

**PROFESSIONAL SERVICES AGREEMENT
FOR
COUNTY OF ALAMEDA**

[PROJECT NUMBER, NAME]

With

XXXXXXXXXXXX

for the

**AS-NEEDED
PROGRAM-PROJECT MANAGEMENT/CONSTRUCTION
MANAGEMENT PROFESSIONAL SERVICES**

Contract No. XXXXX

County of Alameda

COUNTY OF ALAMEDA

AGREEMENT BETWEEN THE COUNTY OF ALAMEDA AND

[COMPANY NAME].

This Agreement is made this XX day of [MONTH], 20XX, in the City of Oakland, State of California, by and between [COMPANY NAME], hereinafter referred to as “Consultant” and the County of Alameda, a political subdivision of the State of California, hereinafter referred to as “County”.

AGREEMENT

1 Definitions

Where any word or phrase defined below, or a pronoun used in place thereof, is used in any part of this Agreement, it shall have the meaning herein set forth.

Agreement This Agreement together with all attachments and appendices and other documents incorporated herein by reference, including, but not limited to, Appendices “A,” “B,” and “C,” attached hereto.

Consultant XXXXX

County County of Alameda.

Project The County’s XXXXX Project as further described in Appendix “A,” Scope of Services.

Services All work, labor, materials and services required under the terms and conditions of this Agreement, provided pursuant to the terms and conditions of this Agreement, including without limitation, coordination and administrative services.

Subconsultants Consultant’s consultants, subconsultants, contractors and subcontractors, of any tier.

2 Term of Agreement

All work comprising the Services shall be deemed performed under this Agreement. This Agreement shall conclude [MONTH DAY YEAR].

3 Services Consultant Agrees to Perform

3.1 Consultant shall perform all Services described in Appendix “A,” “Services to be Provided by Consultant,” attached hereto and incorporated by reference as though fully set forth herein.

3.2 Consultant shall complete all Services required by this Agreement within the times specified in the Milestone Schedule in Appendix “A.” Consultant agrees that the Milestone Schedule includes reasonable allowances for completion of the Services, including all time required for County’s review and approval of deliverables and for approval of the deliverables by all authorities having jurisdiction over the Project and the Services. Consultant shall achieve its scheduled Milestones (as shown on the Milestone Schedule) unless an excusable event causes a delay (excusable delay), and unless Consultant gives written notice of the excusable event and requests a time extension within ten days of the occurrence of the excusable event. (Excusable events shall be limited to acts of neglect by County or County’s agents or consultants when acting at County’s direction, breaches of this Agreement by County, Acts of God such as fire, flood, earthquake, or epidemic, or delay by a construction contractor during the construction phase of the Project, or any other circumstances beyond Consultant’s

reasonable control). If the period of excusable delay caused by an excusable event concurs with a Consultant caused or other nonexcusable delay, County may (but shall not be required to) grant a time extension without compensation.

- 3.3 Consultant may recover extra costs resulting from excusable delay upon showing that the costs claimed (i) resulted from time and/or expenses actually incurred in performing Services, (ii) were incurred by Consultant as a direct result of the delay and not otherwise within Consultant's scope of Services, and (iii) are documented to the County's satisfaction. (For example, and not by way of limitation, contract punch list, and final inspection Services, whenever performed, and Services related to correcting deficiencies in Consultant's work, shall be within Basic Services and not entitle Consultant to extra costs or Additional Services.)
- 3.4 Should the progress of the Services under this Agreement at any time fall behind schedule for any reason other than excusable delays, Consultant shall apply such additional manpower and resources as necessary to bring progress of the Services under this Agreement back on schedule and consistent with the standard of professional skill and care required by this Agreement. Time is of the essence in the performance of this Agreement.

