

PROFESSIONAL SERVICES AGREEMENT

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BETWEEN

THE COUNTY OF SANTA CLARA AND

SALAS O' BRIEN ENGINEERS, INC

FOR

**MECHANICAL, ELECTRICAL, AND PLUMBING (MEP) ENGINEERING SERVICES FOR VARIOUS
PROJECTS**

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**PROFESSIONAL SERVICES
AGREEMENT FOR
MECHANICAL, ELECTRICAL, AND PLUMBING (MEP) ENGINEERING SERVICES
FOR VARIOUS PROJECTS**

PART 1 – RECITALS

This is an agreement between **THE COUNTY OF SANTA CLARA**, a political subdivision of the State of California (“Owner” or “County”), and **SALAS O’ BRIEN ENGINEERS, INC**, a California corporation, with its principal place of business located at **305 South 11th Street, San José, CA 95112** (“Consultant”). Consultant and County are each “Party” and collectively the “Parties” to this Agreement.

- 1.01** WHEREAS, this Professional Services Agreement (“PSA” or “Agreement”) sets forth the terms and conditions pursuant to which Consultant will provide Mechanical, Electrical, and Plumbing (MEP) Engineering Services for Various Projects. The Services and Deliverables described within this PSA reflect a non-exhaustive list of Services and Deliverables that may be ordered through individual Project Agreements (“PA”), and are part of the scope of this PSA. Consultant is not authorized to perform Services or Deliverables described within this PSA unless and until a Project Agreement is executed by County for the scope of such Services or Deliverables. The decision to authorize any or all of these items of Service or Deliverables in a Project Agreement is at the sole discretion of the County;
- 1.02** WHEREAS, Consultant acknowledges, agrees, and understands that Consultant’s written response to the County’s competitive selection process is the basis upon which Consultant was selected, such responses are incorporated herein by this reference, and County materially relies upon such responses as a basis for entering into this PSA;
- 1.03** WHEREAS, Consultant was selected by means of the County’s consultant selection process, represents itself as a consultant having the requisite qualifications, and agrees to perform such Services and Deliverables; and,
- 1.04** WHEREAS, Consultant will perform such Services pursuant to separate Project Agreements to be negotiated by both parties and issued by Owner’s Authorized Representative (“OAR”) pursuant to this PSA. The OAR is the Deputy Director, Capital Programs Division, Facilities and Fleet Department.

NOW, THEREFORE, Owner and Consultant agree to the foregoing and as follows:

PART 2 - PROJECT AUTHORIZATION, DEFINITIONS, TERM, AND MAXIMUM COMPENSATION

- 2.01 AGREEMENT FOR SERVICES.** This PSA is a master agreement that sets forth the terms and conditions pursuant to which Consultant, will provide Mechanical, Electrical, and Plumbing (MEP) Engineering Services to the County. The County will authorize Consultant to perform specific services by separate Project Agreements. Each Project Agreement will set forth: (i) a PA project description; (ii) scope of Services and Deliverables; (iii) schedule for performance; (iv) maximum compensation and method of payment and invoicing; (vi) authorized subconsultants and employees, if any; and, (vii) OAR or OAR designee will provide coordination between Consultant and County and communicate relevant approvals and decisions. The “PA Project” will be further characterized in an individual applicable “Project Agreement” (“PA”). The PA Project differs from the defined term “Project” also referenced herein below.

2.02 DEFINITIONS

Capitalized terms found in this PSA are defined within the PSA or derived from the County Capital Project Manual, as amended by County from time to time. A copy is available upon request.

- A. Contract Documents:** The bid documents (plans and specifications along with the Project Manual) including all addenda and approved change orders. This is synonymous with Issued for Construction Documents or Conformed Documents.
- B. Contractor's Submittals:** Items submitted by the construction contractor ("Contractor") for Owner's review and acceptance including, but not limited to shop drawings, layouts, schedules, substitution requests, samples, mockups, catalogs, product data and literature, equipment data sheets, maintenance and operating data, warranties, and guarantees.
- C. Deliverables:** The Instruments of Service, documents, information, data, Submittals, and other products or things of Consultant to be delivered to Owner pursuant to this PSA or any Project Agreement.
- D. Milestones:** Significant Deliverables, deadlines, or turn-around times.
- E. Plans:** Project drawings prepared by a design professional for approval by the County Board of Supervisors or designee, including any Addenda approved by OAR, which specify the location, character, dimensions, and details of the construction Work to be performed. This is synonymous with "Drawings" and "Contract Drawings" in the construction Project Manual.
- F. Project:** An entire public improvement proposed by Owner to be constructed in whole or in part pursuant to Plans and Specifications including the Construction Contract and any phasing and milestone requirements.
- G. Project Schedule:** The time-phased schedule for construction, completion, and acceptance of an entire the Project.

2.03 MAXIMUM COMPENSATION. The sum of all Project Agreements issued pursuant to this PSA shall not exceed FIVE MILLION DOLLARS AND NO CENTS (\$5,000,000.00) ("Maximum Compensation Limit"). If Consultant performs Services or incurs expenses beyond the amount authorized in the PA or which exceeds the Maximum Compensation Limit, Consultant does so at Consultant's sole risk and expense, and is solely responsible and liable for any such expenses incurred, amounts owed or expended.

2.04 TERM. This Agreement is effective upon the date of full execution by both Parties, and shall remain in effect for a period of up to 60 months ("Term"), unless earlier terminated under Part 12 of this Agreement or further amended by the Parties. All Project Agreements must be completed within the PSA's Term.

2.05 SCOPE

- A.** The Services and Deliverables identified in Part 5, "Consultant's Responsibilities, Services, And Deliverables," of this PSA, establish:
 - 1. The full range of Services and Deliverables the County may authorize for PA Projects within the scope of this PSA and any PA.
 - 2. The extent of the Services and/or Deliverables that may be authorized by the OAR within the scope of this PSA and any PA.
- B.** Any act or event affecting any particular Project Agreement, such as its completion, termination, acceptance, non-acceptance, continuation, or modification, shall not affect any other Project Agreement or this PSA except as mutually agreed in writing by both Parties or otherwise provided for in this PSA.

2.06 BUDGET CONTINGENCY. This PSA is contingent upon the appropriation and availability of sufficient funding for the Services and Deliverables covered under this PSA and any Project Agreements. Notwithstanding the termination provisions, if funding is reduced, depleted, or deleted for services covered by this PSA or a Project Agreement, the County has the option to either terminate this PSA or a Project Agreement, without notice (except necessary to transition

any projects in the discretion of the County) and with no liability occurring to the County, or to offer an amendment to this PSA or Project Agreement indicating the reduced amount.

PART 3 – OWNER’S RESPONSIBILITIES

3.01 OWNER PROVIDED INFORMATION

- A.** If required for a Project as specified herein or in a PA, Owner may provide, or direct Consultant to provide, any of the following for Consultant’s use in connection with the Services and Deliverables.
- B.** In accordance with best industry practices, Consultant must make a written recommendation to Owner regarding the completeness or sufficiency of any survey or specialized study provided to Consultant, or the need for any study or survey that the Consultant believes is required for the Project that is not included within Consultant’s Services or Deliverables.

3.02 APPROVAL & PERMIT FEES. Owner will pay all fees required by any jurisdiction having authority over a Project for filing and checking of any item of Service prepared by Consultant, and such fees necessary to secure approvals and permits for the Project from any state, local, or federal department, agency, municipality, county, special district, executive office, or public utility (collectively and each a “Governmental Agency” or “Authority Having Jurisdiction (AHJ)”).

PART 4 - PROJECT AGREEMENTS (PA)

4.01 PREPARATION AND APPROVAL

- A.** Owner will prepare each Project Agreement, generally in accordance with the sample which is attached hereto as Exhibit C, “Sample Project Agreement,” and its attachments, Exhibit D.
- B.** Each Project Agreement will be executed by the Owner’s Authorized Representative (“OAR”), and incorporate the terms of this PSA.
- C.** Owner hereby approves all Project Agreements executed by OAR within the limits of this PSA. OAR does not have the authority to negotiate or authorize payments or scope beyond the Maximum Compensation Limit or scope stated in this PSA.
- D.** Commencement of each Project Agreement is contingent on receipt by Consultant of an Authorization to Proceed issued by the OAR or designee. Consultant must not commence work until Consultant receives the written Authorization to Proceed from the OAR or designee.

4.02 CHANGES IN SCOPE

- A.** If Owner requests a change in the requirements of a Project Agreement, or circumstances not in the control of Consultant cause a material change in the duration or scope of Services that Consultant contends is material and justifies an increase in compensation, Consultant must advise Owner in writing before proceeding with such change. If Consultant fails to provide prior written notice to Owner prior to commencing Services, such change will be deemed not material and Consultant will not be entitled to additional compensation for the Services rendered in support of such change.
- B.** If the change results in a material decrease in the scope of Services required to perform a Project Agreement, Consultant will immediately notify OAR and Consultant’s compensation will be subject to a commensurate reduction in compensation.

PART 5 - CONSULTANT'S RESPONSIBILITIES, SERVICES, AND DELIVERABLES

- 5.01 CONSULTANT AS INDEPENDENT CONTRACTOR.** Consultant is performing all Services and providing all Deliverables as an independent contractor and not an agent or employee of County. The expertise and experience of Consultant are material considerations for County's execution of this Agreement. Consultant shall not assign or transfer any interest in this Agreement nor the performance of any of Consultant's obligations hereunder, without the prior written consent of County, and any attempt to so assign this Agreement, or any rights, duties, or obligations arising hereunder, shall be void and of no effect.
- 5.02 CONSULTANT'S USE OF SUBCONSULTANTS.** Notwithstanding the foregoing, Consultant may use subconsultants in performing the Services under this Agreement, when authorized in a Project Agreement or this PSA. Consultant shall be responsible for directing the work of authorized subconsultants, and for any compensation due to subconsultants. County assumes no responsibility whatsoever concerning such compensation. Without amendment to this Agreement, Consultant may add subconsultants to those identified in Exhibit B only with the prior written approval of the OAR.
- 5.03 CONSULTANT'S GENERAL RESPONSIBILITIES.** The specific Services Consultant shall provide for each Project, and Consultant's Schedule for providing those Services, shall be set forth in the applicable Project Agreement. Consultant's responsibilities when providing such Services shall be as set forth herein, unless specified otherwise in the Project Agreement.

A. Standard of Care

1. Consultant must perform Services in accordance with those standards of care that are generally recognized as being used by competent persons in Consultant's area of specialty in the State of California.
2. Consultant must perform Services in compliance with applicable written federal, state, and local codes, statutes, laws, regulations, and ordinances, including environmental, energy conservation, and disabled access requirements.
3. All construction documents must comply with the regulations and standards of the Fire Marshal having jurisdiction over the Project and in effect during performance of Consultant's Services.
4. Consultant must verify interpretations of applicable law, codes, regulations, and ordinances, from the appropriate Government Agency(ies) and AHJs over the Project. Such efforts will be undertaken in accordance with the acceptable standard of care for these type of Projects.
5. Consultant must incorporate the mitigation measures identified in the applicable Mitigation and Monitoring Plan for the Project, and Project mitigation measures identified in any adopted Environmental Impact Review (EIR or Mitigated Negative Declaration) under the California Environmental Quality Act.

B. Funding by Governmental Agencies

1. If Owner desires to obtain funding from federal, state, or other outside funding sources, Consultant must prepare and furnish information required by such federal, state, or outside funding sources.
2. When a Project is to be constructed in part or wholly with funds from federal, state, or other outside funding sources, Consultant must comply with and incorporate the requirements of said federal, state, or outside funding sources in the construction documents, subject to the approval of Owner.
3. Notwithstanding the source of funding, this PSA is between Owner and Consultant and unless specified herein, all direction, instructions, and decisions related to the services provided by Consultant under this PSA shall come from Owner.

C. HCAI Jurisdiction

1. When a Project is within the jurisdiction of the State of California's Department of Health Care Access and Information (HCAI), Consultant's Instruments of Service must meet all HCAI requirements.
2. When a Project is within the jurisdiction of HCAI, Consultant's Services shall include all Services necessary to obtain all required HCAI approvals and permits for construction and occupancy of the Project.

D. Sequence of Consultant's Services

1. In general, Consultant's Services will proceed sequentially by the Phases described in Part 5.04, "Basic Services & Deliverables."
2. Each PA will establish the Consultant's Milestone Schedule for completion of the Consultant's Services applicable to that Project Agreement.
3. Commencement of work under each PA is contingent on the full execution of said PA. Consultant must not commence work until Consultant receives the written Authorization or Notice to Proceed from the Owner's Project Manager or a fully executed PA when applicable.

E. Quality Control & Coordination Checks

1. Consultant is responsible for the technical quality of all documents prepared by Consultant and Consultant's Subconsultants.
2. Before submitting the completed documents to Owner, Consultant must check all documents for technical accuracy and coordination within and between disciplines.
3. Consultant must not incorporate review comments generated by Owner's organization into subsequent documents until the comments are first reviewed and accepted by Owner's Project Manager.

F. Submittal of Deliverables

1. Each submittal must include a declaration statement, signed by a principal of Consultant's firm, that the work of Consultant and its subconsultants was coordinated, the submittal is complete, and that all prior review comments have been incorporated and coordinated.
2. Consultant must furnish to Owner, suitable for reproduction, original documents, and drawings. Documents and drawings shall be submitted in hardcopy and in electronic format. Files shall be IBM compatible operating system, (Windows 7 or newer), Microsoft Office 2021 or newer, Adobe Acrobat X or newer, and AutoCAD 2020 or newer.

G. Printing & Reproduction

1. Consultant must pay for all printing and reproduction cost incurred in the performance of its Services.
2. Owner will print coordination check documents to be used by Owner at its expense.
3. Owner will print bid documents for distribution to bidders at Owner's expense.
4. At Owner's written request, Consultant must print or reproduce selected documents. Consultant may invoice the Owner for Owner-requested printing as a reimbursable direct expense.

H. Meetings

1. In addition to meetings specifically identified in Part 5.04, "Basic Services & Deliverables," Consultant must attend meetings as needed or required with:
 - a. Owner's officials, staff, commissions, and user groups as required for the performance of Consultant's Services pursuant to this PSA and all Project Agreements.
 - b. Owner-sponsored advisory groups and local officials to present the Project to the

public.

- c. Governmental Agencies/AHJs having jurisdiction related to the Project or any part of the Project, as necessary to provide Services.
- 2. If requested by Owner, Consultant must prepare agendas for and take minutes of all meetings conducted/attended by Consultant. This includes meetings that are chaired by Owner's Project Manager. In meetings with facility personnel, all discussions that involve scope, a significant design element, schedule, or project cost must be documented by Consultant in the meeting minutes.
- 3. Consultant's fee for attendance at and preparation of minutes for all meetings specifically identified in Part 5.04, "Basic Services & Deliverables," will be considered included in the overall fee identified in each Project Agreement.
- 4. Owner's Project Manager will coordinate all meetings between Consultant, Owner's user groups, and the public.
- I. Consultant's Staff and Subconsultants
 - 1. Consultant's staff and Subconsultants are identified in an attachment in the Project Agreement form Exhibit A, "Consultant's Hourly Rates," and are subject to the requirements set forth therein.
 - 2. Changes to Consultant's staff and Subconsultants are subject to approval as an amendment to the PA by the OAR, or if permitted under the terms of the PA.

5.04 BASIC SERVICES & DELIVERABLES. The following list of Services provides a non-exhaustive list of Services that Owner may authorize through individual Project Agreements (PA). Consultant is not authorized to perform these Services, and these Services do not become a contractual obligation, unless specifically authorized by the execution of a Project Agreement. The County has sole discretion to authorize any or all of these items of Service in a Project Agreement.

- A. Unless the requirements for the Services and Deliverables described herein are specifically modified in writing in a particular PA and is within the scope of Services authorized in the PSA, when a particular phase of Services is authorized in an individual Project Agreement, Consultant must provide its Services and Deliverables for that phase as required herein.
- B. Architectural Programming Phase
 - 1. Examine Owner-provided information and the proposed Project site in terms of:
 - a. Project requirements;
 - b. Functions and priorities;
 - c. Site and existing facility conditions;
 - d. Opportunities and constraints;
 - e. Space requirements and constraints;
 - f. Utilities services and constraints;
 - g. Zoning and other applicable regulations;
 - h. Expandability;
 - i. Access;
 - j. Parking;
 - k. Massing;
 - l. Construction feasibility and phasing;
 - m. Owner's Space Planning Standards;
 - n. Owner's Architectural and MEP Design Guidelines and Standards;
 - o. Existing As-built Information; and,
 - p. Other factors Consultant or Owner consider relevant to the Project.
 - 2. Provide comprehensive Engineering Services including but not limited to the following:
 - a. Fully develop all necessary programmatic information. For existing building retrofit/renovation projects, Consultant must become familiar with the existing facility

and governing documents in order to facilitate preparation of accurate and complete design/construction documents for building fit-out and retrofit;

- b. Solidify Project design objectives and criteria and prepare the Owner's Project Requirements (OPR) document. The OPR details the functional requirements of a project and the expectations of how it will be used and operated. These include:
 - (1) Project Goals;
 - (2) Measurable performance criteria;
 - (3) Cost considerations;
 - (4) Benchmarks and success criteria.

The OPR should follow the guidelines of ASHRAE Guideline 0-2005.
 - c. Confirm staffing plans, numbers, and positions of personnel;
 - d. Confirm space requirements and relationships;
 - e. Compare requested space to similar projects and space standards;
 - f. Diagram space relationships by using massing diagrams, flow diagrams, stacking diagrams, bubble diagrams, and other graphical methods; and,
 - g. Identify special equipment and systems, site and off-site requirements, security zones, and other factors Consultant or Owner consider relevant to the Project.
3. Prepare and submit a draft Engineering Program for Owner's review, comment, and acceptance.
 4. Based on Owner's comments to the Draft Architectural Program, prepare and submit a final Architectural Program including the following additional items:
 - a. A proposed Project Schedule;
 - b. Conceptual Project Budget in format specified by Owner;
 - (1) Develop Budget by applying unit costs and other standard cost data to space and facilities requirements;
 - (2) Include all foreseeable Project costs including design, construction, utilities connections, off-site improvements, permits, fees, furniture, and moveable and installed equipment; and,
 - (3) Incorporate Owner's estimates for costs of land, rights-of-way, special studies and other costs that are Owner's responsibility pursuant to Part 3, "Owner's Responsibilities."

