

**THIRD AMENDMENT
TO PROFESSIONAL SERVICES AGREEMENT
BETWEEN
THE COUNTY OF SANTA CLARA AND CODE COMPLIANT GROUP
FORMERLY KNOWN AS VISTA CONSTRUCTION SERVICES
FOR
CONSTRUCTION INSPECTION SERVICES
FOR VARIOUS PROJECTS FOR THE
COUNTY OF SANTA CLARA HEALTH SYSTEM**

RECITALS

WHEREAS, on May 1, 2019, The County of Santa Clara ("Owner" or "County") and Vista Construction Services ("Consultant") entered into a Professional Services Agreement ("PSA") for a period of fourteen (14) months, through June 30, 2020, and a maximum compensation limit of \$500,000, for Consultant to provide Construction Inspection Services for the Annual Construction Projects and Minor Projects ("Services") for the County of Santa Clara Health System ("CSCHS"), formerly known as the Santa Clara Valley Health and Hospital System ("SCVHHS");

WHEREAS, the PSA was entered into pursuant to a delegation of authority from the Board of Supervisors to the County Executive or Chief Operating Officer under Resolution BOS-2018-110, adopted on October 9, 2018, delegating authority to the County Executive or Chief Operating Officer to negotiate, execute, amend, assume, or terminate contracts, amendments, assignments, leases, licenses, or other documentation necessary to continue operation and integration of hospital assets acquired by the County;

WHEREAS, on May 7, 2019, the Board of Supervisors adopted Resolution BOS-2019-51, extending the delegation of authority to the County Executive or Chief Operating Officer through December 31, 2019;

WHEREAS, on October 8, 2019, the Board of Supervisors adopted Resolution BOS-2019-133, extending the delegation of authority to the County Executive or Chief Operating Officer through June 30, 2020;

WHEREAS, on June 2, 2020, the Board of Supervisors adopted Resolution BOS-2020-72, extending the delegation of authority to the County Executive or Chief Operating Officer through June 30, 2021;

WHEREAS, on June 3, 2020 pursuant to a delegation of authority from the Board of Supervisors to the County Executive, Resolution BOS-2019-133, the parties entered into the First Amendment to the PSA, extending the term to April 30, 2024, and increasing the Maximum Compensation Limit \$2,500,000.00, allowing Consultant to continue providing Services on projects planned through April 30, 2024;

WHEREAS, on December 2, 2020, the parties entered into an Assignment, Assumption of Liability, and Consent to Assignment, acknowledging Consultant's restructuring of itself from Vista Construction Services, an S corporation, to Code Compliant Group, an S corporation;

WHEREAS, on May 4, 2021, the parties entered into the Second Amendment to the PSA, increasing the Maximum Compensation Limit \$9,500,000.00;

WHEREAS, the Parties agree that the PSA must be amended to extend the term in order for Consultant to complete on-going pending Project Agreements issued under the PSA; and,

WHEREAS, the Parties agree to further amend the PSA as set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, Owner and Consultant agree to the foregoing and as follows:

THIRD AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT

1. **PART 2.04 “TERM”**, is deleted in its entirety and replaced with the following:

This Agreement is effective upon the date of full execution by both Parties and shall remain in effect until October 31, 2025 (“Term”), unless earlier terminated under Part 12 of this Agreement. All Project Agreements must be executed, and services completed within the Term of the PSA.

2. **PART 14 MISCELLANEOUS PROVISIONS** is deleted in its entirety and replaced with the following:

1. Capitalization and Formatting

- A. Terms capitalized in this PSA and subsequent Project Agreement may include those that are:
- i. Specifically defined;
 - ii. Titles of Parts or paragraphs;
 - iii. Titles of reports or Deliverables; or,
 - iv. 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.

2. **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.
3. **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.

4. 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:

- i. Shoring;
- ii. Scaffolding;
- iii. Underpinning;
- iv. Temporary retainment of excavations;
- v. 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.

5. 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.

6. 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.