4 Compensation

- 4.1 County shall pay Consultant compensation according to the Compensation Schedule established in Appendix "B," Payment to Consultant. County shall pay Consultant in monthly payments on or before the last day of each month for Services properly invoiced by the Consultant which have been properly performed as of the last day of the immediately preceding month and is due in Appendix "B."
- 4.2 County shall not incur any charges under this Agreement, nor shall any payments become due to Consultant for any payment period on the Project, until County receives all deliverables required under Appendix "A" for the payment period (if any) and reasonably accepts such deliverables as meeting the requirements of this Agreement. In cases where Consultant has partially completed one or more deliverables due during a payment period, and if Consultant demonstrates diligent progress thereon, then County may make a partial progress payment based upon Consultant's percentage completion of the partially completed deliverables and diligent progress but taking into account any adverse impacts upon County.
- 4.3 County will not withhold an entire payment if a questioned amount is involved, but will issue payment in the amount of the total invoice less any questioned amount(s). County will make payment for questioned amounts(s) upon County's receipt of any requested documentation verifying the claimed amount(s) and County's determination that the amount is due under the terms of this Agreement. County shall advise Consultant, in writing, within 15 days of receipt of the requested documentation. Final payment will be made when all Services required under this Agreement have been completed to the reasonable satisfaction of County including, without limitation, Consultant's transmittal of all deliverables to County required by Appendix "A."
- 4.4 Invoices furnished by Consultant under this Agreement must be in a form acceptable to County. All amounts paid by County to Consultant shall be subject to audit by County. Payment shall be made by County to Consultant at the address stated hereinabove.
- 4.5 County may set off against payments due Consultant under this Agreement any sums that County determines that Consultant owes to County because of Consultant's errors, omissions, breaches of this Agreement, delays or other acts which caused County

monetary damages. Prior to exercising such right, County must demand and attend mediation pursuant to Section 26.3 of this Agreement, to be attended by County, Consultant, and any applicable insurance carriers; such mediation to occur within 30 days of demand. If the parties cannot agree upon the time, place, and mediator, within one week of the County's demand, then the Alameda County Superior Court may upon application by any party make such selection for the parties. If a party other than County refuses to mediate under this Section, then County shall have satisfied its obligations under this Section.

5 Maximum Costs

- 5.1 County's obligation hereunder shall not at any time exceed the amount approved by the Board of Supervisors and approved by the County's General Services Agency Director for payment to the Consultant pursuant to the terms of this Agreement.
- 5.2 Except as may be provided by applicable law governing emergency conditions, County has not authorized its employees, officers and agents to request Consultant to perform Services or to provide materials, equipment and supplies that would result in Consultant performing Services or providing materials, equipment and supplies that exceed the scope of the Services, materials, equipment and supplies agreed upon in the Agreement unless the County amends the Agreement in writing and approves the amendment as required by law to authorize the additional Services, materials, equipment or supplies.
- 5.3 County shall not reimburse Consultant for Services, materials, equipment or supplies provided by Consultant beyond the scope of the Services, materials, equipment, and supplies agreed upon in the Agreement and unless approved by a written amendment to the Agreement having been executed and approved in the same manner as this Agreement.

6 Qualified Personnel

- 6.1 For purposes of this Agreement, except for notices specified under Section 17 below, County shall direct all communications to Consultant through, [PRINCIPAL, COMPANY NAME AND ADDRESS]; and Consultant shall direct all communications to County through XXXXX.
- 6.2 Services under this Agreement shall be performed only by competent personnel under the supervision of and/or in the employment of Consultant. Consultant shall conform with County's reasonable requests regarding the assignment of personnel, but all personnel, including those assigned at County's request, and shall be supervised by Consultant.
- 6.3 Consultant agrees that all professional personnel assigned to the Project will be listed in its proposal, Exhibit 1 to Appendix "A," attached hereto and by this reference incorporated herein, and that the listed personnel will continue their assignments on the Project during the entire term of this Agreement. It is recognized that the listed personnel are not bound by personal employment contracts to Consultant. Consultant agrees that reassignment of any of the listed personnel during the Agreement period shall only be with other professional personnel who have equivalent experience and shall require the prior written approval of County. Any costs associated with the reassignment of personnel shall be borne exclusively by Consultant.
- 6.4 Consultant agrees that should the above personnel not continue their assignments on the Project during the entire term of this Agreement, then Consultant shall not charge

County for the cost of training or “bringing up to speed” replacement personnel. County may condition its reasonable approval of substitution personnel upon a reasonable transition period wherein new personnel will learn the Project and get up to speed at Consultant’s cost.