C. Schematic Design Phase

1. Based on the Owner-accepted final Architectural Program, prepare Schematic Design documents, and provide specific deliverables, as described below:
 - a. Perform a review of alternative approaches to design and construction of the Project, and provide a narrative report of such a review. Assess such "alternate approaches" such as project phasing; an assessment of achieving a LEED rating; use of renewable energy sources; use of "modular construction" such as tilt-up walls, pre-fabricated "units" etc.;
 - b. Perform an investigation of the project site to evaluate design and construction "factors" such as:
 - (1) Load capacity of existing utility systems and the effects of new construction/building renovation on the capacity of these systems;
 - (2) Presence of underground utilities that might interfere with construction efforts;
 - (3) Presence of sub-surface obstructions and/or above-ceiling or behind wall obstructions (in existing buildings) that would interfere with the construction/renovation; and,
 - (4) Performing a condition assessment of utility systems to include video evaluation of piping, assessing future maintainability of systems in order to evaluate repair/replacement/leave-in-place options, etc.
 - c. Schematic drawings and study models, if appropriate, to indicate the size, shape, and relationship of all spaces and systems involved in the Project, including basic structural, mechanical, plumbing, and electrical systems. These documents must clearly show site plans, off-site improvements if needed, all elevations, floor plans of individual floors, and sections to demonstrate the building construction and spaces in both plan view and section;

- d. A narrative report by each discipline describing its proposed design philosophy and basis of design with a description of, and the rationale for, the proposed structural systems, electronics and security systems, fire protection systems, types of equipment (preliminary equipment list of fixed and moveable equipment), materials, finishes, site development, and landscaping.
 - e. For the Mechanical and Electrical systems, prepare a separate “**Design Intent**” document. For these systems, describe factors that will influence the design and selection of HVAC, plumbing, and electrical systems. These factors include occupancy requirements; Indoor Environmental Quality (IEQ) including space temperatures, relative humidity, indoor air quality, noise levels, illumination levels; “Green Building” requirements including LEED, etc. The rationale must include initial cost, life-cycle cost, and life expectancy considerations. The Design Intent document referred to in this paragraph is essentially the OPR for mechanical and electrical systems.
 - f. Perspective drawings, if needed to convey the designer’s intent;
 - g. An updated Project Schedule for design and construction of the Project, including the Consultant’s Schedule detailing the progression and submittal of Drawings and Project Manual in the subsequent Phases. The portion of the Project Schedule for the Construction Phase may be shown as a single activity depicting the estimated start and completion dates for each construction phase Milestone and/or bid package;
 - h. An analysis of construction phasing including accessibility, interference with and continuation of facility operations during construction, and a plan for resolving interferences and problems identified;
 - i. A document such as a chart or spreadsheet comparing the changes in cost elements and the size of each space from the Owner-accepted Architectural Program to the Final Schematic Design submittal;
 - j. A Preliminary Energy Consumption Report including estimates of annual utilities consumption by month for the Project. The report must include energy calculations for each significant component of the Project and must include a narrative on why the particular components are being recommended and what alternatives were considered. Maintenance requirements for energy savings components must also be addressed in the report;
 - k. An Energy Savings Features Matrix identifying features that could be incorporated into the building’s design and construction to increase the building’s energy efficiency at least fifteen percent (15%) more than the minimum required by Title 24 energy efficiency requirements. The Matrix must identify the initial costs of these features in excess of the costs required to meet the minimum Title 24 energy efficiency requirements. The Matrix must also indicate the payback period in terms of energy/lifecycle savings of these special features and an overall lifecycle cost comparison. The Energy Savings Feature Matrix must be presented in a format acceptable to the Owner; and,
 - l. A Preliminary Statement of Probable Construction Cost.
2. At 100% completion of the Schematic Design Phase, Consultant must furnish to Owner for purposes of checking and acceptance of Schematic Design Phase Documents:
- a. One reproducible copy of all Schematic Design Phase Documents;
 - b. One copy of the updated Project Schedule;
 - c. Computer flash drives containing electronic copies of the Schematic Design Phase submittals;
 - d. A declaration statement, signed by a principal of Consultant’s firm, that the work of Consultant and its Subconsultants was coordinated, the submittal is complete, and that all Owner review comments from the final Architectural Program submission have been incorporated and coordinated. All Drawings, Project Manual, Technical Specifications, and calculations submitted by Consultant to Owner must also contain a statement that the document was reviewed for accuracy, completeness, and coordination and the coordination check was performed immediately prior to

submission to Owner. The respective Design Professional(s) of Record as appropriate for each discipline must sign the statement;

- e. Preliminary Energy Consumption Report;
- f. Energy Savings Features Matrix; and,
- g. A Preliminary Statement of Probable Construction Cost.

D. Design Development Phase

1. Based on the Owner-accepted Schematic Design Phase Documents, prepare Design Development Phase Documents as described below:

- a. Drawings, three-dimensional studies and rendering, color boards, calculations, and outline Technical Specifications as required to fix and describe the architectural character and materials; the structural system and all its essential features; the electrical, electronic, mechanical, and plumbing systems refined to show the system characteristics, quality of environment, and control they will provide; landscaping and site work as applicable;
- b. Design Development Phase drawings must indicate the scope of Work included in the bid package with sufficient detail to enable preparation and review of a reliable Revised Statement of Probable Construction Cost;
- c. Design features and limitations required by the approved Environmental Impact Report must be included in the design and Technical Specifications. Construction phase monitoring and reporting requirements required by the adopted Mitigation Monitoring Program must be included in the Project Manual; and
- d. Design features, details and plans required to comply with ADA, NFPA and Local Fire Codes. Information shall include fire exiting plans, building occupancy analysis, and fire code analysis.
- e. Prepare a "Basis of Design" narrative for the following systems:
 - (1) HVAC;
 - (2) Plumbing;
 - (3) Electrical and lighting, including lighting controls;
 - (4) Conveyance systems such as elevators;
 - (5) Structural systems; and,
 - (6) Emergency power systems including UPS and generators.
- f. The Basis of Design is the documentation of the primary thought processes, assumptions, and calculations behind design decisions that were made to meet the Design Intent. The Basis of Design describes the systems, components, conditions, and methods chosen to meet the intent. At a minimum, the Basis of Design shall include the following information:
 - (1) Describe systems, components, and methods for achieving the Design Intent objectives. For example, for a rooftop air conditioning unit include: what system alternatives were considered and why was this system selected; details of size, efficiencies, areas served, capacity, control details, vibration criteria, etc. If the Engineer is designing around a specific system or manufacturer, the narrative must include specific details of the system, and an analysis of the availability of other suppliers and manufacturers to meet the requirements.
 - (2) A discussion of equipment maintainability;
 - (3) Energy performance;
 - (4) Ventilation strategies and methods;
 - (5) Primary load calculations including design and energy modeling assumptions including:
 - a) Occupant density and function;
 - b) Indoor Environmental Conditions;
 - c) Outdoor conditions;
 - d) Glazing fraction, U-values and shading coefficient; and,
 - e) Wall and ceiling R-values.
 - (6) Preparation of a detailed Sequence of Operation for the HVAC system. All sequences shall be written in small statements, each with a number for reference.

For a given system, numbers will not repeat for different sequence sections, unless the sections are numbered. Sequence of Operation to include:

- a) An overview narrative of the system (1 or 2 paragraphs) generally describing its purpose, components and function;
 - b) All interactions and interlocks with other systems;
 - c) Detailed delineation of control between any packaged controls and the building automation system, listing what points the BAS monitors only and what BAS points are control points and are adjustable;
 - d) Written sequences of control for packaged controlled equipment;
 - e) Start-up sequences;
 - f) Warm-up mode sequences;
 - g) Normal operating mode sequences;
 - h) Shutdown sequences;
 - i) Unoccupied mode sequences;
 - j) Shutdown sequences;
 - k) Capacity control sequences and equipment staging;
 - l) Effects of power or equipment failure with all standby component functions;
 - m) Detailed sequences for all control strategies, e.g., economizer control, optimum start/stop, staging, optimization, etc.
 - n) Sequences for all alarms;
 - o) Initial and recommended values for all adjustable settings, set-points, and parameters that are typically set or adjusted by operating staff; and any other control settings or fixed values, delays etc. that will be useful during testing and operating of the equipment.
- (7) Preparation of a Fire and Emergency Response Matrix. This matrix shall list all equipment and components (air handlers, dampers, valves, etc.) with their status and action during a fire alarm and under emergency power.
2. The following descriptions are a guide to the minimum requirements for a Design Development Phase submittal. They must be augmented as necessary to show design intent and to prepare an accurate Revised Statement of Probable Construction Cost.
- a. Architectural Drawings
 - (1) Floor plans that clearly show:
 - a) Finish schedule;
 - b) Principal dimensions;
 - c) Wall types clearly identified;
 - d) Security zones and perimeters;
 - e) Room and door numbers, and a numbering plan for the entire facility;
 - f) Sections and details to enable a reasonable material takeoff; and,
 - g) Contractor-furnished and Owner-furnished equipment lists incorporated in the layout.
 - (2) Roof plans that clearly show:
 - a) Slopes;
 - b) Type of roofing;
 - c) Roof access and pathways;
 - d) Location of any mechanical equipment;
 - e) Sufficient information to determine primary and secondary means of drainage; and,
 - f) Parapets, guardrails, and any fall-protection items.
 - (3) Reflected ceiling plans that clearly show:
 - a) Ceiling material;
 - b) Access hatches;
 - c) Room numbers;
 - d) Partitions coordinated with the floor plans; and,
 - e) Mechanical & electrical features coordinated with mechanical & electrical system drawings.
 - (4) Elevations that clearly show:

- a) Types of surface materials;
 - b) Dimensions from finish floor to tops of walls, eaves and rooflines; and,
 - c) All openings without dimensions but coordinated with door and window schedules.
- (5) Sections that clearly show:
 - a) Any security considerations;
 - b) Firewall conditions at tops of walls;
 - c) All essential building parts and materials;
 - d) All door, window, glazing, and hardware schedules complete with sufficient detail to show the agreed-upon form and style; and,
 - e) All items intended to be permanently affixed to the building.
- b. Structural Drawings
 - (1) Floor and foundations plans that clearly show:
 - a) Principal dimensions;
 - b) All columns, shear walls, shafts, and stairs;
 - c) Coordination of structure with architectural floor plans;
 - d) Section cuts and details to identify the proposed type of foundations; and,
 - e) Sufficient section and detail bubbles to show where sections and details can be found.
 - (2) Roof plans that clearly show:
 - a) Principal dimensions;
 - b) All major framing members;
 - c) Sufficient sections and details to show design intent;
 - d) Coordination with architectural, mechanical, and electrical floor plans; and,
 - e) Sufficient section and detail bubbles to show where sections and details can be found.
 - (3) Sections and details that clearly show:
 - a) Design intent;
 - b) All-important connections;
 - c) Coordination with other structural plans; and,
 - d) Logical placement to allow easy location of sections and details.
- c. Mechanical and Plumbing Drawings
 - (1) Mechanical and Plumbing plans which clearly show:
 - a) Room numbers;
 - b) Locations of all major pieces of equipment;
 - c) Layout and sizing of all ductwork and piping;
 - d) Symbol list coordinated with symbols on plans;
 - e) All points-of-connection including invert elevations; and,
 - f) Sufficient section and detail bubbles to show where sections and details can be found.
 - (2) Equipment and fixture schedules that clearly show:
 - a) All fixtures identified; and,
 - b) All mechanical equipment identified and sized.
- d. Electrical Drawings
 - (1) Lighting and power plans that clearly show:
 - a) Room numbers;
 - b) Single line diagrams of services and systems;
 - c) Symbol list coordinated with symbols on the plans;
 - d) Lighting plans coordinated with reflected ceiling plans;
 - e) Sufficient section and detail bubbles to show where sections and details can be found;
 - f) Equipment and fixture schedules including lighting; and,
 - g) Intercom, public address (PA), closed circuit TV (CCTV), nurse call, and similar electrical and electronic systems.
- e. Civil Drawings. Site and grading plans that clearly show:
 - (1) Site cross sections;

- (2) Site contours and drainage;
- (3) Locations of all benchmarks;
- (4) Precise locations of all major elements; and,
- (5) Roadways, driveways, and parking areas.
- (6) Site utility plans that clearly show:
 - a) All connections to off-site utilities;
 - b) All points-of-connection including invert elevations; and,
 - c) All drainage systems and other utilities located and sized.
- f. Specialty Systems including, but not limited to: security, fire protection, building automation systems (BAS), lighting controls, and information technology systems and Infrastructure:
 - (1) Symbol list coordinated with symbols on plans;
 - (2) Single line diagrams of services and systems;
 - (3) Location and type of reporting/monitoring devices;
 - (4) Power sources;
 - (5) Code analysis for fire protection systems; and,
 - (6) Reporting and Monitoring Architecture for BAS, security, fire protection, and lighting controls.
- g. Landscaping Drawings
 - (1) Site plans that clearly show:
 - a) Plant selection and planting layout; and,
 - b) Irrigation system with points-of-connection to site utilities.
- h. Other Items
 - (1) Outline Project Manual including Introductory Information, Bidding Requirements, Contracting Requirements, and General Requirements;
 - (2) Outline Technical Specifications describing the size, character, and quality of the entire Project, including locations of materials; types of structural, mechanical, electrical, and security systems;
 - (3) Engineering calculations clearly presented for all disciplines, including realistic loads, and sufficiently complete for preparation of Construction Documents to proceed;
 - (4) Room Data Sheets itemizing all requirements for each space including: staff positions, furnishings, equipment including equipment lists by room for fixed and moveable equipment, security provisions, power, telephone and data requirements, etc.;
 - (5) A chart comparing the changes in cost elements and the size of each space between the final Architectural Program, the Schematic Design Phase, and the Design Development Phase;
 - (6) Updated Energy Consumption Report;
 - (7) Updated Energy Savings Features Matrix; and,
 - (8) List of all existing permit-required confined spaces.
- 3. At 100% completion of the Design Development Phase, Consultant must furnish to Owner for purposes of checking and acceptance of Design Development Phase Documents:
 - a. One reproducible copy of all Design Development Phase Documents identified above;
 - b. One copy of the updated Project Schedule;
 - c. Computer flash drives containing electronic copies of the Design Development Phase Documents;
 - d. A declaration statement, signed by a principal of Consultant's firm, that the work of Consultant and its Subconsultants was coordinated; quality control checks have been performed per Section 5.03, Quality Control and Coordination Checks; the submittal is complete; and that all Owner's review comments from the final Schematic Design Phase submittal have been incorporated and coordinated. All Drawings, Project Manual, Technical Specifications, and calculations submitted by Consultant to Owner must also contain a statement that the document was reviewed for

accuracy, completeness, and coordination and the coordination check was performed immediately prior to submission to Owner. The respective Design Professional(s) of Record as appropriate for each discipline must sign the statement; and,

- e. A Revised Statement of Probable Construction Cost. The construction cost estimate must include all fixed equipment. A separate estimate must be prepared and submitted for all movable equipment.

E. Construction Documents Phase

1. Based on the Owner-accepted Design Development Phase Documents, Consultant must prepare final Construction Drawings and Project Manual ready for Bidding and construction purposes including but not limited to:

a. Project Manual

- (1) The County Project Manager will prepare the Division 0/1 Sections of the Project Manual;
- (2) Consultant must prepare the technical specifications and assemble the Project Manual including the Introductory Information, Bidding Requirements, Contracting Requirements, General Requirements, and Technical Specifications;
- (3) Consultant must review Submittal Review times as referenced in the Project Manual Document 00 72 00 (General Conditions) and Section 01 33 00 (Submittal Procedures), and ensure Consultant can perform reviews pursuant to this PSA. If Consultant identifies that the necessary review time for a specific technical Section exceeds the allowance of Document 00 72 00 or Section 01 33 00, Consultant must identify the appropriate review time in the individual technical Sections of the specifications. Otherwise, Consultant is responsible for the submittal review time established in the PSA.
- (4) Consultant shall assist the County in preparing and include in the Project Manual:
 - (a) Project Manual Section 01 45 00 (Quality Control), "QC Specialist Table."
 - (b) Project Manual Table 01 45 00-01, "QC Documentation."
- (5) Consultant shall assist Owner in preparing the list of systems to be commissioned, pursuant to Section 01 91 00 (Commissioning).
- (6) Consultant shall assist the County in preparing the list of systems and components requiring Operation and Maintenance manuals, pursuant to Section 01 78 23 (Operation and Maintenance Data).
- (7) Consultant must prepare and include in the Project Manual sketches SK-01 52 00-1 and SK-01 52 00-2 for County Representatives' Temporary Offices. Sketches must be in CAD format;
- (8) Consultant must prepare and include in the Project Manual, a list of all existing permit-required confined spaces. (See Project Manual, Document 00 72 00 (General Conditions));
- (9) Sole source or brand name items:
 - (a) Pursuant to Public Contract Code section 3400, Consultant must verify that:
 - i. Technical Specifications do not limit bidding, directly or indirectly, to any one specific concern or brand name;
 - ii. For performance-type specifications, Consultant must verify that there are at least two suppliers that can meet Consultant's performance specification, unless criteria for a brand name specification per Public Contract Code section 3400 is met; and,
 - iii. Bid Documents must not call for a designated material, product, thing, or service by specific brand or trade name unless the specification lists at least two brands or trade names of comparable quality or utility and is followed by the words "or equal" so that bidders may furnish any equal material, product, thing, or service. If aware of an equal product manufactured in this state, Consultant must name that product in the specification. If a second brand cannot be identified, Consultant must advise the Owner.