7. 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.
- 8. 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.
- 9. 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.

- 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.
- 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.
- 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.
- 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. 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..

- 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.
- 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.
- 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.
- 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.
- 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.
- 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.
- 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.

- 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.
- 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.
- 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.
- 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.
- 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.

27. Construction. This PSA shall not be construed more strongly against either Party regardless of who is more responsible for its preparation.

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.

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.

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.

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.

- 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.
- 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.
- 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.
- 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.
- 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.

- 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.
- 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.
- 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.
- 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.

- 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.
- 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.
- 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.
- 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 of 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.

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.

- 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.
- 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.
- 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.

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

- A. 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.
- B. 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.
- C. 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.
- D. 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.

- E. 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.
- F. 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.
- G. 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.

- H. 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.
- I. 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.
- J. 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.

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.

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.

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.

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.

3. PART 15, NOTICES of the PSA, is deleted in its entirety and replaced with the following:

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-1, "Notices."

4. Exhibit G, "NOTICES" of the PSA, is deleted in its entirety and replaced with Exhibit G-1, "NOTICES", attached hereto and incorporated by reference.

TERMS AND CONDITIONS

- A. **Definitions.** Capitalized terms used in this Third Amendment without definition shall have the same meaning ascribed to such terms in the PSA, as previously amended.
- B. **Entire Agreement; Amendment.** Except as modified by this Third Amendment, all other terms, conditions, and stipulations of the PSA as previously amended remain in full force and effect. The PSA as previously amended, and as amended by this Third

Amendment, constitutes the full and complete agreement and understanding by and between the Parties relative to the subject matter of the PSA as previously amended, and this Third Amendment shall supersede all prior communications, representations, and understandings or agreements, if any, whether oral or written, concerning the same subject matter and may not be modified or amended in whole or in part, except by a written instrument executed by all Parties hereto. Any prior or contemporaneous oral or written representations relating to the same subject matter is hereby revoked and extinguished by the amended PSA, as amended by this Third Amendment.

- C. Counterparts; Electronic/Digital Signatures.** This Third Amendment may be executed in any number of counterparts, and all of such counterparts so executed together shall be deemed to constitute one and the same agreement, and each such counterpart shall be deemed to be an original provided all of the Parties have fully executed the Third Amendment. 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.
- D. 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.
- E. Signing Warranty.** By signing below, each signatory for a Party warrants and represents that they executed this Third Amendment, 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 Third Amendment.

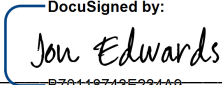
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F. Construction. This Third Amendment shall not be construed more strongly against either Party regardless of who is more responsible for its preparation.

IN WITNESS WHEREOF, Owner and Consultant have entered into this Third Amendment effective as of the date it is fully executed by all Parties below ("Effective Date").

CONSULTANT, CODE COMPLIANT GROUP, fka VISTA CONSTRUCTION SERVICES :

DocuSigned by:

B70118743E234A9...

Jon Edwards, Principal in Charge

3/25/2024

Date

OWNER: County of Santa Clara

Susan Ellenberg, President
Board of Supervisors

Date

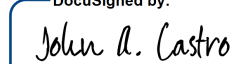
Signed and certified that a copy of this document
has been delivered by electronic or other means
to the President, Board of Supervisors.

ATTEST:

Curtis Boone
Acting Clerk of the Board of Supervisors

Date

APPROVED AS TO FORM AND LEGALITY:

DocuSigned by:

5761D0F0554549C...

John A. Castro
Deputy County Counsel

**EXHIBIT G-1 TO
PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE COUNTY OF SANTA CLARA AND
CODE COMPLIANT GROUP, FKA VISTA CONSTRUCTION SERVICES**

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:

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

Consultant:

Code Compliant Group, fka Vista Construction Services
9613 Southampton Drive
Windsor, CA, 95492
Contact: Jon Edwards
Email: jedwards@csquaredg.com
Phone: (408) 341-5644

END OF EXHIBIT G-1