7. Representations

- 7.1 Consultant represents that it has reviewed Appendix “A”, “Services to be Provided by Consultant”, and that in its professional judgment the Services to be performed under this Agreement can be performed for a fee within the maximum amount set forth in the Compensation Schedule established in Appendix “B”, Payments to Consultant, and within the times specified in the Milestone Schedule.
- 7.2 Consultant represents that it is qualified to perform the Services and that it possesses the necessary licenses and/or permits required to perform the Services or will obtain such licenses and/or permits prior to the time such licenses and/or permits are required. The consultant also represents that it has extensive knowledge of all applicable building codes, laws, regulations, and ordinances.
- 7.3 Consultant represents that it and its subconsultants have specialized expertise in services similar to those intended for the Project. Consultant agrees that the Services shall be performed in a manner that conforms to the standards of architectural or engineering practice observed by a specialist in performing services similar to the Services. Consultant agrees that for a period of one year after the completion of the Services or at the final acceptance of the construction resulting from the Services, whichever is later, it will re-perform or replace any part or all of the Services deemed by County to be defective and/or not meeting the above standard.
- 7.4 The granting of any progress payment by County, or the receipt thereof by Consultant, or any inspection, review, approval or oral statement by any representative of County or any other governmental entity, shall in no way waive or limit the obligations in this Section 7 or lessen the liability of Consultant to re-perform or replace unsatisfactory Services to the extent required by Section 7.3 above, including but not limited to cases where the defective or below standard Services may not have been apparent or detected at the time of such payment, inspection, review or approval.

8 Indemnification and General Liability

- 8.1 To the fullest extent permitted by law, Consultant shall defend (with legal counsel reasonably acceptable to County) indemnify, and hold harmless the County, its officers, agents, departments, officials, representatives and employees (collectively “Indemnitees”) from and against any and all claims, losses, damages, injuries (including, without limitation, injury to or death of an employee of Consultant or its Subconsultants), expenses, liabilities of every kind, nature and description (including, without limitation, indirect and incidental special and consequential damages, court costs, attorneys’ fees, litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) to the extent they arise from, or are brought for, or on account of or are connected in any way to Consultant’s performance of this agreement (collectively “Liabilities”) except where such Liabilities are caused solely by the negligence or willful misconduct of any indemnitee. County may participate in the defense of any such claim without relieving Consultant of any obligation hereunder. This indemnity obligation shall be for the full amount of all damage to County, including defense costs, and shall not be limited by any insurance limits.

- 8.2 Consultant shall defend (with legal counsel reasonably acceptable to the County), indemnify and hold harmless the Indemnitees from all loss, cost, damage, expense, liability or claims, in law or in equity, including attorneys' fees, court costs, litigation expenses and fees of expert consultants or expert witnesses, that may at any time arise for any infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark or any other proprietary right of any person or persons in consequence of the use by County, or any of the other Indemnitees, of Articles or Services to be supplied in the performance of this Agreement.
- 8.3 County shall include a provision in the construction contract with the general contractor on the Project requiring the general contractor to indemnify Consultant for damages resulting from the negligence of the general contractor and its subcontractors. County shall also include a provision in the construction contract with the general contractor on the project requiring the general contractor to name Consultant as an additional insured on its CGL insurance coverage.
- 8.4 Consultant shall place in its subconsulting agreements and cause its Subconsultants to agree to indemnities and insurance obligations in favor of County and other Indemnitees in the exact form and substance of those contained in this Agreement. Consultant shall require all subconsultants to comply with all indemnification and insurance requirements of this Agreement, including, without limitation, Exhibit C. Consultant shall verify subconsultant's compliance.
- 8.5 County acknowledges that the discovery, presence, handling or removal of asbestos products, polychlorinated biphenyl (PCB) or other hazardous substances which may presently exist at the Project site is outside of Consultant's expertise and is not included in the scope of Services Consultant is to perform nor included in Consultant's insurance. County shall hire an expert consultant in this field if the Project involves such materials. Consultant shall not be responsible or be involved in any way with the discovery, presence, handling or removal of such materials. Consultant shall be responsible for coordinating with County's expert consultant as required by Appendix "A," Services to Be Provided by Consultant.

9 Liability of County

- 9.1 Except as provided in Appendix "A," Services to be provided by Consultant, and Appendix "C," Insurance, County's obligations under this Agreement shall be limited to the payment of the compensation provided for in Sections 3, 4 and 5 of this Agreement.
- 9.2 Notwithstanding any other provision of this Agreement, in no event shall County be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Agreement or the Services performed in connection with this Agreement.
- 9.3 County shall not be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Consultant, or by any of its employees, even though such equipment be furnished, rented or loaned to Consultant by County. The acceptance or use of such equipment by Consultant or any of its employees shall be construed to mean that Consultant accepts full responsibility for and agrees to exonerate, indemnify, defend and save harmless County from and against any and all claims for any damage or injury of any type, including attorneys' fees, arising from the use, misuse or failure of such equipment, whether such damage be to the Consultant, its

employees, County employees or third parties, or to property belonging to any of the above.