- (b) Consultant must verify, and provide all necessary information and supporting documentation, that each sole source product required by the Technical Specifications is specifically approved in writing by the Owner and itemized and listed in Project Manual, Document 00 11 00 (Notice To Bidders).
 - (c) If the Owner approves the use of a sole source product, Consultant must add the words "no exceptions" to the sole source item where it is identified in the Project Manual.
- (10) Consultant must verify that all page numbers, Part and Section references, and Drawing List references contained within the Project Manual are correct.
- b. Drawings
 - (1) Consultant must complete, coordinate, and assemble the Drawings;
 - (2) Consultant must verify that all Drawing numbers, detail numbers, and Project Manual references indicated on the Drawings are correct;
 - (3) Consultant must verify that all General Notes included on the Drawings do not conflict with the provisions and requirements of the Project Manual; and,
 - (4) Consultant must verify that all sole source Products identified on the Drawings are also identified in the Technical Specifications and in Document 00 11 00 (Notice To Bidders), or equivalent.
- 2. All Construction Documents must be verified by Consultant as required by Part 5.03, Quality Control and Coordination Checks.
- 3. All Construction Documents Phase submittals and must be stamped and signed by the Design Professional(s) of Record as appropriate for the submittal.
- 4. Consultant shall identify all necessary approvals and permits required, such as the Department of Health Care Access and Information (HCAI), State and County Fire Marshals, State Department of Corrections, State Fish & Game, etc.
- 5. Other required Construction Document Phase Deliverables:
 - a. An Operating Manual describing the operation of all systems and equipment designed into the Project;
 - b. An Updated Energy Consumption Report including estimates of annual utilities consumption by month for the Project. The report must include energy calculations for each significant component of the Project and must include a narrative on why the particular components were selected and what alternatives were considered. Maintenance requirements for energy savings components must also be addressed in the report;
 - c. Final Room Data Sheets itemizing requirements for each space;
 - d. An updated Project Schedule;
 - e. A Final Statement of Probable Construction Cost;
 - f. Simplified Floor Plans of all floors, in Owner-approved format;
 - g. A preliminary report indicating how each project-specific CEQA Mitigation Measure was incorporated into the Contract Documents and a table referencing the applicable Drawing number and/or Project Manual section satisfying the requirement; and,
 - h. Moveable (Group 2) equipment list.
- 6. Consultant must furnish to Owner for purposes of checking and acceptance, one reproducible copy of Construction Documents Phase submittals at 75% completion including:
 - a. Project Manual and Drawings;
 - b. Coordination Check Sheets;
 - c. Operating Manual;
 - d. Updated Energy Consumption Report;
 - e. Updated Room Data Sheets;
 - f. Moveable (group 2) equipment list;
 - g. Updated Project Schedule;
 - h. Updated Final Statement of Probable Construction Cost;
 - i. Preliminary CEQA Mitigation Measure report and table;

- j. A declaration statement, signed by a principal of Consultant's firm, that the work of Consultant and its Subconsultants was coordinated per Section 5.03, Quality Control and Coordination Checks; the submittal is complete; and that all review comments from the 100% Design Development Phase submittal have been incorporated and coordinated. All Drawings, Technical Specifications, and calculations submitted by Consultant to Owner must also contain a statement that the document was reviewed for accuracy, completeness, and coordination and the coordination check was performed immediately prior to submission to Owner. The respective Design Professional(s) of Record as appropriate for each discipline must sign the statement; and,
 - k. Updated Engineering Calculations.
7. Consultant must furnish to Owner for purposes of checking and acceptance, one reproducible copy of all Construction Documents Phase submittals at 100% completion including:
- a. Project Manual and Drawings stamped and signed and ready for bidding;
 - b. Coordination Check Sheets;
 - c. One copy of the updated Project Schedule;
 - d. Computer flash drives containing electronic copies of all Construction Documents Phase Deliverables;
 - e. A declaration statement, signed by a principal of Consultant's firm, that the work of Consultant and its Sub-consultants was coordinated per Section 5.03, Quality Control and Coordination Checks; the submittal is complete; and that all review comments from the 75% Construction Phase Documents submittal have been incorporated and coordinated. All Drawings, Technical Specifications, and calculations submitted by Consultant to Owner must also contain a statement that the document was reviewed for accuracy, completeness, and coordination and the coordination check was performed immediately prior to submission to Owner. The respective Design Professional(s) of Record as appropriate for each discipline must sign the statement;
 - f. Final Statement of Probable Construction Cost;
 - g. Final Operating Manual;
 - h. Final Energy Consumption Report including final estimates of annual utilities consumption by month for the Project. The final report must include energy calculations for each significant component of the Project and must include a narrative on why the particular components were incorporated in the Project and what alternatives were considered. Maintenance requirements for energy savings components must also be addressed in the report;
 - i. Final Room Data Sheets;
 - j. Updated Project Schedule;
 - k. Final CEQA Mitigation Measure report and table; and,
 - l. A summary list by Project Manual Section of all required tests and inspections.
8. Consultant must furnish to Owner for purposes of final verification and acceptance, one reproducible back-check copy of all Construction Documents Phase submittals. The 100% CD back-check set must include all the comments generated during the review of the 100% CD submittal and the comments and corrections required by Permitting Authorities.
9. Consultant must obtain and provide documented approval of the Construction Documents from all jurisdictional agencies.

F. Bidding Phase

- 1. Based on the Owner acceptance of the 100% CD back-check documents, Consultant must furnish to Owner for purposes of reproduction and distribution to the prospective Bidders, two complete and reproducible copies of the Bid Documents ready for bidding. Each drawing shall be stamped: Issued for Bidding (One for Fire Marshal, one for Clerk of the Board of Supervisors).
- 2. Consultant must assist Owner in obtaining Bids.

3. Consultant must strictly adhere to Owner's processes and procedures related to competitive bidding of public works projects.
4. Consultant must answer Bidders' questions relating to the Contract Documents, develop corrections or clarifications as required, and prepare all Addenda for issuance by Owner. Addenda must be signed by the appropriate design professional and indicate its Registration or License Number. Preparation of Addenda is part of the Design Consultant's Basic Services and must be prepared by the Consultant at no additional cost to Owner.
5. Consultant must attend, participate in, and prepare minutes for all pre-bid conferences.
6. Consultant must advise and assist Owner regarding acceptance or rejection of Bids.
7. Owner will administer the Bidding process.
8. Contractor Prequalification:
 - a. If prequalification of construction contractors is required by Owner, Consultant must recommend prequalification criteria and assist Owner in preparation of the prequalification documents; and,
 - b. If requested by Owner, Consultant must participate with Owner in evaluation of prequalification submittals.

G. Construction Phase

1. The Construction Phase will commence on the Award Date of the Construction Contract and, together with Consultant's obligation to provide Basic Services, will terminate as provided in Part 12, "Term And Termination."
2. Project Meetings
 - a. Consultant must attend the following Construction Phase meetings:
 - (1) Construction Phase in-house kick-off meeting
 - (2) Preconstruction Conference
 - (3) Coordination and Mutual Understanding Meeting
 - (4) All Construction Phase Progress Meetings (prepare Minutes)
 - (5) Demonstration and Training Pre-instruction Conference
 - (6) Commissioning Scoping Meeting
 - (7) Closeout Conference
3. Site Visits
 - a. Consultant's Project Manager:
 - (1) Consultant's Project Manager will visit the Project site at a minimum frequency established in Project Agreements during the Construction Phase to observe the Work.
 - (2) Consultant's Project Manager must assist Owner in evaluating the Contractor's progress against Contractor's Progress Schedule.
 - (3) Consultant's Project Manager must attend the Progress Meeting at a frequency established in Project Agreements, observe the current status of the Work, and prepare and furnish a detailed written report of conditions observed, problems discussed and decisions made. Original and copies of the site visit reports must be sent to the Owner's Project Manager within five (5) calendar days of each site visit.
 - b. Consultant's Project Manager, before leaving the Project site, must inform Owner when Consultant observes Work that does not conform to the requirements of the Contract Documents. When Consultant's observations so indicate, Consultant must recommend special inspection or testing of the Work, whether or not such Work be then fabricated, installed, or completed.
 - c. Consultant's "in-house" specialists or Subconsultants
 - (1) The minimum number of site visits by Consultant's "in-house" specialists or Subconsultants included in the Consultant's Basic Services will be established in Project Agreements.
 - (2) The presence of Consultant's "in-house" specialists or Subconsultants at the site for participation in walk-through inspections associated with the development of Deficiency Lists for acceptance of all or at designated portions of the Work is part

- of the Consultant's Basic Services and is not to be charged against the designated number of site visits stated above.
- (3) Additional site visits necessitated by Consultant's error, omission, unauthorized changes, or negligence, must be accomplished without additional cost to Owner.
 - (4) Additional site visits of Consultant's "in-house" specialists or Subconsultants necessitated by significant failure on the part of the Contractor to perform in accordance with the requirements of the Contract Documents will be considered as additional Supplemental Services.
 - (5) Attendance at a progress meeting by a Consultant's "in-house" specialists or Subconsultant does not constitute a site visit. To be considered a site visit, the Consultant's "in-house" specialist or Subconsultant must perform close-up observation of the current Work being constructed, review the Contractor's As-Built Documents, and prepare and submit a site visit report to the Owner.
4. Communications. All written communications with the Contractor must be through Owner's Project Manager unless otherwise approved in writing by the Owner's Project Manager.
 5. Interpretation of the Contract Documents
 - a. Consultant must provide all design-related technical interpretation of the Contract Documents during construction necessary for the proper execution and progress of the Work;
 - b. Interpretations and decisions of Consultant must be consistent with the intent of and reasonably inferable from the Contract Documents and must be in written and/or graphic form.
 - c. For Requests For Information (RFIs):
 - (1) Consultant must render written decisions within **five (5) Work Days** unless otherwise agreed between Consultant and Owner's Project Manager;
 - (2) The receipt date, topic, response date, and current status of all RFIs must be logged and tracked by Consultant in an electronic database;
 - (3) Responses to RFIs must be in the form of drawings, sketches, technical information, and/or any other documentation, in sufficient detail for the Contractor to proceed unimpeded with the Work without requesting further clarification;
 - (4) Consultant shall bear the cost of responding to RFIs as previously described in the sub-paragraph; however, if, as a result of the RFI, Owner directs a change to the Project scope, the implementation of which requires preparation of design documents by Consultant, Owner may negotiate a corresponding fee increase to the Consultant's Project Agreement pursuant to Part 5.05, "Supplementary Services & Deliverables";
 - (5) In preparing its response to any RFI, Consultant will evaluate whether the response will result in a change to the requirements of the Contract Documents.
 - (6) If Consultant's response to a RFI will change the requirements of the Contract Documents, Consultant must:
 - a) State in writing in Consultant's response to the RFI that the response to the RFI is a change to the requirements of the Contract Documents; and,
 - b) Promptly notify the Owner that the Consultant's response to the RFI is a change to the requirements of the Contract Documents.
 - (7) Consultant will be required to prepare a cost estimate for each change to the Contract Documents resulting from Consultant's response to a RFI, except for circumstances described in sub-paragraph c.4 above; and,
 - (8) Upon Owner's request, Consultant may be required to assist Owner in negotiating any adjustment in the Contract Time or Contract Sum with the Contractor resulting from contract modifications based on Consultant's response to a RFI, except for circumstances described in c.4 above.
 - d. For Claims, Disputes, and other matters in question between Owner and Contractor, Consultant must render written opinion/recommendation within **fourteen (14) County Business Days**.

- e. Consultant must notify Owner immediately if more time is required, for reasonable cause, to respond to RFIs, Claims, or other matters. Owner's Project Manager must, in writing, approve any extension to the maximum response times stated in this Part of the PSA.
 - f. Consultant's recommendations on Disputes, Claims, or other matters, including those in question between Owner and Contractor, are subject to the provisions of the Contract Documents.
6. Testing and Inspection Reports
- a. Consultant must review all testing and inspection reports submitted by Contractor and/or testing laboratory and any reports furnished by others who may be retained or employed by Owner to review the Work.
 - b. Consultant must recommend to Owner the issuance of any directives that, based on Design Professionals' evaluation of the report data, are deemed necessary to obtain compliance with the requirements of the Contract Documents.
7. Submittals
- a. Consultant must review or take other appropriate action on receipt of Contractor Submittals including but not limited to:
 - (1) Shop Drawings;
 - (2) Coordination Drawings;
 - (3) Product Data;
 - (4) Samples;
 - (5) Substitution Requests;
 - (6) Construction Cost Reduction Proposals;
 - (7) Submittal Log;
 - (8) Testing Log;
 - (9) Operation and Maintenance Manuals;
 - (10) Warranty/Guarantees; and,
 - (11) Supplier and/or vendor correspondence and related data pertaining to the equipment and systems installed in the Project.
 - b. Consultant must review and return all Contractor submittals as promptly as possible, but in no case shall Contractor submittals be returned later than **five (5) Work Days** from receipt of Contractor's submittals by Consultant.
 - c. Consultant must review and return unacceptable or incomplete Contractor's submittals within ten **(10) County Business Days** from receipt of Contractor's submittals by Consultant.
 - d. Consultant must notify Owner immediately of any potential delays in meeting the response times stated in this Part of the PSA.
 - e. Consultant must immediately notify Owner of any submittal review comment that could result in a Change Order.
 - f. Except for Contractor Product Substitution requests submitted up to **thirty (30)** calendar days after the Notice to Proceed is issued to the Contractor, Consultant has no obligation to review Contractor's Submittals not required by the Contract Documents.
 - g. If Consultant makes notes on the Contractor's Submittal that constitute a change to the requirements of the Contract Documents, Consultant must state in Consultant's Submittal response that a Change Order request will be issued and immediately notify Owner in writing of the need to issue a Change Order request.
 - h. The receipt date, submittal identification number, response date, and review stamp action must be logged and tracked by Consultant in an electronic database maintained by Consultant.
 - i. Each submittal must be stamped with an action stamp. Consultant's action stamp must have verbiage that is identical to the review stamp verbiage stated in Owner's Project Manual Section 01 33 00 (Submittal Procedures). The Action Stamp review verbiage is:
 - (1) "No Exceptions Taken"
 - (2) "Make Corrections Noted"

- (3) "Revise and Resubmit"
- (4) "Rejected"
- (5) "Submit Additional Information"
- (6) "Returned Without Action"

8. Change Orders and Field Modifications

- a. Consultant must prepare supporting data, Drawings, Technical Specifications, and other documentation, and provide other Services as needed to assist Owner in evaluating Contractor's proposals for Change Orders and Field Modifications;
- b. For Change Orders resulting from Owner requests or unknown site conditions, pursuant to Part 5.05, "Supplementary Services & Deliverables" Owner may negotiate a corresponding fee increase to the Consultant's Project Agreement for Consultant preparation of supporting data, Drawings, Technical Specifications, and other documentation, and provision of other Services as needed to assist Owner in evaluating Contractor's proposals for Change Orders and Field Modifications;
- c. Consultant must prepare Change Orders and Field Modifications for Owner's approval and execution in accordance with Owner's procedures;
- d. If in Owner's opinion, a Change Order is required as the result of a probable error or omission on the part of Consultant, Consultant must prepare and submit to Owner, along with the Change Order documentation, a cost estimate for the value of the Change Order Work. If it is subsequently determined by the Owner that the Change Order was not due to an error or omission on the part of Consultant, Consultant will be compensated for preparation of the Change Order estimate pursuant to Part 5.05, "Supplementary Services & Deliverables."

9. Owner Move-in/Training Orientation

- a. Consultant must provide Owner with an orientation session to facilitate moving into the Project. The session must focus on operational issues relating to the design intent of the various systems. The session will orient Owner's staff on the design intent in order to facilitate staff acceptance and move-in. The orientation session must be coordinated with the training, if any, provided by the Contractor.

10. Milestone Acceptance and Project Closeout

- a. Consultant must attend the closeout conference, participate in the development of Milestone and Project acceptance Deficiency Lists, and attend preliminary and final walk-through inspections to assist Owner in determining the final completion of the Construction Work and/or designated portions of the Work. Consultant and Subconsultants' presence at the site for participation in the development of Deficiency Lists and walk-through inspections is part of the Consultant's Basic Services and is not to be counted against the number of site visits stated elsewhere in this Agreement.

11. Record Documents

- a. Based on Consultant's site visit reviews of Contractor's As-Built documents during construction, Consultant will recommend Owner's acceptance of Contractor's As-Built documents prior to Consultant's preparation of the final Record Documents.
- b. Upon Owner's receipt and acceptance of Contractor's As-Built documents, Consultant must prepare a reproducible set of Record Documents for the Project including the Drawings and Project Manual.
- c. Consultant's fee for preparation of Record Documents must be shown as a discrete pay item in the Project Agreement for Consultant's Construction Phase Services.
- d. Consultant prepared Record Project Manual must incorporate all changes to the Project Manual issued during construction and indicate each product incorporated into the Work.
- e. Record Documents (Drawings and Project Manual) must also be submitted in electronic format (both Owner-specified ACAD version and PDF).

H. Warranty Phase

- a. Acceptance by Owner of Consultant-prepared Record Documents constitutes completion of Consultant's Basic Services for compensation purposes; however,

Consultant is required to arrange for and conduct an inspection of the Project one month prior to expiration of the Contractor's one-year Warranty/Guarantee period without additional compensation.

- b. Consultant must, when requested, render advice to assist Owner in obtaining necessary compliance by the Contractor with the terms of said Contractor Warranty/Guarantees.
- c. Other than the inspection of the Project one month prior to expiration of the Contractor's one-year Warranty/Guarantee period, should Owner request Warranty Phase Services after Consultant's completion of their Basic Services, and Services are required through no fault of Consultant, Consultant will be compensated pursuant to Part 5.05, "Supplementary Services & Deliverables."

5.05 Supplementary Services. Owner may establish a Supplemental Services Allowance (SSA) in a Project Agreement for the performance of services not included with the PA's Scope of Services and Deliverables. Consultant will only commence work pursuant to the SSA following prior written authorization of County's Project Manager and the OAR.

PART 6 – CONSULTANT'S SCHEDULE

6.01 CONSULTANT SCHEDULE REQUIRED

- A. Consultant will perform all Services and Deliverables within the time and project schedule stated in the Project Agreement(s), including milestones, if any. Consultant shall perform its Services expeditiously and on budget. Time is of the essence in this Agreement and all Project Agreements.
- B. Consultant must provide and maintain Project staffing levels as necessary to perform the Services within the time provided in the Project schedule.

PART 7 - COST CONTROL

7.01 OWNER APPROVED CONSTRUCTION COST (OACC). A Project Agreement may specify the Owner Approved Construction Cost for the Project or Project part covered by that Project Agreement. The Owner Approved Construction Cost may not be revised without Owner's prior written approval.

7.02 FORMATTING AND COMPARING ESTIMATES

- A. All required Statements of Probable Construction Cost by Consultant must be prepared per Owner's direction, in a format or formats approved by Owner's Project Manager. The identical format(s) must be used consistently throughout the Project in order to facilitate tracking the costs of various Project components. In addition, Consultant must provide a cost estimate summary sheet in CSI format for all Construction Document Phase submissions of Statements of Probable Construction Cost.
- B. County may have an independent cost estimate prepared by an independent estimator designated by County and at County's expense. If County chooses to have an independent estimate prepared, Consultant is required to answer the independent estimator's questions regarding the design. If attendance at meetings with the independent estimator to reconcile Consultant's estimate are necessary, Consultant will be compensated according to their hourly rate schedule.
- C. Consultant must include an estimate summary of all buildings when there is more than one building. The summary includes all building cost to five feet outside the building. Site work estimates must be to within five feet outside the building and represented on a separate summary page. The summary must list the building or site work, its size, cost per square foot, and total cost.

- D. If the project involves multiple bid packages then Consultant must prepare separate estimates for each bid package.

