on the basis of an individual's sex, gender, gender identity, gender expression, sexual orientation, race, color, ethnicity, or national origin under Title VII of the Civil Rights Act of 1964 as amended, the Equal Pay Act of 1963, California Fair Employment and Housing Act, or California Labor Code section 1197.5, as applicable. For wage and hour Laws, relevant investigatory government agencies include the federal Department of Labor, the California Division of Labor Standards Enforcement, and the City of San Jose's Office of Equality Assurance.

- (5) Prior Judgments, Decisions or Orders against Contractor: By signing this Agreement, Contractor affirms that it has disclosed any Final Judgments that (a) were issued in the five years prior to executing this Agreement by a court or investigatory government agency and (b) found that Contractor violated an applicable wage and hour or pay equity law. Contractor further affirms that it has satisfied and complied with – or has reached agreement with the County regarding the manner in which it will satisfy – any such Final Judgments.

- (6) Violations of Wage and Hour Laws or Pay Equity Laws During Term of Agreement: If at any time during the term of this Agreement, Contractor receives a Final Judgment rendered against it for violation of an applicable wage and hour Law or pay equity Law, then Contractor shall promptly satisfy and comply with any such Final Judgment. Contractor shall inform the

Office of the County Executive-Office of Countywide Contracting Management (OCCM) of any relevant Final Judgment against it within 30 days of the Final Judgment becoming final or of learning of the Final Judgment, whichever is later. Contractor shall also provide any documentary evidence of compliance with the Final Judgment within 5 days of satisfying the Final Judgment. Any notice required by this paragraph shall be addressed to the Office of the County Executive-OCCM at 70 W. Hedding Street, East Wing, 11th Floor, San José, CA 95110. Notice provisions in this paragraph are separate from any other notice provisions in this Agreement and, accordingly, only notice provided to the Office of the County Executive-OCCM satisfies the notice requirements in this paragraph.

(7) Access to Records Concerning Compliance with Pay Equity Laws: In addition to and notwithstanding any other provision of this Agreement concerning access to Contractor's records, Contractor shall permit the County and/or its authorized representatives to audit and review records solely related to compliance with applicable pay equity Laws. Upon the County's written request, Contractor shall provide the County with reasonable access to applicable nonconfidential records in order for County to confirm Contractor's compliance of the applicable pay equity Laws that are related to the purpose of this Section, except where prohibited by federal or state laws, regulations or rules. County's access to such records shall be permitted at any time during Contractor's normal business hours upon no less than 10 business days' advance written notice.

(8) Pay Equity Notification: Contractor shall (1) directly provide each employee working in California and each person applying for a job in California with a written copy of any applicable pay equity Laws, or (2) electronically disseminate the text of applicable pay equity Laws to each California employee and job applicant, either directly or by posting a copy in conspicuous places available to employees and applicants. Such notification shall occur at least once during the term of this Agreement and, if this Agreement is a multi-year Agreement, at least annually thereafter.

(9) Material Breach: Failure to comply with any part of this Section shall constitute a material breach of this Agreement. In the event of such a breach, the County may, in its discretion, exercise any or all remedies available under this Agreement and/or at law. County may, among other things, take any or all of the following actions:

- (i) Suspend or terminate any or all parts of this Agreement.
- (ii) Withhold payment to Contractor until such breach is cured.
- (iii) Offer Contractor an opportunity to cure the breach.

(10) Subcontractors: Contractor shall impose all of the requirements set forth in this Section on any subcontractors permitted to perform work under this Agreement. This includes ensuring that any subcontractor receiving a Final Judgment for violation of an applicable wage and hour Law promptly satisfies and complies with such Final Judgment.

All other terms and conditions of the Agreement remain in full force and effect. In the event of a conflict between the original Agreement and this Amendment, this Amendment controls.

Prepared and administered by: Martin Coronel 408-491-7467 or Martin.Coronel@prc.sccgov.org

The Agreement as amended constitutes the entire agreement of the parties concerning the subject matter herein and supersedes all prior oral and written agreements, representations and understandings concerning such subject matter.

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