- 9.4 Nothing in this Agreement shall constitute a waiver or limitation of any right or remedy, whether in equity or at law, which County may have under this Agreement or any applicable law. All rights and remedies of County, whether under this Agreement or other applicable law, shall be cumulative.

10 Independent Contractor; Payment of Taxes and Other Expenses

- 10.1 Consultant shall be deemed at all times to be an independent contractor and shall be wholly responsible for the manner in which Consultant performs the Services required of Consultant by the terms of this Agreement. Consultant shall be liable for the acts and omissions of its Subconsultants, its employees, and its agents.
- 10.2 Nothing contained herein shall be construed as creating an employment, agency or joint venture relationship between County and Consultant. Consultant acknowledges that neither it nor any of its employees or agents shall, for any purpose whatsoever, be deemed to be County employees, and shall not be entitled to receive any benefits conferred on County employees, including without limitation workers' compensation, pension, health, insurance or other benefits.
- 10.3 Consultant shall be solely responsible for payment of any required taxes, including California sales and use taxes, City of Oakland business taxes and United States income tax withholding and social security taxes, levied upon this Agreement, the transaction, or the Services delivered pursuant hereto.
- 10.4 Consultant shall be available as much as reasonably possible to County staff during the County's normal working hours or as otherwise requested by County. Terms of this Agreement referring to direction from County shall be construed as providing for direction as to policy and the result of Consultant's Services only and not as to the means by which such a result is obtained.
- 10.5 Nothing in this Agreement shall operate to confer rights or benefits on persons or entities who are not parties to this Agreement.

11 Insurance

- 11.1 Prior to execution of this Contract, Consultant shall furnish to County satisfactory proof that it maintains the insurance required by this Contract as set forth in Appendix C "Insurance," which is attached and made a part of this Contract. In the event Consultant fails to maintain any required insurance, County may (but is not obligated to) purchase such insurance and deduct or retain premium amounts from any sums due Consultant under this Contract (or Consultant shall promptly reimburse County for such expense).

12 Suspension of Services

- 12.1 County may, without cause, order Consultant to suspend, delay or interrupt ("suspend") Services pursuant to this Agreement, in whole or in part, for such periods of time as County may determine in its sole discretion. County shall deliver to Consultant written notice of the extent of the suspension at least seven (7) calendar days before the commencement thereof. The suspension shall be treated as an excusable delay, and Consultant shall be compensated for such delay to the extent provided under this Agreement.

- 12.2 Notwithstanding anything to the contrary contained in this Section, no compensation shall be made to the extent that performance is, was or would have been so suspended, delayed or interrupted by cause for which Consultant is responsible.

13 Termination of Agreement for Cause

- 13.1 If at any time County believes Consultant may not be adequately performing its obligations under this Agreement, that Consultant may fail to complete the Services as required by this Agreement, or has provided written notice of observed deficiencies in Consultant's performance, County may request from Consultant prompt written assurances of performance and a written plan to correct the observed deficiencies in Consultant's performance. Consultant shall provide such written assurances and written plan within ten calendar days of receipt of written request. Consultant acknowledges and agrees that any failure to provide written assurances and a written plan to correct observed deficiencies, in the required time, is a material breach under this Agreement.
- 13.2 Consultant shall be in default of this Agreement and County may, in addition to any other legal or equitable remedies available to County, terminate Consultant's right to proceed under the Agreement, for cause:
- 13.2.1 Should Consultant make an assignment for the benefit of creditors, admit in writing its inability to pay its debts as they become due, file a voluntary petition for bankruptcy, be adjudged a bankrupt or insolvent, file a petition or answer seeking for itself any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any present or future statute, law, or regulation, file any answer admitting or not contesting the material allegations of a petition filed against Consultant in any such proceeding, or seek, consent to, or acquiesce in, the appointment of any trustee, receiver, custodian or liquidator of Consultant or of all or any substantial part of the properties of Consultant, or if Consultant, its directors or shareholders, take action to dissolve or liquidate Consultant; or
- 13.2.2 Should Consultant commit a material breach of this Agreement and not cure such breach within ten (10) calendar days of the date of written notice from County to Consultant demanding such cure; or, if such failure is curable but not curable within such ten (10) day period, within such period of time as is reasonably necessary to accomplish such cure. (In order for Consultant to avail itself of this time period in excess of 10 calendar days, Consultant must provide County within the 10 day period a written plan acceptable to County to cure said breach, and then diligently commence and continue such cure according to the written plan); or
- 13.2.3 Should Consultant violate or allow a violation of any valid law, statute, regulation, rule, ordinance, permit, license or order of any governmental agency in effect at the time of performance of the Services and applicable to the Project or Services and does not cure such violation within ten (10) days of the date of the notice from County to Consultant demanding such cure; or, if such failure is curable but not curable within such ten (10) day period, within such period of time as is reasonably necessary to accomplish such cure. (In order for Consultant to avail itself of this time period in excess of 10 calendar days, Consultant must provide County within the 10 day period a written plan to cure said violation acceptable to County, and then diligently commence and continue performance of such cure according to the written plan.)