7.03 CONSULTANT'S RESPONSIBILITY FOR MANAGING DESIGN TO STAY WITHIN THE OACC

- A. Owner asserts that the total Construction Cost of each Project must not exceed the Owner Approved Construction Cost set forth in the applicable Project Agreement.
- B. Consultant is fully responsible for managing and will manage the Project Design to stay within the Owner Approved Construction Cost.
- C. Consultant must reconcile each Statements of Probable Construction Cost to previous Statement of Probable Construction Cost. If any deviation occurs between estimates that affect the Construction Costs by more than 5% for any component (a component is defined as a building or the site development portion of the Project Budget), a reconciliation of where the difference occurred must be submitted with the estimate. A written description of why the change took place is required.
- D. Evaluations of Owner's Project Budget and Statements of Probable Construction Cost prepared by Consultant represent Consultant's best professional judgment as someone familiar with the construction industry and trends in prevailing wages and material escalation costs.
- E. Consultant must identify and provide for reasonable additive and/or deductive bid items as mutually determined by Owner and Consultant to ensure reconciliation between Statements of Probable Construction Cost and the OACC.
- F. Consultant shall identify potential costs and present option(s) to reduce such cost.
- G. If the Preliminary, Revised, Updated Revised, Preliminary Final, or Final Statement of Probable Construction Cost exceeds the then-current OACC, Consultant must immediately notify Owner in writing with recommended actions to bring the Probable Construction Cost to within the OACC. Thereafter, Owner and Consultant will discuss the revisions or steps necessary to bring the current Statement of Probable Construction Cost to within the OACC.

7.04 CONSULTANT'S OBLIGATION TO MODIFY BID DOCUMENTS

- A. If, upon bidding the project for construction, the lowest responsive bid submitted by a responsible bidder exceeds the OACC, Owner may elect to:
 - 1. Rebid the project;
 - 2. Increase the OACC;
 - 3. Terminate the project or a part thereof; or,
 - 4. Revise the project to reduce the construction cost.
- B. If the lowest responsive bid submitted by a responsible bidder exceeds the OACC by more than ten percent (10%) including all additive bid items as provided in Part 7.03, "Consultant's Responsibility for Managing Design to Stay Within the OACC," Consultant must, upon Owner's request and without additional cost to Owner, modify the bid documents as necessary to reduce the probable Construction Cost to less than the OACC. Revising such documents is the limit of Consultant's responsibility pertaining to construction cost.
- C. Consultant may, with Owner's agreement, include contingencies in the Statements of Probable Construction Cost for design, bidding, and price escalation.

7.05 ADDENDUM ESTIMATES

- A. Consultant must prepare and submit Addendum Estimates for all Addenda changes that may result in added construction costs in excess of \$5,000 after release of bid documents but prior to bid opening.
- B. The Addendum Estimate must include only the items of work involved in each Addendum.
- C. Separate costs for deductive and additive changes within the appropriate CSI Divisions must be shown. Deductive costs must be identified by enclosing them in parentheses.
- D. All estimates must be submitted to Owner's Project Manager for acceptance prior to bid opening.

PART 8 - INDEMNIFICATION & INSURANCE

- 8.01** Consultant shall comply with all insurance and indemnification requirements contained within this PSA, all PAs, and Exhibit F to this Agreement.

PART 9 - REPRESENTATION BY COUNSEL

- 9.01** Both Parties to this PSA were represented by counsel in the negotiation and execution of this Agreement.
- 9.02** The Parties are aware of the provisions set forth in California Civil Code section 1717, as amended, and intend this paragraph of the PSA to meet said statutory requirements so that the reference to attorneys' fees in Part 8, "Indemnification & Insurance," applies only in the indemnification context in Part 8, "Indemnification & Insurance."

PART 10 - HAZARDOUS MATERIALS

- 10.01** Owner acknowledges that Consultant has no special knowledge or expertise regarding asbestos or other hazardous materials.
- 10.02** Unless otherwise provided in this PSA or a PA, or unless Owner has provided documented information to Consultant regarding the presence or potential presence of such hazardous materials Consultant and its subconsultants have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to hazardous materials in any form at the Project site, including but not limited to asbestos, asbestos products, polychlorinated biphenyl (PCB), or any other toxic substance.
- 10.03** If hazardous materials are a reasonable part or condition of the project or project site, then the following terms shall apply:
- A. Definition of Hazardous Materials. "Hazardous Materials" means, but is not limited to, (a) any hazardous, toxic or regulated wastes, materials or substances, and other pollutants or contaminants, which are or become regulated by any Environmental Laws, including but not limited to regulations pertaining to storage, labeling, handling, recordkeeping, reporting, transportation, use, disposal or shipment; (b) petroleum, petroleum by-products, gasoline, diesel fuel, crude oil or any fraction thereof; (c) asbestos and asbestos containing material, in any form, whether friable or nonfriable; (d) polychlorinated biphenyls; (e) radioactive materials; (f) lead, lead-containing materials or suspected lead-containing materials; (g) any other material, waste or substance displaying or reasonably believed or suspected to have toxic, reactive, ignitable or corrosive characteristics, as all such terms are used in their broadest sense, and are defined or become defined by any Environmental Law (defined below); (h) any materials which cause or threaten to cause a nuisance upon or waste to any portion of the premises or any surrounding property; (i) any materials which pose or threaten to pose a hazard to the health or safety of persons on the premises or any surrounding property; (j) any substances, ingredients, materials or products containing blood borne pathogens, human remains or by-product, bio-waste or medical waste. "Environmental Laws" or "Environmental Law" means, for purposes of this Agreement, any and all local, state and federal environmental, health and safety-related laws, statutes, orders, standards, court or judicial or administrative decisions, ordinances, rules, regulations, decrees, directives, guidelines, permits, and permit conditions, currently existing

and as amended, enacted, issued, or adopted in the future prohibition.

- B.** For quantities and uses that are more than what are regulated as household hazardous waste or materials, Consultant and Consultant Representatives shall not be entitled to generate, manufacture, store, handle, transport to or from, use, dispose of, or ship to or from, any Hazardous Materials on, in, under or about any portion of County property or facilities ("Use") without, in each instance, first disclosing such Hazardous Materials to County, obtaining County's prior written consent thereto and complying with all Environmental Laws, including County's IPM Ordinance. If County, in its sole discretion, consents to any Use then Consultant shall be permitted to engage in such Use only for those Hazardous Materials and in such quantities (A) that are necessary and unavoidable for the intended Project, (B) to the extent disclosed pursuant to disclosure requirements and guidelines under Environmental Laws, (C) expressly approved by County in writing, and (D) only to the extent that such Use fully and completely complies with all applicable Environmental Laws. County shall have the right at all times during the Term to (i) inspect the Project site, (ii) conduct tests and investigations to determine whether Consultant or others are in compliance with this Agreement, the applicable PA and Environmental Laws, and (iii) request lists of all Hazardous Materials in Use on, under or about any portion of the Project site or any County property. The aforementioned rights granted herein to County and its representatives shall not create (a) a duty on County's part to perform inspections, monitor or otherwise observe the Project, the Project site, other County property or observe or prevent or deter Consultant or others from such Use or (b) liability on the part of County and its representatives for any Use or any Release (as defined below), it being understood that Consultant and Consultant Representatives shall be solely responsible for all liability in connection with or relating to such Use. Consultant warrants, represents, and agrees that all Consultant Representatives shall be required by written executed agreement between Consultant and such party to comply with all the provisions of this Part 10.
- C. Releases.** Consultant shall give to County immediate verbal and follow up written notice of any contamination, exposure, deaths, injuries, illnesses, spills, releases, discharges, disposals, emissions, migrations, removals, shipments or transportation of, from or relating to Hazardous Materials on, under or about any portion of the Project site or on County property (collectively, a "Release"), provided that Consultant knows or reasonably should know of such Release, regardless of cause. Consultant, at its sole cost and expense, covenants, warrants and represents to promptly investigate, remedy, clean up, remove, decontaminate, restore, respond to, otherwise fully remediate, and resolve any and all claims relating to (including, without limitation, preparation of any feasibility studies or reports and the performance of any and all closures) any Release of Hazardous Materials arising from or related to the acts or omissions of Consultant or any of the Consultant Representatives such that the affected portions of the County property and any adjacent property are returned to the condition existing prior to the Release of such Hazardous Materials ("Remediation"). Any such Remediation shall only be performed after Consultant has obtained County's prior written consent, which consent shall not be unreasonably withheld so long as such actions would not potentially have a material adverse long-term or short-term effect on any portion of the County property or the liability of the County. Notwithstanding the foregoing, Consultant shall be entitled to respond immediately to an emergency without first obtaining County's prior written consent so long as such response complies fully with all applicable laws. Consultant, at its sole cost and expense, shall conduct and perform, or cause to be conducted and performed, all Remediation as required by any Environmental Laws or any agencies or other governmental authorities having jurisdiction thereof. If Consultant fails to so promptly complete the Remediation, County may, but without obligation to do so, take any and all steps necessary to rectify the same and Consultant shall promptly reimburse County, upon written demand, for all costs and expenses to County for performing the Remediation. All such Remediation, as required herein, shall be performed in such a manner so as to enable County to make full use of the Premises and the other portions of the Premises after the satisfactory completion of such Remediation. County acknowledges that Consultant shall have no obligation or liability with respect to Hazardous Materials existing on County property prior to the date the property was used by Consultant as intended by this Agreement, but only so long as Consultant and Consultant Representatives have not, by action

or inaction, disturbed or caused the disturbance or Release of said existing Hazardous Materials.

- D.** Consultant shall immediately deliver to County documents, notices, demands, and information, in the possession or control of Consultant or the Consultant Representatives, from any governmental or quasi-governmental, or any insurance company or board of fire underwriters or like or similar entities, regarding any Hazardous Material, Release or Remediation upon, under, at, in, around, or from the project site or any other County property. Consultant shall immediately inform County in writing (and orally in the event of a Release or other emergency) of (1) any and all enforcement or Remediation, or other governmental, regulatory, or judicial acts or orders instituted, or threatened pursuant to any Environmental Law; and/or, (2) all claims made by any third party in writing against County property relating to damage, contribution, cost recovery, compensation, loss, or injury resulting from any actual or threatened use or presence of Hazardous Material, Remediation or Release on, under, from, to, or about the Project site or any other County property.

PART 11 - COMPENSATION & PAYMENT

11.01 Compensation

- A.** Payments will be made as set forth herein and as authorized in each Project Agreement.
- 1.** Maximum Compensation Limit. Each Project Agreement will specify a Maximum Compensation Limit (MCL) by Owner to Consultant for that Project Agreement. The MCL includes all authorized Services and authorized Reimbursable expenses. Total payment by Owner pursuant to any Project Agreement shall not exceed the MCL specified in the Project Agreement and Consultant is fully responsible for provision of all Services and Deliverables to fully perform a Project Agreement, compensation for which will not exceed the specified MCL. The total maximum compensation limits of all Project Agreements under the same PSA cannot exceed maximum compensation set forth in the PSA.
 - 2.** Consultant's Hourly Rate Schedule
 - a.** Consultant's Hourly Rate Schedule is set forth in Exhibit A, "Consultant's Hourly Rates."
 - b.** During the Term of this PSA, the OAR may authorize modifications to Consultant's Hourly Rate Schedule following Consultant's demonstration that it is consistent with the cost of similar services in the San Francisco Bay Area and the increased cost of providing the service. If the modification of the rate schedule does not increase the maximum compensation limit of the PSA approved by the Board of Supervisors, and provided the Board of Supervisors has delegated the appropriate authority, the OAR shall document the modifications as an administrative amendment to the PSA that does not need to be executed by the Board of Supervisors. The administrative amendment shall explain the reason for the modification and if the modification is an increase in the rate(s). The amendment shall also include the justification for the increased cost of providing the service.
 - c.** Subconsultant's hourly rates are subject to approval by the OAR and documented in a Project Agreement. Consultant may not add any administrative mark-up on Subconsultant invoices.
 - d.** Where the class of persons authorized to provide specific Services is not designated in a Project Agreement, Services must be provided by a qualified person who is in a class that has the lowest rate of payment among those classes that contain persons who are qualified to provide the Services.
 - 3.** Consultant's Milestone Schedule. Each Project Agreement must contain a Consultant's Milestone Schedule prepared in accordance with Part 6, "Consultant's Schedule" of this PSA.
 - 4.** Changes. If, during the term of a Project Agreement, circumstances constituting a material

change in scope, as described in the “Changes in Scope” section of Attachment 1 to the PA arise, and the OAR approves, Consultant will be entitled to compensation therefore, within the Maximum Compensation Limit for that Project Agreement.

5. **Prevailing Wages.** Consultant acknowledges that work performed to support the Services or provide the Deliverables under this PSA are or may be considered a public work within the meaning of California Labor Code section 1720, as amended, and that the requirements of Section 1771, as amended, *et seq.* apply to such public work. Consultant has included (and will include) consideration for this obligation in calculating compensation under this PSA. Consultant shall comply at all times with California prevailing wage laws, including registration, notice, and recordkeeping responsibilities.
6. **Errors and Omissions.** Consultant must correct errors and omissions resulting from a failure to comply with any of the provisions of this PSA without cost to Owner. Owner may pursue all available legal remedies for Consultant’s errors and omissions. Upon tender of a notice of claim or potential claim by Owner to Consultant, Consultant shall notify its insurer and cooperate with Owner’s investigation of the claim or potential claim.

11.02 Reimbursable Expenses

- A. Consultant agrees to comply with the Santa Clara County travel policies and guidelines, where applicable, for all travel, lodging, and meal reimbursements arising from the performance of this Agreement, including, but not limited to the requirement that travel costs be included in Consultant’s fees. Detailed travel policy requirements and limitations can be found in the County’s Travel Policy Desk Reference Manual.
- B. When authorized in the Project Agreement, Owner will reimburse Consultant, at cost, for reasonable extraordinary expenses incurred in the performance of the Services. Only the following expenditures, made by Consultant with Owner’s advance written approval, are payable as reimbursable expenses within the Maximum Compensation Limit of any Project Agreement:
 1. Extraordinary “office” expenditures specifically related to executing the scope of work in Project Agreements, including overnight mailing such as FedEx, and additional copies of Deliverable Documents, over and above those required by the terms of the Project Agreement; and, mileage reimbursement to attend meetings beyond those specified in the scope of Project Agreements. Any individual expense in excess of \$10.00 must be supported by a copy of the receipt.
 2. Other reimbursable expenses specifically identified in a Project Agreement.
- C. Reimbursable Expenses must be part of the maximum compensation limit identified in the agreement and not an amount that is in addition to the maximum compensation limit amount.

11.03 Payment

- A. **Payment Requests.** Owner will endeavor to make payments within thirty (30) County business days after the OAR’s approval of the Consultant’s complete and correct Payment Request.
- B. **Invoices.** Consultant will submit Payment Requests on the forms shown in Exhibit E, “Sample Invoice,” or on other forms approved by County, not more than once each month.
- C. **Progress Payments.** Owner may, at its discretion, adjust any progress payment so that it corresponds with the percentage of completion as reasonably determined by Owner.
- D. Neither Consultant, nor authorized subconsultants, may provide services to the Construction Contractor or any Subcontractor pursuant to separate agreement for any part of the project.

11.04 Release of All Claims

Prior to final payment under any Project Agreement, Consultant must execute and deliver, and have all subconsultants and subcontractors execute and deliver, to Owner a release of all claims for payment arising under the Project Agreement, other than such claims, if any, as may be specifically excepted from the release for the reasons and in the amounts stated in the release. Otherwise, Consultant's acceptance of final payment shall constitute a release of all claims arising under the applicable Project Agreement.

11.05 Timely Billings

- A.** Consultant agrees to bill Owner on a timely basis and not later than ninety (90) calendar days after:
 - 1. Services are performed;
 - 2. Reimbursable Expenses are incurred; or,
 - 3. Billings are otherwise due pursuant to the terms of the Project Agreement.
- B.** Owner has no liability for payment of, and has sole discretion to pay or decline payment of, any billings submitted after the expiration of this ninety (90) calendar day period.

11.06 Consultant's Accounting Records

- A.** Accounting System & Records Retention. Consultant must maintain an accounting system in accordance with current standards of accounting and financial reporting for the purpose of supporting payments for Services authorized under this PSA. Consultant must retain such records for three (3) years from expiration or termination of this PSA, or until all claims, if any, have been disposed of, whichever period is longer.
- B.** Owner's Auditing Rights. Upon service of a written Notice to Consultant, Owner, and persons authorized by Owner, have the right at any reasonable time and place to examine, audit, and make copies of books, records, documents, accounting procedures, and practices affecting the performance or administration of this PSA, or affecting any changes or modifications to this PSA.
- C.** Applicability to Subcontractors and Subconsultants. Consultant must incorporate the above-stated accounting and audit requirements into all subcontracts and subconsultant agreements exceeding Ten Thousand Dollars (\$10,000) in value pursuant to this PSA or any modification thereof.

PART 12 - TERMINATION

12.01 Owner's Rights

- A.** Termination for Convenience
 - 1. Owner's Authorized Representative may, by written notice to Consultant, terminate all or part of this PSA or any Project Agreement at any time for Owner's convenience. Upon receipt of such notice, Consultant must immediately cease all work as specified in the notice.
 - 2. If this PSA or any Project Agreement is so terminated, Consultant will be compensated as set forth below.
- B.** Termination for Breach
 - 1. If Consultant violates any of the covenants or agreements of this PSA or a Project Agreement, or if Consultant fails to fulfill in a timely and proper manner its obligations pursuant to this PSA or any Project Agreement, and does not cure such failure or violation within thirty (30) calendar days, or such shorter period as the Owner may determine is

necessary and appropriate, after receipt of written notice from Owner's Authorized Representative specifying such failure or violation, Owner may terminate this PSA and any or all uncompleted Project Agreements.

2. Owner will provide Consultant with written notice as to the effective date of termination, and Consultant is not entitled to compensation for Services or expenses beyond the specified termination date.
 3. If, after notice of termination for breach of this PSA or any Project Agreement, it is determined that Consultant did not breach this PSA or the Project Agreement, the termination will be deemed to have been made for Owner's convenience, and Consultant will receive payment, which is allowed by this PSA for a termination for convenience.
- C. The rights and remedies provided herein to Owner are in addition to any other rights and remedies provided by law, this PSA, or a Project Agreement.

12.02 Consultant's Compensation Upon Termination

- A. In the event of Owner's termination of this PSA or any Project Agreement, Consultant will receive compensation as follows:
1. For fully performed and accepted items of County-approved Service, and authorized Reimbursable Expenses pursuant to any Project Agreement, compensation will be in the amount specified in the Project Agreement for that item of Service or expense.
 2. For items of Service on which Owner has issued an Authorization to Proceed but which have not been fully completed and accepted, Consultant will be compensated for its Services accepted by Owner in an amount which bears the same ratio to the total fee otherwise payable for the performance of that Service as the Services performed bear to the total Services necessary for the full performance of that Service.
- B. In no event will the total compensation paid for any item of Service exceed the value specified in the applicable Project Agreement for that item of Service.

12.03 Delivery of Documents

Upon any termination of this PSA or any Project Agreement, Consultant must furnish Owner all documents and Instruments of Service prepared pursuant to this PSA or such Project Agreement(s), whether complete or incomplete. Consultant may retain a copy for its records.

PART 13 - DISPUTE RESOLUTION

- 13.01** The parties will attempt to resolve any disputes related to this Agreement informally, to the extent possible, and will act in good faith to attempt to resolve such disputes in a mutually satisfactory manner.
- A. Alternate Dispute Resolution (ADR)
1. Owner intends to use ADR techniques including partnering and mediation during the Term of this Agreement, if necessary, and excluding arbitration.
 2. Consultant and its subconsultants shall participate in all ADR efforts when requested by Owner.
- B. Mediation
1. In the event a dispute or issue is not resolved by negotiation, Owner and Consultant agree to attempt to resolve the matter by mediation when requested by Owner.
 2. Said mediation is non-binding, and intended to provide an opportunity for the parties to evaluate each other's cases and arrive at a mutually agreeable solution.

3. These provisions relating to mediation shall not be construed or interpreted as mandatory arbitration.
4. Negotiations to resolve disputes before and during mediation are initiated for settlement purposes only and are not binding unless otherwise mutually agreed by Owner and Consultant.

PART 14 - MISCELLANEOUS PROVISIONS

14.01 Capitalization and Formatting

- A. Terms capitalized in this PSA and subsequent Project Agreement may include those that are:
 1. Specifically defined;
 2. Titles of Parts or paragraphs;
 3. Titles of reports or Deliverables; or,
 4. Titles of other documents.
- B. Unless otherwise indicated, **highlighted**, **emboldened**, *italicized*, or underlined text is not indented to imply special significance but serves merely as an aid to the reader to distinguish or quickly reference selected text.
- C. The captions of the Parts and paragraphs are for convenience only and will not be deemed relevant in resolving any question of interpretation or construction of any such Part or paragraph.

14.02 Force Majeure. Neither Party shall hold the other responsible for damages or delay in performance caused by acts of God, severe weather, hurricanes, earthquakes, natural disasters, or fire, beyond the reasonable control of the other or the other's employees, agents, or representatives. Each party shall give notice promptly to the other of the nature and extent of any force majeure claimed to delay, hinder, or prevent performance of the services required by the terms of this Agreement.

14.03 Waiver. One or more waivers by either party of any provision, term, condition, or covenant will not be construed by the other Party as a waiver of a subsequent breach. If either Party should waive any breach of any provision of this Agreement, it shall not thereby be deemed to have waived any preceding or succeeding breach of the same or any other provision hereof. No delay or failure to require performance of any provision of this Agreement shall constitute a waiver of that provision as to that or any other instance. Any waiver granted by a party shall be in writing and shall apply to the specific instance expressly stated.

14.04 Exclusion of Consultant's Means & Methods

- A. Consultant has not been retained or compensated to provide design and construction review services relating to the Consultant's safety precautions or to means, methods, techniques, sequences, or procedure required for the Consultant to perform its Work except as required by Labor Code section 6705. Omitted services include, but are not limited to:
 1. Shoring;
 2. Scaffolding;
 3. Underpinning;
 4. Temporary retainment of excavations;
 5. Temporary erection methods and temporary bracing.
- B. Pursuant to Labor Code section 6705, no contract for public works involving an estimated

expenditure in excess of twenty-five thousand dollars (\$25,000), for the excavation of any trench or trenches five feet or more in depth, shall be awarded unless it contains a clause requiring submission by the contractor and acceptance by the awarding body or by a registered civil or structural engineer, employed by the awarding body, to whom authority to accept has been delegated, in advance of excavation, of a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation of such trench or trenches. Consultant is responsible for reviewing submissions provided by the Consultant pursuant to Labor Code section 6705.

14.05 Timely Approvals. Whenever the approval of Owner or Consultant is required pursuant to this PSA or any Project Agreement, such approval must not be unreasonably withheld or delayed.

14.06 Ownership & Use of Instruments of Service

- A.** All Instruments of Service and other materials prepared by Consultant, including Plans, Specifications, Construction Documents, Project Manuals, and other related documents and materials, in whatever media, are the sole and exclusive property of Owner. Consultant must provide Owner with such Instruments of Service and materials at appropriate times during this PSA, and on termination or suspension of this PSA or any Project Agreement. Consultant may retain a copy for its records. Consultant conveys, assigns, and transfers the intellectual property rights it has to such materials, information, records, and documents to Owner.
- B.** Consultant is not entitled to any fees for Owner's use of Instruments of Service unless Owner enters into an agreement with Consultant for Services in connection therewith. Copies of data exchanged by, through, or between Owner and Consultant that may be relied upon are limited to the printed copies. Computer-generated files, disks, or tapes of text, data, or graphics that are furnished, are only for the mutual convenience of the parties.

14.07 Reliance

- A.** Unless otherwise indicated, Consultant may rely on the accuracy and technical quality of documents provided by Owner or the Owner's consultants. Unless otherwise indicated in this Agreement, Owner may rely on the accuracy and technical quality of documents provided by Consultant or by or through Consultant's subconsultants.
- B.** Consultant and Owner acknowledge that remodeling or rehabilitation work may require visual inspection to verify adequacy of "as-built" conditions and that Consultant may not be responsible for those conditions not visible without exposing concealed conditions or destructive investigation. If OAR authorizes opening concealed conditions or destructive testing, Consultant will be responsible for accurately documenting the condition of those areas inspected.
- C.** Consultant's review of Contractor's Submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities or for substantiating instructions for installation or performance of equipment or systems designed by the Contractor, all of which remain the responsibility of the Contractor if required by the Contract Documents.
- D.** When the Contract Documents require Contractor to provide professional certification of performance characteristics of materials, systems or equipment, Consultant will be entitled to rely on such certification to establish that the materials, systems, or equipment will meet the performance criteria required by the Contract Documents unless there is evidence indicating such certification should not reasonably be relied upon.

- 14.08 Smoking Prohibited.** Smoking is prohibited on County property and within 30 feet of County property at all times and Consultant, its employees, agents and subconsultants shall comply with this requirement at all times.
- 14.09 Contracting Principles.** All entities that contract with County to provide services where the contract value is \$100,000 or more per budget unit per fiscal year and/or as otherwise directed by the Board of Supervisors, shall be fiscally responsible entities and shall treat their employees fairly. To ensure compliance with these contracting principles, all contractors shall: (1) comply with all applicable federal, state and local rules, regulations and laws; (2) maintain financial records, and make those records available upon request; (3) provide to County copies of any financial audits that have been completed during the term of the Agreement; (4) upon County's request, provide County reasonable access, through representatives of Contractor, to facilities, financial and employee records that are related to the purpose of the Agreement, except where prohibited by federal or state laws, regulations or rules.
- 14.10 Budget Contingency.** Performance and/or payment by County pursuant to this Agreement is contingent upon the appropriation by County of sufficient funds for Services covered by this Agreement. If funding is reduced or deleted by County for services covered by this Agreement, County may, at its option and without penalty or liability, terminate this Agreement or offer an amendment to this Agreement indicating the reduced amount.
- 14.11 Assignment of Clayton Act, Cartwright Act Claims.** Consultant 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. section 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 Consultant for sale to the County pursuant to this Agreement.
- 14.12 Authority.** Each Party executing the Agreement on behalf of such entity represents that they are duly authorized to execute and deliver this Agreement on the entity's behalf.
- 14.13 Notice and Cooperation in Legal Proceedings.** Consultant shall give prompt notice, in writing, to the County of the commencement of any action, lawsuit, or other legal proceeding against County or against Consultant with respect to any aspect or part of the Services or this PSA. Consultant shall fully cooperate with County, and shall cause all Consultant Representatives to fully cooperate in connection with the prosecution or defense of any such legal proceedings.
- 14.14 California Public Records Act.** County is a public agency subject to the disclosure requirements of the California Public Records Act ("CPRA"). If Consultant's proprietary information is contained in documents or information submitted to County, and Consultant claims that such information falls within one or more CPRA exemptions, Consultant must clearly mark such information "CONFIDENTIAL AND PROPRIETARY," and identify the specific lines containing the information. In the event of a request for such information, County will make best efforts to provide notice to Consultant prior to such disclosure. If Consultant contends that any documents are exempt from the CPRA and wishes to prevent disclosure, it is required to obtain a protective order, injunctive relief or other appropriate remedy from a court of law in Santa Clara County before County is required to respond to the CPRA request. If Consultant fails to obtain such remedy within the time County is required to respond to the CPRA request, County may disclose the requested information. Consultant further agrees that it shall defend, indemnify and hold County harmless against any claim, action or litigation (including but not limited to all judgments, costs, fees, and attorneys' fees) that may result from denial by County of a CPRA request for information arising from any representation, or any action (or inaction), by Consultant..
- 14.15 Third Party Beneficiaries.** Neither this PSA nor any of the PAs confer any rights or remedies upon any person or entity other than the Parties. There are no third party beneficiaries to this PSA or any of the PAs.
- 14.16 Changes to Scope of Services.** On County's reasonable request, and prior to making any changes to the Services, Consultant will provide to County for written approval prior to such

change any and all documents, information, representations, depictions, or clarifications as to the scope of the changes. No changes or modifications will be made to the Services unless first approved in writing by Owner.

- 14.17 Subconsultants.** If any obligation is performed for Consultant through any Consultant employee, subconsultant, agent, contractor, representative, officer, director, affiliate, parent company or subsidiary (collectively and each, "Consultant Representatives"), Consultant will remain fully responsible and liable for the performance of all obligations under this PSA and PAs and Consultant will be solely responsible for all payments due to its Consultant Representatives. No contract, subcontract, or other agreement entered into by Consultant with any third party in connection with the Services or Deliverables contemplated herein will provide for any indemnity, guarantee, or assumption of liability by, or other obligation of, County with respect to such arrangement. None of the Consultant Representatives will be deemed an employee or agent of County or a third-party beneficiary for any purpose under this PSA or any of the PAs.
- 14.18 Submission of PSA/PA; Nonbinding Until Signed.** Each of the Parties agree, accept, and understand that a submission of this PSA or any PA, or any amendment thereto, for examination, review, editing, or signature by either Party, in any form or by electronic or digital means, by email, facsimile or DocuSign, by verbal confirmation or discussion or by any other means of delivery, does not constitute a binding agreement or contract, nor does it constitute a meeting of the minds or a commitment to execute the PSA, or any PA, or any amendment thereto, and this PSA or any such PA, or any amendment thereto, shall only be legally binding and enforceable upon full execution by all Parties. The Parties acknowledge and agree that this PSA, any PAs, and any amendments thereto, are nonbinding on either Party and neither Party may claim any legal rights against the other by reason of the existence of this PSA, any PA, or any amendments thereto, or by reason of actions taken in reliance upon this PSA, any PA, or any amendments thereto (including, but not limited to, any obligation to continue negotiations) unless and until this PSA, the subject PA(s), and any applicable amendments thereto, are fully executed by all of the Parties.
- 14.19 Obey All Laws.** Consultant and the Consultant Representatives will strictly comply with all federal, state, local, and County laws, rules, and regulations, including County policies.
- 14.20 Conflict of Interest; Political Reform Act**
- A.** Consultant shall comply, and require its employees, agents, and subconsultants to comply, with all (1) applicable requirements governing avoidance of impermissible client conflicts; and (2) federal, state, and local conflict of interest and disclosure laws and regulations including, without limitation, California Government Code section 1090 *et seq.*, the California Political Reform Act (California Government Code section 87100 *et seq.*) and the regulations of the Fair Political Practices Commission concerning disclosure and disqualification (2 California Code of Regulations section 18700 *et seq.*). Failure to do so constitutes a material breach of this Agreement and is grounds for immediate termination of this Agreement by County.
 - B.** In accepting this Agreement, Consultant covenants that it presently has no interest, and will not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of this Agreement. Consultant further covenants that, in the performance of this Agreement, it will not use any consultant or employ any person having such an interest. Consultant, including but not limited to Consultant's employees, agents, and subconsultants, may be subject to the disclosure and disqualification provisions of the California Political Reform Act of 1974 (the "Act"), that (1) requires such persons to disclose economic interests that may foreseeably be materially affected by the work performed under this Agreement, and (2) prohibits such persons from making or participating in making decisions that will foreseeably financially affect such interests.
 - C.** If the disclosure provisions of the Act are applicable to any individual providing service under the Agreement, Consultant shall, upon execution of this Agreement, provide County with the names, description of individual duties to be performed, and email addresses of all individuals, including but not limited to Consultant's employees, agents, and subconsultants, that could be

substantively involved in “mak[ing] a governmental decision” or “serv[ing] in a staff capacity” and in that capacity participating in making governmental decisions or performing duties that would be performed by an individual in a designated position, (2 CCR 18700.3), as part of Consultant’s service to County under this Agreement. Consultant shall immediately notify County of the names and email addresses of any additional individuals later assigned to provide such service to County under this Agreement in such a capacity. Consultant shall immediately notify County of the names of individuals working in such a capacity who, during the course of the Agreement, end their service to County. Consultant shall ensure that all such individuals identified pursuant to this paragraph understand that they are subject to the Act and shall conform to all requirements of the Act and other applicable conflict of interest and disclosure laws and regulations, and shall file Statements of Economic Interests within 30 days of commencing service pursuant to this Agreement, annually by April 1, and within 30 days of their termination of service pursuant to this Agreement.

- 14.21 Levine Act Compliance.** Contractor will comply, and will ensure that its agents (as that term is defined under 2 Cal. Code Regs. § 18438.3(a)) and its subcontractors identified in Contractor’s proposal responding to a County solicitation and/or identified in this Agreement (“Subcontractors”) comply, with California Government Code section 84308 (“Levine Act”) and the applicable regulations of the Fair Political Practices Commission concerning campaign disclosure (2 California Code of Regulations sections 18438.1 – 18438.8), which (1) require a party to a proceeding involving a contract to disclose on the record of the proceeding any contribution, as defined by Government Code section 84308(a)(6), of more than \$250 that the party or their agent has made within the prior 12 months, and (2) prohibit a party to a proceeding involving a contract from making a contribution, as defined by Government Code section 84308(a)(6), of more than \$250 to any County officer during the proceeding and for 12 months following the final decision in the proceeding. Contractor agrees to submit any disclosures required to be made under the Levine Act at the Office of the Clerk of the Board of Supervisors website at <http://www.sccgov.org/levineact>, and Contractor shall require Subcontractors to do the same. If this Agreement is to be considered or voted upon by the County’s Board of Supervisors, Contractor shall complete the Levine Act Contractor Form: Identification of Subcontractors and Agents, and if applicable, shall ensure that any Subcontractor completes the Levine Act Subcontractor Form: Identification of Agents, and Contractor must submit all such forms to the County as a prerequisite to execution of the Agreement.
- 14.22 Bribery Clause.** Consultant certifies, represents, and warrants that Consultant and the Consultant Representatives have not been convicted of bribery or attempting to bribe an officer or employee of the County or any federal, state, local or municipal entity, agency, department, or public corporation, nor has Consultant or any of the Consultant Representatives made an admission of guilt of such conduct which is a matter of record.
- 14.23 Entire PSA – Governing Language.** This PSA constitutes the entire agreement by and between the Parties with respect to the subject matters hereof, and supersedes all prior understandings and agreements relating thereto. This PSA comprises the complete and final expression of the rights, obligations, duties, and undertakings of the Parties and sets forth all consideration, covenants, understandings, and inducements pertaining thereto. Any translation of this PSA is done for local requirements and in the event of a dispute between the English and any non-English version, the English version of this PSA shall govern. No alteration, amendment, waiver, cancellation, or other change in any term or condition of this PSA shall be valid or binding on either Party unless the same has been agreed to in writing and signed by

both Parties. Each Party represents and warrants that it has executed this PSA freely, fully intending to be bound by the terms and provisions contained in this PSA.

- 14.24 Changes or Amendments to PSA.** This PSA sets forth all agreements by and between the Parties as to the subject matter herein. No modification or amendment shall be valid unless set forth in writing and signed by Owner and Consultant.
- 14.25 Paragraph Headings.** The headings and captions of the various paragraphs and subparagraphs hereof are for convenience only, and they shall not limit, expand, or otherwise affect the construction or interpretation of this PSA.
- 14.26 Cumulative Remedies.** The rights and remedies of the Parties to this PSA, whether pursuant to this PSA or in accordance with law, shall be construed as cumulative, and the exercise of any single right or remedy shall constitute neither a bar to the exercise of nor the waiver of any other available right or remedy.
- 14.27 Construction.** This PSA shall not be construed more strongly against either Party regardless of who is more responsible for its preparation.
- 14.28 Governing Law, Exclusive Jurisdiction.** This PSA, and all the rights and duties of the Parties arising from or relating in any way to the subject matter of this PSA or the transaction(s) contemplated by it, shall be governed by, construed and enforced in accordance with the law of the State of California (excluding any conflict of laws provisions that would refer to and apply the substantive laws of another jurisdiction). Any suit or proceeding relating to this PSA, including arbitration, administrative, settlement, and mediation proceedings, shall be brought only in Santa Clara County, California. THE PARTIES HERETO CONSENT TO THE EXCLUSIVE PERSONAL JURISDICTION AND VENUE OF THE COURTS, STATE AND FEDERAL, LOCATED IN SANTA CLARA COUNTY, CALIFORNIA.
- 14.29 Use of County's Name for Commercial Purposes.** Consultant shall not use the name or logo of the County or reference any endorsement from the County in any fashion for any purpose, without the prior express written consent of the County.
- 14.30 Disentanglement.** Consultant shall cooperate with County and County's other contractors to ensure a smooth transition at the time of termination of this Agreement, regardless of the nature or timing of the termination. Consultant shall cooperate with County's efforts to ensure that there is no interruption of work required under the Agreement and no adverse impact on the supply of goods, provision of County services or County activities. Consultant shall return to County all County assets or information in Contractor's possession. Consultant shall deliver to County or its designee, at County's request, all documentation and data related to County, including, but not limited to, County Data and client files, held by Contractor, within sixty (60) days of the request, and after return of same, Contractor shall destroy all copies thereof not turned over to County, all at no charge to County.