- 13.3 In the event of termination by County as provided herein for cause:
- 13.3.1 County shall compensate Consultant for the value of the Services delivered to County upon termination as determined in accordance with the Agreement, subject to all rights of offset and back charges, but County shall not compensate Consultant for its costs in terminating the Services or any cancellation charges owed to third parties;
 - 13.3.2 Consultant shall deliver to County possession of all tangible aspects of the Services in their then condition, including but not limited to, all copies (electronic and hard copy) of designs, engineering, Project records, cost data of all types, drawings and specifications and contracts with vendors and Subconsultants, and all other documentation associated with the Project, and all supplies and aids dedicated solely to performing Services which, in the normal course of the Services, would be consumed or only have salvage value at the end of the Services period.
 - 13.3.3 Consultant shall remain fully liable for the failure of any Services completed and drawings and specifications provided through the date of such termination to comply with the provisions of the Agreement. The provisions of this Section shall not be interpreted to diminish any right which County may have to claim and recover damages for any breach of this Agreement, but rather, Consultant shall compensate County for all loss, cost, damage, expense, and/or liability suffered by County as a result of such termination and failure to comply with the Agreement.
- 13.4 In the event a termination for cause is determined to have been made wrongfully or without cause, then the termination shall be treated as a termination for convenience, and Consultant shall have no greater rights than it would have had if a termination for convenience had been effected in the first instance. No other loss, cost, damage, expense or liability may be claimed, requested or recovered by Consultant.

14 Termination of Agreement for Convenience

- 14.1 County may terminate performance of the Services under the Agreement in accordance with this Section in whole, or from time to time in part, whenever County shall determine that termination is in the County's best interests. Termination shall be effected by County delivering to Consultant, at least seven (7) calendar days prior to the effective date of the termination, a Notice of Termination specifying the extent to which performance of the Services under the Agreement is terminated.
- 14.2 After receipt of a Notice of Termination, and except as otherwise directed by County, Consultant shall:
- 14.2.1 Stop Services under the Agreement on the date and to the extent specified in the Notice of Termination;
 - 14.2.2 Place no further orders or subcontracts (including agreements with Subconsultants) for materials, Services, or facilities except as necessary to complete the portion of the Services under the Agreement which is not terminated;
 - 14.2.3 Terminate all orders and subcontracts to the extent that they relate to performance of Services terminated by the Notice of Termination;

- 14.2.4 Assign to County in the manner, at times, and to the extent directed by County, all right, title, and interest of Consultant under orders and subcontracts so terminated. County shall have the right, in its discretion, to settle or pay any or all claims arising out of termination of orders and subcontracts;
 - 14.2.5 Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with approval or ratification of County to the extent County may require. County's approval or ratification shall be final for purposes of this clause;
 - 14.2.6 Transfer title and possession to County, and execute all required documents and take all required actions to deliver in the manner, at times, and to the extent, if any, directed by County, completed and uncompleted work products, Services in process, completed Services, supplies, and other material produced or fabricated as part of, or acquired in connection with performance of, Services terminated by the Notice of Termination (including mockups and model(s)), completed or partially completed plans, drawings, information, in whatever form (i.e., hard-copy and electronic), all intellectual property rights (including without limitation, to the extent applicable, all licenses and copyright, trademark and patent rights) and all other property and property rights which, if the Agreement had been completed, would have been required to be furnished to County.
 - 14.2.7 Use its best efforts to assist County in selling, in the manner, at times, to the extent, and at a price or prices that County directs or authorizes, any property of the types referred to in Section 14.2.6, but Consultant shall not be required to extend credit to any purchaser, and may acquire any such property under conditions prescribed and at a price or prices approved by County. All proceeds from the foregoing shall be applied to reduce payments to be made by County to Consultant under this Agreement, shall otherwise be credited to the price or cost of Services covered by this Agreement or be paid in such other manner as County may direct;
 - 14.2.8 Complete performance of any part of the Services which were not terminated by the Notice of Termination; and
 - 14.2.9 Take such action as may be necessary, or as County may direct, for the protection and preservation of property related to this Agreement which is in Consultant's possession and in which County has or may acquire an interest.
- 14.3 After receiving a Notice of Termination, Consultant shall submit to County a termination claim, in the form and with the Certification County prescribes. The claim shall be submitted promptly but in no event later than three months from the effective date of the termination, unless one or more extensions in writing are granted by County upon Consultant's written request made within such 3-month period or authorized extension. However, if County determines that facts justify such action, it may receive and act upon any such termination claim at any time after such 3-month period or extension. If Consultant fails to submit the termination claim within the time allowed, County may determine, on basis of information available to it, the amount, if any, due to Consultant because of the termination. County shall then pay to Consultant the amount so determined.
- 14.4 Subject to provisions of Section 14.3, Consultant and County may agree upon the whole or part of the amount or amounts to be paid to Consultant because of any