14.31 Living Wage

Unless otherwise exempted or prohibited by law or County policy, where applicable, Contractors that contract with the County to provide Direct Services developed pursuant to a formal Request for Proposals process, as defined in County of Santa Clara Ordinance Code Division B36 ("Division B36") and Board of Supervisors Policy Manual section 5.5.5.5 ("Living Wage Policy"), and their subcontractors, where the contract value is \$100,000 or more ("Direct Services Contract"), must comply with Division B36 and the Living Wage Policy and compensate their employees in accordance with Division B36 and the Living Wage Policy. Compliance and compensation for purposes of this provision includes, but is not limited to, components relating to fair compensation, earned sick leave, paid jury duty, fair workweek, worker retention, fair chance hiring, targeted hiring, local hiring, protection from retaliation, and labor peace. If Consultant and/or a subcontractor or subconsultant violates this provision, the Board of Supervisors or its designee may, at its sole discretion, take responsive actions including, but not limited to, the following:

- a. Suspend, modify, or terminate the Direct Services Contract.

- b. Require Consultant and/or Subcontractor/Subconsultant to comply with an appropriate remediation plan developed by the County.
- c. Waive all or part of Division B36 or the Living Wage Policy.

This provision shall not be construed to limit an employee's rights to bring any legal action for violation of the employee's rights under Division B36 or any other applicable law. Further, this provision does not confer any rights upon any person or entity other than the Board of Supervisors or its designee to bring any action seeking the cancellation or suspension of a County contract. By entering into this Agreement, Consultant certifies that it is currently complying with Division B36 and the Living Wage Policy with respect to applicable contracts, and warrants that it will continue to comply with Division B36 and the Living Wage Policy with respect to applicable contracts.

14.32 Food and Beverage Standards. Except in the event of an emergency or medical necessity, the following nutritional standards shall apply to any foods and/or beverages purchased by Consultant with County funds for County-sponsored meetings or events. If food is to be provided, healthier food options shall be offered. "Healthier food options" include (1) fruits, vegetables, whole grains, and low fat and low calorie foods; (2) minimally processed foods without added sugar and with low sodium; (3) foods prepared using healthy cooking techniques; and (4) foods with less than 0.5 grams of trans fat per serving. Whenever possible, Consultant shall (1) offer seasonal and local produce; (2) serve fruit instead of sugary, high calorie desserts; (3) attempt to accommodate special, dietary and cultural needs; and (4) post nutritional information and/or a list of ingredients for items served. If meals are to be provided, a vegetarian option shall be provided, and Consultant should consider providing a vegan option. If pre-packaged snack foods are provided, the items shall contain: (1) no more than 35% of calories from fat, unless the snack food items consist solely of nuts or seeds; (2) no more than 10% of calories from saturated fat; (3) zero trans-fat; (4) no more than 35% of total weight from sugar and caloric sweeteners, except for fruits and vegetables with no added sweeteners or fats; and (5) no more than 360 mg of sodium per serving.

14.33 Time of the Essence. Time is of the essence of this PSA. Failure to comply with any time requirement of this PSA, or any underlying Project Agreement, shall constitute a material breach of this PSA.

14.34 Bailee Disclaimer. The Parties understand and agree that the County does not purport to be Consultant's bailee, and is therefore not responsible in any way for any of the Consultant Representatives.

14.35 Incorporation of Exhibits. All exhibits referred to in this PSA and any addenda, appendices, attachments, exhibits, and schedules which may, from time to time, be referred to in any duly executed amendment hereto are by such reference incorporated in this PSA and shall be deemed to be part of this PSA.

14.36 Responsibility for Property. Except as otherwise provided in this PSA, Consultant assumes the risk of and shall be responsible for any loss or damage to any materials, documents, or other property delivered to it by the County, and for the security and condition of any and all property both personal or otherwise used or operated by Consultant or any of the Consultant Representatives regardless of location. Consultant shall return County property to the County in the condition in which it was received, except for reasonable wear and tear, upon the expiration or earlier termination of this PSA.

14.37 Liens, Claims, Encumbrances and Title. Consultant represents and warrants that, to the extent payments have been received from the County per the terms of this Agreement, all the Services shall remain and are free and clear of all liens, claims, or encumbrances of any kind. If, because of any act or omission of Consultant, or any of the Consultant Representatives, any mechanic's lien or other lien, charge, or order for the payment of money are filed against any

portion of County real or personal property, Consultant shall at its own expense, cause the same to be discharged of record within thirty (30) calendar days after written notice from County, and Consultant shall indemnify, defend, and save harmless County from, for, and against all resulting costs, liabilities, suits, claims, and demands, including any resulting legal fees and court costs.

- 14.38 Assignment; Subcontracting.** Consultant may not assign any of its rights, delegate any of its duties, or subcontract any portion of its Services, work or deliverables under this PSA without the prior written consent of Owner. No assignment, delegation, or subcontracting will release Consultant from any of its obligations or alter any of its obligations to be performed under the PSA. Any attempted assignment, delegation, or subcontracting in violation of this provision is void.
- 14.39 Intellectual Property Indemnity.** Consultant represents and warrants for the benefit of County and its users that it is the exclusive owner of all rights, title and interest in the product or Services to be supplied. Consultant shall, at its own expense, indemnify, defend, settle, and hold harmless County and its employees, agents and assigns against any claim or potential claim that any good, (including software) and/or service, or County's use of any good (including software) and/or service, provided under this Agreement infringes any patent, trademark, copyright or other proprietary rights, including trade secret rights. Consultant shall pay all costs, damages and attorneys' fees that a court or other adjudicatory body awards as a result of any such claim.
- 14.40 Debarment.** Consultant represents and warrants that it and the Consultant Representatives (collectively, for the purposes of this section, "Consultant") are not suspended, debarred, excluded, or ineligible for participation in any County, state, or federal funded program, or from receiving federal funds as listed in the List of Parties Excluded from Federal Procurement or Non-procurement Programs issued by the Federal General Services Administration. Consultant must within thirty (30) calendar days advise the County if, during the Term of this PSA, Consultant becomes suspended, debarred, excluded, or ineligible for participation in any federal or state funded program, or from receiving federal funds as listed in the List of Parties Excluded from Federal Procurement or Non-procurement Programs issued by the Federal General Services Administration. Consultant shall defend, indemnify, and hold the County harmless for any loss or damage resulting from the conviction, debarment, exclusion, or ineligibility of Consultant.
- 14.41 Severability.** Should any part of the PSA between County and Consultant be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect the validity of the remainder of the PSA which shall continue in full force and effect, provided that such remainder can, absent the excised portion, be reasonably interpreted to give the effect to the intentions of the Parties.
- 14.42 Ambiguities.** Any rule of construction to the effect that ambiguities are to be resolved against the drafting party does not apply in interpreting this PSA. Should any ambiguities or conflicts between contract terms and conditions contained in this PSA and its exhibits exist, the terms and conditions in this PSA shall control over its exhibits.
- 14.43 Joint and Several.** If Consultant consists of more than one person or entity, the obligations of all such persons or entities shall be joint and several. Each provision to be performed by Consultant hereunder shall be deemed to be both a covenant and a condition.
- 14.44 Other Representations and Warranties.** Consultant represents, warrants, and covenants that the following is true and correct and shall be true and correct at all times during the Term:
- A.** Consultant is in good standing under the laws of the State of California and is authorized to carry on and do business in the State of California as such business is now conducted and to perform its obligations under this PSA.
 - B.** Consultant has the full right, power, and lawful authority to enter into this PSA and its execution and delivery of this PSA by it or on its behalf has been fully authorized by all requisite actions.

- C. Consultant has provided County with true and correct copies of documentation reasonably acceptable requested by acceptable to County designating the parties authorized to execute this PSA on its behalf.
- D. Consultant's execution, delivery, and performance of its obligations under this PSA will not violate any applicable laws, regulations, or rules nor to its knowledge after due inquiry, constitute a breach or default under any contract, agreement, or instrument to which it is a party, or any judicial or regulatory decree or order to which it is a party or by which it is bound.
- E. Consultant has not made an assignment for the benefit of creditors, filed a petition in bankruptcy, been adjudicated insolvent or bankrupt, petitioned a court for the appointment of any receiver or trustee for it or any substantial part of its property, or commenced any proceeding relating to it under any reorganization, arrangement, readjustment of debt, dissolution, or liquidation law or statute of any jurisdiction, whether now or later in effect. There has not been commenced nor is there pending against it any proceeding of the nature described in the first sentence of this subsection. No order for relief has been entered with respect to it under the Federal Bankruptcy Code.
- F. All documents, instruments, and other information delivered by Consultant to the County pursuant to this PSA are true, accurate, correct, and complete to the best of Consultant's knowledge unless otherwise indicated in writing delivered concurrently with such delivery. County shall be entitled to rely upon the accuracy and completeness of the information, surveys, and reports provided by Consultant or any of Consultant's employees, agents, subcontractors, or subconsultants.
- G. This PSA, when executed by it and delivered, shall constitute its legal, valid, and binding obligation. No consent, approval, or authorization of any third person to its execution, delivery, and performance of this PSA is required, other than consents, approvals, and authorizations which have already been unconditionally given.
- H. Upon its receipt of knowledge that any fact or condition which would cause any warranty or representation made by it pursuant to this Section is not true, promptly give written notice of such fact or conditions to the County. Each of the foregoing items (A) to (H), inclusive, shall be deemed to be ongoing representations, warranties, and covenants, and shall survive termination, expiration, or cancellation of this PSA.

14.45 County Reliance and Consequential Damages.

Acceptance by County of the Services (in whole or in part) performed under this PSA does not operate as a release of the Consultant from such professional responsibility for the Services performed or provided. It is further understood and agreed that Consultant is apprised of the scope(s) of the work to be performed under this PSA and Consultant agrees that the work can and shall be performed in a fully competent manner.

Consultant recognizes that the timely and competent completion of the Services is an important inducement to enter into this PSA, and that the failure of Consultant to timely and competently perform may result in foreseeable and known substantial negative financial consequences to the County.

14.46 Further Assurances. Consultant covenants and agrees that it will execute such other and further instruments and documents as are or may become necessary or convenient to effectuate and carry out this PSA.

14.47 Office of Foreign Assets Control. Consultant represents and warrants to County that: (i) Consultant and the Consultant Representatives are not acting, and shall not act, directly or indirectly, for or on behalf of any person, group, entity, or nation named by any Executive Order or the United States Treasury Department as a terrorist, "Specially Designated National and Blocked Person," or other banned or blocked person, entity, nation, or transaction pursuant to any law, order, rule or regulation enforced or administered by the federal Office of Foreign Assets Control; and, (ii) Consultant and the Consultant Representatives are not engaged in the

Project or entering into this PSA, directly or indirectly, on behalf of, or instigating or facilitating this transaction, directly or indirectly, on behalf of any such person, group, entity, or nation.

14.48 Representation by Counsel. The Parties to this PSA were represented by their respective counsel in the negotiation and execution of this PSA. The Parties are aware of the provisions set forth in California Civil Code section 1717 and intend this paragraph of the PSA to meet said statutory requirements so that the reference to attorneys' fees in the Indemnity and Insurance Requirements provisions and exhibits of this PSA, applies only in the indemnification context in such provisions and exhibits.

14.49 Compliance with All Laws, Including Nondiscrimination, Equal Opportunity, and Wage Theft Prevention

- (1) **Compliance with All Laws.** Consultant shall comply with all applicable federal, state, County, and local laws, regulations, ordinances, rules, and policies (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.** Consultant 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 section 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, Consultant 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 Consultant 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.** Consultant 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 José's Office of Equality Assurance.

- (5) **Prior Judgments, Decisions or Orders against Contractor.** By signing this Agreement, Consultant affirms that it has disclosed any final judgments that (A) were issued in the 5 years prior to executing this Agreement by a court, an investigatory government agency, arbiter, or arbitration panel and, (B) found that Consultant violated an applicable wage and hour Law or pay equity Law. Consultant 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 Contract.** If at any time during the term of this Agreement, Consultant receives a Final Judgment rendered against it for violation of an applicable wage and hour Law or pay equity Law, then Consultant shall promptly satisfy and comply with any such Final Judgment. Consultant shall inform the Office of the County Executive-Office of Countywide Contracting Management (“OCCM”) of any relevant Final Judgment against it within 30 calendar days of the Final Judgment becoming final or of learning of the Final Judgment, whichever is later. Consultant shall also provide any documentary evidence of compliance with the Final Judgment within 5 calendar 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 West 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 Consultant’s records, Consultant shall permit the County and/or its authorized representatives to audit and review records related to compliance with applicable pay equity Laws. Upon the County’s request, Consultant shall provide the County with access to any and all facilities and records, including but not limited to financial and employee records, that are related to the purpose of this article, except where prohibited by federal or state laws, regulations, or rules. County’s access to such records and facilities shall be permitted at any time during Consultant’s normal business hours upon no less than 10 business days’ advance notice.
- (8) **Pay Equity Notification.** Consultant shall (1) at least once in the first year of this Agreement and annually thereafter, provide each of its employees working in California and each person applying to Consultant for a job in California (collectively, “Employees and Job Applicants”) with an electronic or paper copy of all applicable pay equity Laws, or (2) throughout the term of this Agreement, continuously post an electronic copy of all applicable pay equity Laws in conspicuous places accessible to all of Consultant’s Employees and Job Applicants.
- (9) **Material Breach.** Failure to comply with any part of this article 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 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 Consultant until full satisfaction of a Final Judgment concerning violation of an applicable wage and hour Law or pay equity Law.
 - (iii) Offer Consultant an opportunity to cure the breach.
- (10) **Subcontractors/Subconsultants.** Consultant shall impose all of the requirements set forth herein on any subcontractors/subconsultants permitted to perform Work under this Agreement. This includes ensuring that any subcontractor/subconsultant receiving a Final Judgment for violation of an applicable Law promptly satisfies and complies with such Final Judgment.

14.50 Health Insurance Portability and Accountability (HIPAA) and Patient Privacy Law Compliance

- A.** If Consultant is providing services at one or more Santa Clara County medical care facilities, including but not limited to the Santa Clara Valley Medical Center (SCVMC), then Consultant and each of the Consultant Representatives may have direct or incidental contact with patients or Protected Health Information ("PHI") while providing services under this Agreement. Consultant and each of the Consultant Representatives shall maintain the confidentiality of any and all patient and employee information and all PHI they have direct or incidental contact with while providing services under this Agreement.
- B.** Consultant and each of the Consultant Representatives shall comply with all applicable federal, state and local laws, rules, regulations ("Laws") that are in effect at the inception of this Agreement and that become effective during the term of Agreement, including without limitations Civil Code section 56.10 *et seq.* and the Health Insurance Portability and Accountability Act (42 USC sections 1320d *et seq.*).
- C.** If, as part of the scope of the services provided herein, Consultant or any of the Consultant Representatives will have direct contact with patients or PHI, such individuals are required to sign a confidentiality agreement developed by County specifically for the purpose of HIPAA compliance, patient privacy and/or protection of PHI.
- D.** Consultant shall indemnify, defend, and hold harmless the County for any loss or damage resulting from a violation of this provision or any local, state, or federal laws related to patient privacy.

14.51 Proof of Immunization

- A.** Consultant and all its personnel, including subconsultants, agents and employees, that are providing services on site at a Santa Clara County medical care facility, including SCVMC, must provide proof of immunizations including rubella, mumps, and varicella titers, live vaccine or disease; a documented TB test; and, a Hepatitis B vaccination or declination form, prior to starting work on any such site.
- B.** Costs of documentation and additional immunizations, if needed, are the responsibility of Consultant.

14.52 Survival. All representations, warranties, and covenants contained in this Agreement, or in any instrument, certificate, exhibit, or other writing intended by the Parties to survive this Agreement, shall survive the termination or expiration of this Agreement, including but not limited to all terms (1) providing for indemnification of County; (2) relating to the California Public Records Act; (3) relating to County Data; and (4) relating to Contractor's obligations upon termination or expiration of this Agreement.

14.53 COVID-19 Requirements. Contractor shall comply with all County requirements in effect relating to COVID-19 for persons who routinely perform services for County onsite and share airspace with or proximity to other people at a County facility as part of their services for County as set forth in a County Health Order (or similar directives) available at <https://covid19.sccgov.org/home>, and incorporated herein by this reference. Contractor shall comply with all reasonable requests by County for documentation demonstrating Contractor's compliance with this Section.

PART 15 - NOTICES

All notices will be deemed to have been given when made in writing and delivered or mailed to the representatives of Owner and Consultant at their respective addresses as shown in Exhibit G, "Notices."

PART 16 - LIMITS OF AGREEMENT

- A.** This PSA and all fully executed Project Agreements constitute the entire and integrated agreement between Owner and Consultant and supersede all prior negotiations, representations, or agreements, either written or oral, preceding this PSA or any Project Agreement.
- B.** This PSA including Project Agreements may be amended only by written agreement signed by Owner and Consultant or as otherwise authorized herein.

PART 17 - EXHIBITS

The following listed Exhibits referred to herein are incorporated in this PSA as though set forth in full:

1. Exhibit A, "Consultant's Hourly Rate Schedule"
2. Exhibit B, "Consultant's Staff & Subconsultants"
3. Exhibit C, "Sample Project Agreement"
4. Exhibit D, Sample "Attachments 1, 2, 3 & 4 to Sample Project Agreement"
5. Exhibit E, "Sample Invoice Format"
6. Exhibit F, "Indemnification & Insurance Requirements"
7. Exhibit G, "Notices"
8. Exhibit H, "Nondisclosure Agreement" (To be signed at same time PSA is signed).

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PART 18 - COUNTERPARTS; ELECTRONIC/DIGITAL SIGNATURES


Unless otherwise prohibited by law or County policy, the Parties agree that an electronic copy of a signed contract, or an electronically signed contract, has the same force and legal effect as a contract executed with an original ink signature. The term "electronic copy of a signed contract" refers to a transmission by facsimile, electronic mail, or other electronic means of a copy of an original signed contract in a portable document format. The term "electronically signed contract" means a contract that is executed by applying an electronic signature using technology approved by the County.

IN WITNESS WHEREOF, the Parties hereto have executed this Professional Service Agreement on the date signed by the Board of Supervisors.

OWNER, COUNTY OF SANTA CLARA:**SALAS O' BRIEN ENGINEERS, INC:**

Susan Ellenberg
President, Board of Supervisors

Date: _____

DocuSigned by:


Jeffrey Gosal
Principal

Date: 4/1/2024

License No.: 18084

ATTEST:
Signed and certified that a copy of this document has been delivered by electronic or other means to the President, Board of Supervisors.

If this Agreement is signed outside of the State of California, a notarized acknowledgement is required.

Curtis Boone

Acting Clerk of the Board of Supervisors

APPROVED AS TO FORM AND LEGALITY:

DocuSigned by:


John A. Castro
Deputy County Counsel

EXHIBIT A**CONSULTANT'S AND SUBCONSULTANTS' HOURLY RATES**

The following rates, which include all overhead, administrative costs, and profit, will be used in arriving at fees for hourly-rate Services. Any rate increases approved by the OAR shall take effect on the yearly anniversary of the Board of Supervisors' approval of the PSA.