termination of Services under this Section. The amount or amounts may include a reasonable allowance for profit on Services done. However, such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total Agreement price as reduced by the amount of payments otherwise made and as further reduced by the Agreement price of Services terminated. The Agreement may be amended accordingly, and Consultant shall be paid the agreed amount.

- 14.5 If Consultant and County fail, under Section 14.4, to agree on the whole amount to be paid to Consultant because of termination of Services under this Section, then Consultant's entitlement to compensation for Services specified in the Agreement which are performed before the effective date of Notice of Termination, shall be the total (without duplication of any items) of –
- 14.5.1 Reasonable value of Consultant's Services performed prior to Notice of Termination, based on Consultant's entitlement to compensation under Appendix "B," "Payments to Consultant." Such amount or amounts shall not exceed the total Agreement price as reduced by the amount of payments otherwise made and as further reduced by the Agreement value of Services terminated. Deductions for such amount or amounts shall be made for deficiently performed Services, rework caused by deficiently performed Services, the cost of materials to be retained by Consultant, amounts realized from the sale of materials, and for other appropriate credits against the cost of Services. Such amount or amounts may include profit, but not in excess of 10 percent of Consultant's total costs of performing the Services.
- 14.5.2 When, in opinion of County, the cost of any item of Services is excessively high due to costs incurred to remedy or replace defective or rejected Services (including having to re-perform Services), reasonable cost to be allowed will be the estimated reasonable cost of performing Services in compliance with the requirements of Agreement and excessive actual cost shall be disallowed.
- 14.5.3 Reasonable cost to Consultant of handling material returned to vendors, delivered to County or otherwise disposed of as directed by County.
- 14.6 Except as provided in this Agreement, in no event shall County be liable for costs incurred by Consultant (or Subconsultants) after receipt of a Notice of Termination. Such non-recoverable costs include, but are not limited to, anticipated profits on the Agreement or subcontracts, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, costs of preparing and submitting claims or proposals, attorney's fees or other costs relating to prosecution of the claim or a lawsuit, pre-judgement interest, or any other expense which is not reasonable or authorized under Section 14.5.
- 14.7 This section shall not prohibit Consultant from recovering costs necessary to discontinue further Services under the Agreement as provided for in Section 14.2 or costs authorized by County to settle claims from Subconsultants.
- 14.8 In arriving at amount due Consultant under this Section there shall be deducted:
- 14.8.1 All unliquidated advance or other payments on account theretofore made to Consultant, applicable to the terminated portion of Agreement,
- 14.8.2 Any substantiated claim which County may have against Consultant in connection with this Agreement, and

14.8.3 The agreed price for, or proceeds of the sale of, any materials, supplies, or other things kept by Consultant or sold under the provisions of this Section, and not otherwise recovered by or credited to County.

14.9 If the termination for convenience hereunder is partial, before the settlement of the terminated portion of this Agreement, Consultant may file with County a request in writing for equitable adjustment of price or prices specified in the Agreement relating to the portion of this Agreement which is not terminated. County may, but shall not be required to, agree on any such equitable adjustment. Nothing contained herein shall limit the right of County and Consultant to agree upon amount or amounts to be paid to Consultant for completing the continued portion of the Agreement when the Agreement does not contain an established price for the continued portion. Nothing contained herein shall limit County's rights and remedies at law.

15 Conflicts of Interest/Other Agreements

15.1 Consultant represents that it is familiar with Section 1090 and Section 87100, *et seq.*, of the Government Code of the State of California, and that it does not know of any facts that constitute a violation of said sections.

15.2 Consultant represents that it has completely disclosed to County all facts bearing upon any possible interests, direct or indirect, which Consultant believes any member of County, or other officer, agent or employee of County or any department presently has, or will have, in this Agreement, or in the performance thereof, or in any portion of the profits thereunder. Willful failure to make such disclosure, if any, shall constitute ground for termination of this Agreement by County for cause. Consultant agrees to comply with all conflict of interest codes adopted by the County of Alameda and their reporting requirements.

15.3 Consultant covenants that it presently has no interest, and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of Services required under this Agreement. Without limitation, Consultant represents to and agrees with the County that Consultant has no present, and will have no future, conflict of interest between providing the County the Services hereunder and any interest Consultant may presently have, or will have in the future, with respect to any other person or entity (including but not limited to any federal or state wildlife, environmental or regulatory agency) which has any interest adverse or potentially adverse to the County, as determined in the reasonable judgment of the County. The provisions of this Section 15 shall remain fully effective indefinitely after termination of Services to the County hereunder.

16 Proprietary or Confidential Information of County; Publicity

16.1 Consultant acknowledges and agrees that, in the performance of the Services under this Agreement or in the contemplation thereof, Consultant may have access to private or confidential information which may be owned or controlled by County and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to County. Consultant agrees that all information disclosed by County to or discovered by Consultant shall be held in strict confidence and used only in the performance of the Agreement. Consultant shall exercise the same standard of care to protect such information as a reasonably prudent Consultant would use to protect its proprietary data, and shall not accept employment adverse to the County's interests where such confidential information could be used adversely to the County's interests. Consultant agrees to notify the County immediately in writing

if it is requested to disclose any information made known to or discovered by Consultant during the performance of or in connection with this Agreement.

- 16.2 Any publicity or press releases with respect to the Project or Services shall be under the County's sole discretion and control. Consultant shall not discuss the Services or Project, or matters pertaining thereto, with the public press, representatives of the public media, public bodies or representatives of public bodies, without County's prior written consent. Consultant shall have the right, however, without County's further consent, to include representations of Services among Consultant's promotional and professional material, and to communicate with persons or public bodies where necessary to perform under this Agreement.
- 16.3 The provisions of this Section 16 shall remain fully effective indefinitely after termination of Services to the County hereunder.

17 Notice to the Parties

- 17.1 Notices. All notices (including requests, demands, approvals or other communications) under this Agreement shall be in writing.

17.1.1 Method of Delivery. Notice shall be sufficiently given for all purposes as follows:

- (a) When personally delivered to the recipient, notice is effective on delivery.
- (b) When mailed first class to the last address of the recipient known to the party giving notice, notice is effective on delivery.
- (c) When mailed by certified mail with return receipt requested, notice is effective on receipt if delivery is confirmed by a return receipt.
- (d) When delivered by overnight delivery service, including Federal Express, United Parcel Service, with charges prepaid or charged to the sender's account, notice is effective on delivery if delivery is confirmed by the delivery service.
- (e) When sent by fax to the last fax number of the recipient known to the party giving notice, notice is effective on receipt as long as (1) a duplicate copy of the notice is promptly given by first-class or certified mail or by overnight delivery or (2) the receiving party delivers a written confirmation of receipt. Any notice given by fax shall be considered to have been received on the next business day if it is received after 5 p.m. (recipient's time) or on a nonbusiness day.

17.1.2 Refused, Unclaimed or Undeliverable Notices. Any correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified shall be considered to be effective as of the first date that the notice was refused, unclaimed, or considered undeliverable by the postal authorities, messenger, or overnight delivery service.

17.1.3 Addresses. Addresses for the purpose of giving notice are set forth below. Either party may change its address or fax number by giving the other party notice of the change in any manner permitted by this paragraph 17.

To County:
General Services Agency
Willie A. Hopkins, Director GSA
cc: XXXXXX, Deputy Director, GSA-Capital Programs
1401 Lakeside Drive, Suite XXXXXX
Oakland, California 94612

To Consultant:
XXXXXXXX.
[FIRM ADDRESS]
[CITY, STATE ZIP CODE]

17.1.4 Change of Recipient or Address. Either party may, by written notice given at any time or from time to time, require subsequent notices to be given to another person, whether a party or an officer or a representative, or to a different address, or both. Notices given before actual receipt of notice of change shall not be invalidated by the change.