Modifications to Consultant's and Subconsultants' Hourly Rate Schedules to include out-years beyond the rates identified in Exhibit A, and the addition of personnel not identified in Exhibit A, will be negotiated by the parties using as a benchmark the prevailing rates/increase for similar consulting services in the San Francisco Bay Area, and may be subject to approval as an amendment to the PSA by the Board of Supervisors.

Reimbursable: County will pay only pre-approved reimbursable expenses at costs. No mark-ups are allowed.

RATE SCHEDULE

The following rates are the maximum billable hourly rate. The County reserve the rights to negotiate all rates on a project-by-project basis.

RATE SCHEDULE:

	Year 1	Year 2	Year 3	Year 4	Year 5
Consultant – Salas O' Brien					
Architect	\$200.00	\$206.00	\$212.18	\$218.55	\$225.10
Associate	\$225.00	\$231.75	\$238.70	\$245.86	\$253.24
Associate Vice President	\$255.00	\$262.65	\$270.53	\$278.65	\$287.00
Construction Project Manager	\$200.00	\$206.00	\$212.18	\$218.55	\$225.10
Coordinator	\$130.00	\$133.90	\$137.92	\$142.05	\$146.32
Design Engineer	\$175.00	\$180.25	\$185.66	\$191.23	\$196.96
Design Manager	\$190.00	\$195.70	\$201.57	\$207.62	\$213.85
Director	\$255.00	\$262.65	\$270.53	\$278.65	\$287.00
Drafter (CAD)	\$150.00	\$154.50	\$159.14	\$163.91	\$168.83
Drafting Manager (CADD)	\$170.00	\$175.10	\$180.35	\$185.76	\$191.34
Field Technician	\$150.00	\$154.50	\$159.14	\$163.91	\$168.83
Principal	\$290.00	\$298.70	\$307.66	\$316.89	\$326.40
Professional Engineer	\$200.00	\$206.00	\$212.18	\$218.55	\$225.10
Program	\$115.00	\$118.45	\$122.00	\$125.66	\$129.43
Program Manager	\$180.00	\$185.40	\$190.96	\$196.69	\$202.59
Program Specialist	\$150.00	\$154.50	\$159.14	\$163.91	\$168.83
Project Assistant	\$105.00	\$108.15	\$111.39	\$114.74	\$118.18
Project Engineer	\$180.00	\$185.40	\$190.96	\$196.69	\$202.59
Sr. Architect	\$220.00	\$226.60	\$233.40	\$240.40	\$247.61
Sr. Project Manager	\$240.00	\$247.20	\$254.62	\$262.25	\$270.12
Sr. Structural Engineer	\$200.00	\$206.00	\$212.18	\$218.55	\$225.10
Sr. Vice President	\$280.00	\$288.40	\$297.05	\$305.96	\$315.14

Staff Engineer	\$160.00	\$164.80	\$169.74	\$174.84	\$180.08
Telecom Engineer	\$175.00	\$180.25	\$185.66	\$191.23	\$196.96
Vice President	\$255.00	\$262.65	\$270.53	\$278.65	\$287.00

EXHIBIT B

CONSULTANT'S STAFF & SUBCONSULTANTS

- A. Consultant declares that the Principal-in-Charge will be **Jeffry Gosal**.
- B. Consultant will employ Subconsultants it deems appropriate to the complexity and nature of the required Services and said Subconsultants must, if their specialty is licensable, be licensed by the State of California to perform their specific Services. Consultant must obtain Owner's approval of all Subconsultants pursuant to the terms of the PSA. Upon Owner's request Consultant must provide copies of all Subconsultant contract agreements to Owner.
- C. No mark-ups are allowed: County will not pay any mark-ups for managing and coordinating Subconsultants.
- D. Reimbursable: County will pay only pre-approved reimbursable expenses at costs. No mark-ups are allowed.
- E. Consultant/Subconsultants:
- Salas O'Brien Engineers, Inc.**
Address: 305 South 11th Street, San Jose, CA 95112
Contact Name: Jeffry Gosal
Phone: (408) 899-3070
Email: jeffry.gosal@salasobrien.com
- F. Consultant represents and warrants that the above-named Subconsultant(s) and Staff (1) are appropriate to the complexity and nature of the required Services, (2) are, if their specialty is licensable, licensed by the State of California to perform their specific Services, and (3) have demonstrated competence and meets the professional qualifications necessary for the satisfactory performance of the services required. Consultant further warrants and represents that the Subconsultant's and staff contract agreement(s) are and shall be consistent with and otherwise comply with applicable terms and conditions of the PSA and this PA, including but not limited to provisions of standard of care, compliance with laws, insurance, confidentiality, indemnity, and jurisdiction. Upon Owner's request Consultant will provide copies of all Subconsultant and Staff contract agreements to Owner.
- G. None of the above-named Staff or Subconsultants shall be replaced without OAR's approval pursuant to an amendment to this PA or PSA. Consultant must provide the names of all key staff and lead personnel of subconsultants associated with each Project in the applicable Project Agreement prior to the work. If Consultant's Project Manager or any other designated key staff person or Subconsultant fails to perform to the satisfaction of Owner, on written notice from Owner's Project Manager, Consultant will have fifteen (15) calendar days to remove that person from the Project and provide a replacement acceptable to OAR. In that event Consultant must submit the name of a qualified replacement for OAR's approval.

END EXHIBIT B

EXHIBIT C
SAMPLE PROJECT AGREEMENT

(Subject to County's changes. This format will be used for all Project Agreements authorized pursuant to this PSA. Owner shall prepare all Project Agreements and Consultant shall provide information and data requested by Owner sufficient to draft the PA.)

PROJECT AGREEMENT NO. [#] TO PSA BETWEEN THE COUNTY OF SANTA CLARA AND [XXX] FOR [XXX] SERVICES FOR VARIOUS PROJECTS
PROJECT TITLE: [TITLE]
PROJECT AGREEMENT TITLE: [TITLE]

Account Assignment	G/L Account	Cost Center	WBS	Amount
X	XXX	XXX	XXX	XX

WHEREAS, on [DATE] the County of Santa Clara, a political subdivision of the state of California ("Owner" or "County"), issued a Request for Statement of Qualifications ("RFSOQ") for [XXX] for various projects to which [XXX] ("Consultant") responded and was selected by County based on that RFSOQ response. Thereafter, on [DATE], Owner and Consultant entered into a Professional Services Agreement ("PSA"), for Consultant to provide the [XXX] for Various Projects, which expires on [DATE]. The PSA was previously amended on [DATE] to [XXX] ("First Amendment") and amended on [DATE] to [XXX] ("Second Amendment"). Consultant and Owner are each a "Party" and collectively the "Parties" to this Project Agreement No. [#], as referenced herein; and,

WHEREAS, the PSA requires that Consultant's Services will be provided pursuant to individual Project Agreements to be executed by the Parties and that no commencement of work under any Project Agreement shall begin until Consultant has received an Authorization to Proceed from Owner's Project Manager.

NOW, THEREFORE, the Parties agree to the foregoing and as follows:

1. PURPOSE.

1.1 This is Project Agreement ("PA") No. [#] pursuant to the PSA.

- 1.2** Consultant will perform the services described and set forth in Attachment 1, Consultant's Services and Deliverables (the "PA Services," "Scope of Work," or "SOW"). The PA Services may only be modified with Owner's prior written approval in advance of any additional or modified work being performed.
- 1.3** All capitalized terms used in this PA shall have the same meaning as those used in the PSA, unless expressly defined in this PA. All terms, conditions, and provisions of the PSA are incorporated into and made a part of this PA without change.
- 2. OWNER'S PROJECT MANAGER.** The Owner's Project Manager is [NAME]. All communications concerning the Project shall be through the Project Manager.
- 3. SCHEDULE AND EXPIRATION DATE.** Services and Deliverables shall be provided according to Attachment 2, Consultant's Milestone Schedule. Consultant's Milestone Schedule may only be modified with Owner's prior written approval. The Parties mutually agree that the expiration date of this PA shall be [DATE].
- 4. MAXIMUM COMPENSATION LIMIT.** The maximum compensation limit for PA Services pursuant to this PA shall be as stated in Attachment 3, Consultant's Compensation, which shall not be exceeded by Consultant. Consultant's Compensation, as stated in Attachment 3, together with all prior and current Project Agreements to date, shall not cumulatively exceed the Maximum Compensation Limit ("MCL") specified in the PSA. Nothing stated herein authorizes or approves an increase in the PSA MCL or in the compensation limit specified in Attachment 3 to this PA. Consultant is fully responsible for not exceeding these limits and solely assumes and accepts all liability, cost and expense for exceeding these limits.
- 5. ATTACHMENTS.** The following listed Attachments are incorporated into this PA as though set forth in full herein.
- Attachment 1:** Consultant's Services and Deliverables (the SOW)
Attachment 2: Consultant's Milestone Schedule
Attachment 3: Consultant's Compensation & Payment Request Form
Attachment 4: List of Subconsultants (if any)
Attachment 5: Contractor Certification of Compliance with COVID-19 Vaccine Requirements
- 6. COVID-19 VACCINATION REQUIREMENTS.** The Contractor shall comply with all County requirements relating to COVID-19 for persons who routinely perform services for the County onsite and share airspace with or proximity to other people at a County facility as part of their services for the County, including but not limited to vaccination, as applicable and periodically updated, and available at <https://procurement.sccgov.org/doing-business-county/contractor-vaccinations> and incorporated herein by this reference. If applicable, the Contractor shall be required to complete the Contractor Certification of Compliance with COVID-19 Vaccine Requirements ("Certification"), attached hereto to this agreement as Attachment 6. The Contractor shall comply with the requirements for the entire term of the contract.

7. The Contractor shall also comply with all reasonable requests by County for documentation demonstrating compliance. Failure of the Contractor to comply with any of the requirements of these requirements (including but not limited to vaccination and masking requirements and completion and submittal of the Certification) will be considered a material breach of the Agreement, and the County may, in its sole discretion terminate the Agreement immediately or take other action as the County may determine to be appropriate
8. **COUNTERPARTS; ELECTRONIC/DIGITAL SIGNATURES.** Unless otherwise prohibited by law or County policy, the parties agree that an electronic copy of a signed PA, or an electronically signed PA, has the same force and legal effect as a PA executed with an original ink signature. The term "electronic copy of a signed PA" refers to a transmission by facsimile, electronic mail, or other electronic means of a copy of an original signed PA in a portable document format. The term "electronically signed PA" means a PA that is executed by applying an electronic signature using technology approved by the County.
9. **SUBMISSION OF PA; NONBINDING UNTIL SIGNED.** Each of the Parties agree, accept, and understand that a submission of this PA for examination, review, editing, or signature by either Party, in any form or by electronic or digital means, by email, facsimile or DocuSign®, by verbal confirmation or discussion or by any other means of delivery, does not constitute a binding agreement or contract, nor does it constitute a meeting of the minds or a commitment to execute the PA, and this PA shall only be legally binding and enforceable upon full execution by all Parties. The Parties acknowledge and agree that this PA is nonbinding on either Party and neither Party may claim any legal rights against the other by reason of the existence of this PA, or by reason of actions taken in reliance upon this PA (including, but not limited to, any obligation to continue negotiations) unless and until this PA is fully executed by all of the Parties.
10. **CONSTRUCTION.** This PA shall not be construed more strongly against either Party regardless of who is more responsible for its preparation.
11. **SIGNING AUTHORITY.** By signing below, each signatory for a Party warrants and represents that they executed this PA, in their authorized capacity, that they have the authority to bind the entity or person for whom they sign to contractual obligations and that, by their signature, the entity or person on behalf of which they acted executed this PA.

IN WITNESS WHEREOF, this PA is effective as of the last date executed by all the parties below ("Effective Date").

CONSULTANT: [Entity]

By: _____
[Name, Title]

Date

OWNER: County of Santa Clara

[Name, Title]
Facilities and Fleet Department

Date

Roger Soohoo, Deputy Director
Facilities and Fleet Department
Owner’s Authorized Representative

Date

Sylvia Gallegos, Deputy County Executive

Date

APPROVED AS TO FORM AND LEGALITY:

John A. Castro, Deputy County Counsel

EXHIBIT D
ATTACHMENT 1 TO
PROJECT AGREEMENT NO. [PA NUMBER]
SERVICES AND DELIVERABLES SCOPE OF WORK

I. Services

[Project Description]

II. Deliverables pursuant to PSA Part 5.04

Subject to PSA, [Consultant Firm name] shall complete the following scope of work on a time and materials with a not-to-exceed maximum fee. Time will be billed using the rates provided in the PSA.

[List of deliverables]

III. Supplemental Services Order

IV. Compensation for Changes in Scope

Consultant must notify the County Project Manager, in writing, within ten (10) calendar days of occurrence, of any direction by the County Project Manager which will cause a change in the Consultant's Services and Deliverables for this Project Agreement, for which the Consultant intends to seek additional compensation. The County Project Manager, in response, may revise or rescind any such direction, or both parties will negotiate and implement an Additional Basic Services Order and/or a Supplemental Services Order, as appropriate.

V. Information and Documentation to support Invoice.

Consultant must submit appropriate documentation to support each invoice, including: a narrative description of services performed during the period, milestones achieved, and deliverables completed.

END ATTACHMENT 1

**ATTACHMENT 2 TO
PROJECT AGREEMENT NO. [PA NUMBER] CONSULTANT'S SCHEDULE**

Event	Duration
Notice to Proceed	Start
Submit 100% Schematic Design	<u>90 calendar days</u> after receiving Notice to Proceed
Submit 100% Design Development	<u>90 calendar days</u> after receiving Funding Approval.
Submit 100% Construction Documents	<u>60 calendar days</u> after receiving 100% Design Development comments.
Submit Back Check Construction Documents	<u>14 calendar days</u> after receiving 100% Construction Documents comments.
Services and Deliverables Completion Date	

Compensation is predicated upon Owner accepting AND Consultant completing each task and associated Deliverables within the time frame herein provided and in a form and content agreed upon by Owner.

Consultant will complete the Services and Deliverables by [date].

END ATTACHMENT 2

**ATTACHMENT 3 TO
PROJECT AGREEMENT NO. [PA NUMBER]**

CONSULTANT'S COMPENSATION

1. COMPENSATION SUMMARY

Consultant's Maximum Compensation for the Basic Services described in Attachment 1, Section II shall be:	
a. Basic services described in Attachment 1, Section II.A & .B (fixed fee).	\$ x,xxx.xx

SUBTOTAL: Fee for Basic Services	\$ x,xxx.xx
-----------------------------------------	--------------------

b. Consultant's fee for Itemized Supplementary Services, if any	\$ x,xxx.xx

SUBTOTAL: Itemized Supplementary Services	\$ x,xxx.xx
--------------------------------------------------	--------------------

c. Allowance for Additional Basic Services (PSA Part 5.04 A, B and C) and Supplementary Services (PSA Part 5.04 D) that may be authorized by the Owner in writing pursuant to issuance of an Additional Basic Services (ABS) Order and Supplementary Services (SS) Order , respectively, during the Construction Phase.	\$ x,xxx.xx
d. Allowance for Reimbursable Expenses pursuant to PSA Part 11.02, which includes the office trailer, drinking water and relating direct office costs.	\$ x,xxx.xx
2. MAXIMUM COMPENSATION (a+b+c+d)	\$ x,xxx.xx

3. PROGRESS PAYMENTS

- a. For **FIXED FEE** portion, Progress Payments will be on the basis of: Monthly and based on the percent of work completed/accepted during the billing period.
- b. For **HOURLY FEE** portion, Progress Payments will be made monthly and based on the actual hours worked/accepted during the billing period charged at the hourly rates set forth

in Exhibit A or B to the PSA, or as modified in this Project Agreement. (Consultant must include back up information for payment including a breakdown of the staff hours for particular tasks performed: task-fee breakdown.)

- c. Only invoices identifying personnel listed in Exhibit A or B to the PSA will be accepted by Owner for payment.
- d. Consultant must submit appropriate documentation and information to support each invoice, including a narrative description of Services performed during the period, completed milestones, and deliverables.
- e. Consultant invoices will be paid by Owner only after Owner has determined that all applicable deliverables, milestones, and documentation have been provided justifying payment subject to the satisfaction of Owner, in its sole discretion. All requests for payment must be accompanied by a Payment Request Summary Sheet (Attachment 5).

4. SUPPLEMENTAL WORK ALLOWANCE

Prior to commencement of any Additional Basic Services or Supplemental Services, Owner's Project Manager must authorize the work in writing pursuant to an Additional Basic Services (ABS) Order and Supplementary Services (SS) Order, which will include a statement of supplemental services to be provided, maximum or fixed fee that may be earned, and a schedule for performance. No supplemental work is authorized until Owner determines that such work is allowed.

END ATTACHMENT 3

ATTACHMENT 4 TO
PROJECT AGREEMENT NO. [PA NUMBER]

LISTING OF SUBCONSULTANTS AND
SUBCONSULTANT HOURLY RATES FOR NON-FIXED FEE SERVICES

- A. Consultant may employ subconsultants that Consultant deems appropriate to the complexity and nature of the Project pursuant to the requirements of the PSA. Such subconsultants must be licensed or certified, as appropriate, in the State of California for their particular area of expertise. Consultant is solely responsible for managing and coordinating the work of subconsultants, and for compensating the subconsultant for Services and Deliverables provided.
- B. **No mark-ups are allowed:** County will not pay any mark-ups for managing and coordinating the Project, any subconsultants or any other third parties.
- C. **Travel:** County will pay only pre-approved travel expenses at costs as per County Travel Policy. No mark ups are allowed. Consultant shall not be entitled to any travel related costs that are not incorporated into the Project Agreement.
- D. **Reimbursable:** County will pay only pre-approved reimbursable expenses at costs. No mark-ups are allowed.

List of Subconsultants Contacts	Services	Consultant's Team (Principal's name)

- E. Consultant may not replace a subconsultant without County's prior written approval. If Consultant's designated Project Manager, or any designated key staff person or Subconsultant, fails to perform to the satisfaction of Owner, Consultant will have fifteen (15) calendar days from County's written notice to remove and replace that person with a replacement acceptable to Owner.
- F. None of the above-named Staff or subconsultants shall be replaced without Owner's Authorized Representative (OAR) approval pursuant to an administrative amendment to this PSA. If Consultant's Project Manager or any other designated key staff person or Subconsultant fails to perform to the satisfaction of Owner, on written notice from Owner's Project Manager, Consultant will have fifteen (15) calendar days to remove that person from the Project and provide a replacement acceptable to OAR. In that event Consultant must submit the name of a qualified replacement for OAR's approval.

- G.** Consultant represents and warrants that any and all subcontractors, subconsultant(s) and staff utilized to perform Services or provide Deliverables (1) are appropriate to the complexity and nature of the required Services, (2) are, if their specialty is licensable, licensed by the State of California to perform their specific Services, and (3) have demonstrated competence and meets the professional qualifications necessary for the satisfactory performance of the services required. Consultant further warrants and represents that all subcontractor, subconsultant, and staff contract agreement(s) are and shall be consistent with and otherwise comply with applicable terms and conditions of the PSA and this PA, including but not limited to provisions of standard of care, compliance with laws, insurance, confidentiality, indemnity, and jurisdiction. Upon Owner's request Consultant will provide copies of all subcontractor, subconsultant, and staff contract agreements to Owner.
- H.** No subcontractors, staff, or subconsultants shall be replaced without Owner's approval pursuant to this Project Agreement and PSA terms. Consultant must provide the names of all key staff and lead personnel of subcontractors and subconsultants associated with each Project in the applicable Project Agreement prior to the work. If Consultant's Project Manager or any other designated key staff person, subcontractor or subconsultant fails to perform to the satisfaction of the Owner, on written notice from the Owner's Project Manager, Consultant will have fifteen (15) calendar days to remove that person from the Project and provide a replacement acceptable to Owner. In that event Consultant must submit the name of a qualified replacement for Owner's approval.
- I.** Consultant represents, warrants, and agrees that (1) Consultant is solely responsible and liable for all work and services performed by subcontractors, subconsultants, and staff, (2) Consultant is at all times solely liable and responsible for payment of all subcontractors, subconsultants, and staff, (3) Owner is not responsible or liable for payment or other obligations to Consultant's subcontractors, subconsultants, and staff, (4) Owner is not, nor shall Owner be considered or alleged to be, an employer of Consultant's subcontractors, subconsultants, or staff or the employees or agents of subcontractors, subconsultants, or staff.

END ATTACHMENT 4

COUNTY OF SANTA CLARA									
CONSULTANT PAYMENT REQUEST									
NOTE: The Consultant should complete red boxed cells only on this PAGE 2. This page transfers information electronically to PAGE 1.									
PROJECT AND AGREEMENT INFORMATION									
County Project Number	263-CP	Consultant's Invoice ID		Insurance Expires		Invoice Date:			
Project Name		Thru PA Amendment No.		Work Period:		to			
Payment No.									
PROJECT AGREEMENT COMPENSATION AND INVOICE INFORMATION									
COMPENSATION DETAILS		\$ PA VALUE	ITEMIZED FEE	WORK COMPLETED THIS PERIOD (%)	\$ AMOUNT INVOICED THIS PERIOD (A)	\$ AMOUNT PREVIOUSLY INVOICED (B)	\$ AMOUNT INVOICED TO DATE (A+B)	WORK COMPLETED TO DATE (%)	
a.	FIXED FEE/MAXIMUM FEE BASIC SERVICES	\$0.00		0.0%	\$0.00		\$0.00	0.0%	
	--		\$0.00	0.0%			\$0.00	0.0%	
	--		\$0.00	0.0%			\$0.00	0.0%	
	--		\$0.00	0.0%			\$0.00	0.0%	
	--		\$0.00	0.0%			\$0.00	0.0%	
	--		\$0.00	0.0%			\$0.00	0.0%	
	--		\$0.00	0.0%			\$0.00	0.0%	
b.	ITEMIZED SUPPLEMENTARY SERVICES (ISS)	\$0.00							
	--		\$0.00	0.0%			\$0.00	0.0%	
	--		\$0.00	0.0%			\$0.00	0.0%	
	--		\$0.00	0.0%			\$0.00	0.0%	
	--		\$0.00	0.0%			\$0.00	0.0%	
c.	ALLOWANCE FOR ADDITIONAL BASIC SERVICES (ABS) AND SUPPLEMENTARY SERVICES (SS)	\$0.00	\$ VALUE AUTHORIZED	PERCENT WORK COMPLETED THIS PERIOD	\$ AMOUNT INVOICED THIS PERIOD (A)	\$ AMOUNT PREVIOUSLY INVOICED (B)	\$ AMOUNT INVOICED TO DATE (A+B)	AUTHORIZED WORK COMPLETED TO DATE (%)	
				0.0%			\$0.00	0.0%	
				0.0%			\$0.00	0.0%	
				0.0%			\$0.00	0.0%	
				0.0%			\$0.00	0.0%	
				0.0%			\$0.00	0.0%	
d.	ALLOWANCE FOR REIMBURSABLE EXPENDITURE	\$0.00	\$0.00	0.0%			\$0.00	0.0%	
TOTAL		\$0.00	\$0.00	0.0%	\$0.00	\$0.00	\$0.00		

Version 2-05

CONSULTANT INVOICE PAGE 2 OF 2

END OF EXHIBIT E

EXHIBIT F

INSURANCE AND INDEMNITY REQUIREMENTS

INSURANCE REQUIREMENTS FOR ARCHITECTS, LANDSCAPE ARCHITECTS, ENGINEERS & SURVEY SERVICES CONTRACTS

Indemnity

Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, including, but not limited to, California Civil Code Section 2782.8, Contractor shall indemnify, release, hold harmless, and defend with counsel approved by the County of Santa Clara ("County") its officers, agents, and employees from any claim, demand, suit, judgment, liability, loss, injury, damage, or expense of any kind (including attorney's fees and costs) arising out of, or in connection with, Contractor's negligence, recklessness, and/or willful misconduct in relation to the performance of this Agreement by Contractor and/or its agents, employees, or subcontractors. It is the intent of the parties to this Agreement to provide the broadest possible coverage for the County as allowed by law. In no event shall Contractor's cost to defend exceed Contractor's proportionate percentage of fault, except as provided in California Civil Code Section 2782.8, provided, however, Contractor shall reimburse the County for all costs, attorney's fees, expenses, and liabilities incurred with respect to any litigation or process in which the Contractor contests its obligation to indemnify, defend, and hold harmless the County under this Agreement and does not prevail in that contest.

Insurance

Without limiting the Contractor's indemnification of the County, Consultant 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, Consultant 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 Consultant upon request.

This verification of coverage shall be sent to the requesting County department, unless otherwise directed. Consultant 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 Consultant.

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.

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 calendar 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 - \$1,000,000
- b. General aggregate - \$2,000,000
- c. Personal Injury - \$1,000,000

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 all owned, non-owned and hired vehicles.

4a. Aircraft/Watercraft Liability Insurance (Required if Consultant or any of its agents or subcontractors will operate aircraft or watercraft in the scope of the Agreement)

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 all owned, non-owned, and hired aircraft/watercraft.

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 one million dollars (\$1,000,000) 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 shall include contractual liability coverage.
- d. 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 Consultant 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 Consultant 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 Consultant. However, this shall not in any way limit liabilities assumed by Consultant under this Agreement. Any self-insurance shall be approved in writing by the County upon satisfactory evidence of financial capacity. Consultant's 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, Consultant shall require each of its subcontractors of any tier to carry the aforementioned coverages, or Consultant may insure subcontractors under its own policies.
4. The County reserves the right to withhold payments to Consultant in the event of material noncompliance with the insurance requirements outlined above.

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

Before receiving compensation under this Agreement, Consultant 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, Consultant will notify County immediately, and County may withhold further payment to Consultant until proper coverage has been obtained. Failure to give such notice may be cause for termination of this Agreement, at the option of County.

END EXHIBIT F

EXHIBIT G

NOTICES

All notices are deemed to have been given when made in writing and delivered or mailed to the representatives of Owner and Consultant at their respective addresses as follows:

1. Owner:

County of Santa Clara Capital Programs Division
2310 North First Street, 2nd Floor, Suite 200
San José, CA 95131-1011

Attention: Roger Soohoo, Deputy Director, Facilities and Fleet
Owners Authorized Representative (OAR)

2. Consultant:

Salas O'Brien Engineers, Inc.
Jeffry Gosal
(408) 899-3070
jeffry.gosal@salasobrien.com
305 South 11th Street, San Jose, CA 95112

END EXHIBIT G

EXHIBIT H

NON-DISCLOSURE AGREEMENT

This Non-Disclosure Agreement (“NDA”) by and between _____ (“Consultant”) and the County of Santa Clara (referred to interchangeably as “County” or “Owner”) relates to the disclosure of certain confidential information. This NDA is incorporated into and made a part of the PSA to which it is attached.

In consideration of the mutual covenants and agreements hereinafter set forth, the adequacy of which are acknowledged, the parties agree as follows:

1. This NDA will commence following full execution by both parties and will continue in full force and effect until the conclusion of the business relationship between the County and the Consultant, or for a period of one year following execution of this NDA, whichever is longer. The obligations with respect to the treatment of all Confidential Information that is received under this NDA will survive termination or expiration of this NDA.

2. Consultant will return all Confidential Information received from the County upon termination or conclusion of this NDA. The Confidential Information will remain the exclusive property of the County, and no copies will be made or retained without the written consent of the County.

3. “Confidential Information” means any and all tangible and intangible information, whether written, oral or in any other medium, originated by or uniquely within the knowledge of the County and not generally available to third parties. Confidential Information includes, without limitation, any and all diagrams, schematics, documentation, maps, address information, system and device configurations, trade secrets, data captured from a County network or information system, financial information, know-how, designs, methodologies, processes, manuals, marketing information, price lists, customer lists, supplier lists, employee information, facility infrastructure, computer programs, and systems designs. County’s Confidential Information also includes all County Property as defined below.

4. Data Ownership

4.1 All “County Property” is Confidential Information, and, as used in this NDA, means and includes, collectively and singularly, all of the following County property: information, appraisals, data, or materials provided to Consultant by County or on behalf of County; PHI, Customer Data and PII (as defined below); the Deliverables; County documents, materials, specifications, lists, maps, outlines, emails, electronic communications; County programming, object code, website, publication, source code, technology, metadata, data, device, or other asset of any kind; County copyrights, trade names, trade dress, domain names, patents, trade secrets, moral rights, termination rights, ownership rights, authorship and other proprietary rights of County including, without limitation, all goodwill, all information and materials provided by, developed for, developed by, or on behalf of County and all derivative work thereto; and, all County rights necessary for any and all local, national, or worldwide development, manufacture, modification, enhancement, sale, licensing, use, reproduction, publication or display.

4.2 Personally Identifiable Information and Customer Data (collectively the "Customer Data and PII") includes, but is not limited to, any and all information pertaining to or about persons and/or entities receiving County services, accessing County links or websites (including but not limited to links and websites developed for the benefit of the County), or participating in any County held or sponsored activities, regardless of whether County provided these links, websites, services, contests, or games directly. Customer Data and PII also includes, but is not limited to, any and all names, addresses, emails, phone numbers, social security numbers, bank account or credit card information, driver license numbers, age, sex, religion, physical descriptions and website or internet use data or metadata. All Customer Data and PII is exclusively and solely County Property. All Customer Data and PII is always County Confidential Information, except as otherwise determined solely by the County in writing.

4.3 Should County Confidential Information be divulged to unauthorized third parties, Consultant shall comply with all applicable federal and state laws and regulations, including but not limited to California Civil Code sections 1798.29 and 1798.82 at Consultant's sole expense (if applicable). Consultant shall not charge the County for any expenses associated with Consultant's compliance with the obligations set forth in this section.

5. Consultant shall review and maintain the Confidential Information in accordance with the following terms and conditions:

(a) Consultant agrees to treat all Confidential Information (as defined above) as confidential and not to disclose the same to any third party. Consultant shall keep the Confidential Information in strict confidence, using the same standard of care as it does with respect to its own Confidential Information, but in no event less than a reasonable degree of care.

(b) No copies of the Confidential Information shall be made, unless agreed to in writing by the County.

(c) All of the Confidential Information shall be kept and maintained in a safe and secure place with adequate safeguards to insure that unauthorized persons do not have access to the Confidential Information and shall not leave County property unless authorized in advance by County. Consultant shall, at all times, keep the County informed in writing of the location of the Confidential Information.

(d) Consultant will permit access to Confidential Information only to individuals authorized in writing by the County and who have a bona fide need to know, provided that all such persons must be required to comply with the terms of this NDA with respect to such Confidential Information.

(e) The Confidential Information shall be used solely by Consultant for the limited purpose stated in this NDA or as otherwise authorized in writing by County.

(f) Any oral discussions between County and Consultant that relate to the Confidential Information shall be kept secret and confidential and are deemed to be Confidential Information.

(g) Upon the request of the County or after the termination of this NDA, Consultant shall promptly return all of the Confidential Information including all work products of Consultant containing Confidential Information to the County. Consultant shall certify that all Confidential Information and copies or extracts thereof have been returned or destroyed.

(h) Consultant shall immediately notify the County in writing of any misuse or misappropriation of the Confidential Information or violation of this NDA that may come to its attention.

(i) Consultant, its agents, employees, representatives, subsidiaries, affiliated, or parent companies shall not, for themselves or for the benefit of any person or entity, other than the County, use, or disclose the Confidential Information whether written or oral, software technology, or otherwise or any portion thereof, for any purpose, at any time or in any place, without the express prior written approval of the County.

6. Confidential Information will not include any information that Consultant can demonstrate that, absent breach of this NDA, was/is:

(a) Publicly known at the time of disclosure by the County, or becomes publicly known through no fault of Consultant;

(b) Rightfully received by Consultant from a third party without a duty of confidentiality;

(c) Already known to Consultant at the time of receiving such Confidential Information or is independently developed by the Consultant without reference to the Confidential Information;

(d) Permitted to be disclosed by written consent of the County; or,

(e) Required to be disclosed by law or by an order of a governmental agency, legislative body, or court of competent jurisdiction; provided that Consultant provides the County with prompt notice of such requirement, so that the County may seek an appropriate protective order and/or waive compliance with this NDA.

7. Disclosure by the County of Confidential Information does not constitute a warranty that the Confidential Information is accurate, complete, or adequate for the purposes contemplated by Consultant. Confidential Information is provided "AS IS." COUNTY DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY, ANY IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, ANY IMPLIED WARRANTY OF NON-INFRINGEMENT, AND ANY EXPRESS WARRANTY WITH RESPECT TO ANY OF THE CONFIDENTIAL INFORMATION AND DOCUMENTATION DISCLOSED HEREUNDER. County accepts no responsibility as a result of any expenses, losses, damages, or actions incurred or undertaken by Consultant as a result of the Consultant's receipt or use of any Confidential Information or documentation.

8. County may in its sole discretion terminate this NDA in whole or in part by providing three (3) calendar days written notice to Consultant. Termination under this provision shall not relieve Consultant of any obligation occurring prior to termination, such as confidentiality, payments, and other provisions which by their nature would survive termination.

9. Upon the end of term of this NDA, or its termination, or at any time upon written demand by the County, all Confidential Information, together with any copies, memoranda, working papers, notes, and photographs thereof, will, at the County's option, be returned or destroyed by Consultant. The return of any Confidential Information will not relieve Consultant of its obligation to maintain the confidentiality of the Confidential Information for the full period contemplated by this NDA; said confidentiality obligation shall survive termination of this NDA.

10. This NDA contains the entire understanding and agreement of the parties with respect to the disclosure of the Confidential Information, and supersedes all prior agreements and discussions concerning the subject matter hereof, whether oral or written.

11. The parties agree that a breach of this NDA is likely to cause irreparable harm to the County for which money damages alone would be an inadequate remedy. Accordingly, the County will be entitled to seek specific performance and injunctive or other equitable relief as a remedy for breaches of this NDA.

12. If any provision of this NDA is held illegal, invalid, or unenforceable by any court of competent jurisdiction, such provision will be deemed separable from the remaining provisions hereof and the remaining portions shall remain in full force and effect.

13. All sections of this NDA shall survive termination, cancellation, and expiration of this NDA regardless of the reason for termination, cancellation or expiration.

14. Consultant shall indemnify, defend, and hold harmless the County of Santa Clara ("County"), its officers, agents and employees, from, for and against any and all claims, liabilities, losses, injuries and damages (collectively, "Litigation") arising out of, pertaining to or relating to the negligence, recklessness, or willful misconduct of Consultant and/or any of its officers, directors, owners, agents, employees, contractors, subcontractors or subconsultants, excepting only to the extent such loss, injury or damage is caused by the gross negligence or willful misconduct of personnel employed by the County. Consultant shall reimburse the County for all costs, attorneys' fees, expenses, and liabilities incurred with respect to any Litigation in which the Consultant is obligated to indemnify, defend, and hold harmless the County under this PSA. The cost to defend charged to Consultant shall not exceed the Consultant's proportionate percentage of fault.

15. Unless where preempted by Federal laws such as in Copyright Laws, this NDA shall be enforced and interpreted under the laws of the State of California and the County of Santa Clara, without any regards to the conflict of law principles.

16. The parties to this NDA hereby agree to submit to the exclusive jurisdiction of and venue in the courts of competent jurisdiction, federal or state, in the County of Santa Clara in any disputes related to or arising out of this NDA.

17. No delay or failure to require performance of any provision of the NDA 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.

18. Consultant shall not assign or transfer this NDA, or all or any part of its rights hereunder, by operation of law or otherwise, without the prior written consent of County. Any unauthorized assignment or transfer shall be null and void and shall constitute grounds for immediate termination of this NDA by County. This NDA shall inure to the benefit of and be binding upon any permitted successor or assign.

19. Each party acknowledges that it has read and understands this NDA and agrees to be bound by its terms.

20. By signing below, signatory warrants and represents that they executed this NDA in their authorized capacity and that by their signature on this NDA, they or the entity upon behalf of which they acted, executed this NDA.

21. Unless otherwise prohibited by law or County policy, the parties agree that an electronic copy of a signed contract, or an electronically signed contract, has the same force and legal effect as a contract executed with an original ink signature. The term "electronic copy of a signed contract" refers to a transmission by facsimile, electronic mail, or other electronic means of a copy of an original signed contract in a portable document format. The term "electronically signed contract" means a contract that is executed by applying an electronic signature using technology approved by the County.

Owner, County of Santa Clara:

Susan Ellenberg
President, Board of Supervisors

Date: _____

Salas O' Brien Engineers, Inc:

Signature: _____

Jeffry Gosal
Principal

Date: _____

4/1/2024

ATTEST:

**Signed and certified that a copy of this document
has been delivered by electronic or other means
to the President, Board of Supervisors.**

Curtis Boone

Acting Clerk of the Board of Supervisors

APPROVED AS TO FORM AND LEGALITY:

John A. Castro
Deputy County Counsel

END EXHIBIT H