18 Ownership of Results/Work for Hire

18.1 Any interest (including, but not limited to, property interests and copyright interests) of Consultant or its Subconsultants, in work products, including but not limited to, drawings, plans, specifications, studies, reports, memoranda, computational sheets or other documents (including but not limited to, electronic media) prepared by Consultant or its Subconsultants in connection with Services to be performed under this Agreement shall become the property of and will be transmitted to County at the conclusion of this Agreement. The consultant may, however, retain one copy for its files. Notwithstanding the foregoing, in the normal course of the Consultant's activities, Consultant shall have an unrestricted right to reuse its standard construction drawings, details, specifications and other related documents, including the right to retain electronic data or other reproducible copies thereof, and the right to reuse portions or the information contained in them which is incidental to the overall design of the Project.

18.2 Any and all artworks, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, source codes or any original works of authorship created by Consultant or its Subconsultants in connection with Services performed under this Agreement shall be Works for Hire as defined under Title 17 of the United States Code, and all copyrights in such works are the property of County. In the event that it is ever determined that any works created by Consultant or its Subconsultants under this Agreement are not Works for Hire under U.S. law, Consultant hereby assigns all copyrights to such works to County. With the prior written approval of the County, Consultant may retain and use copies of such works for reference and as documentation of its experience and capabilities.

19 Audit and Inspection Records

19.1 Consultant shall maintain all work products, including but not limited to, drawings, specifications, calculations, cost estimates, quantity takeoffs, statements of construction costs and completion dates, schedules and all correspondence, internal memoranda, papers, writings, electronic media and documents of any sort prepared by or furnished to Consultant during the course of performing the Services and providing services with respect to the Project, for a period of at least five years following final completion and acceptance of the Project. All such records (except for materials

subject to the attorney-client privilege, if any) shall be available to County, and County's authorized agents, officers, and employees, upon request at reasonable times and places. Monthly records of Consultant's personnel costs, Consultant costs, and reimbursable expenses pertaining to both Basic Services or Additional Services shall be kept on a generally recognized accounting basis, and shall be available to County, and County's authorized agents, officers, and employees, upon request at reasonable times and places. Consultant shall not destroy any Project records until after advising County and allowing County to accept and store the records.

- 19.2 Consultant agrees to maintain full and adequate records in accordance with County requirements to show actual costs incurred by Consultant in its performance of this Agreement, and to make available to County during business hours accurate ledgers, books of accounts, invoices, vouchers, cancelled checks, and accounting and other books, records and documents evidencing or relating to all expenditures and disbursements charged to County or relative to Consultant's activities under this Agreement. The consultant will furnish to County, its authorized agents, officers and employees such other evidence or information as County may request with regard to any such expenditure or disbursement charged by Consultant. Consultant will permit County, and County's authorized agents, officers, and employees, to audit, examine and make copies, excerpts and transcripts from such items, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement
- 19.3 Consultant shall maintain all items described in Sections 19.1 and 19.2 above in an accessible location and condition for a period of not less than five years after final completion and acceptance of the Project or until after final audit has been resolved, whichever is later. If such items are not kept and maintained by Consultant within a radius of fifty (50) miles from County's offices at 1401 Lakeside Drive, Oakland, California, Consultant shall, upon County's request and at Consultant's sole cost and expense, make such items available to County, and County's authorized agents, officers, and employees, for inspection at a location within said fifty (50) mile radius or Consultant shall pay County its reasonable and necessary costs incurred in inspecting Consultant's books and records, including, but not limited to, travel, lodging and subsistence costs. The State of California or any federal agency having an interest in the subject of this Agreement shall have the same rights conferred upon County by this Section.
- 19.4 The rights and obligations established pursuant to this Section shall be specifically enforceable and survive termination of this Agreement.

20 Subcontracting/Assignment/County Employees

- 20.1 Consultant and County agree that Consultant's unique talents, knowledge, and experience form a basis for this Agreement and that the services to be performed by Consultant under this Agreement are personal in character. Therefore, Consultant shall not subcontract, assign or delegate any portion of this Agreement or any duties or obligations hereunder unless approved by County in a written instrument executed and approved by the County in writing. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. Any agreement that violates this Section shall confer no rights on any party and shall be null and void.
- 20.2 Consultant shall use the subconsultants for the scopes of work listed in its Statement of Qualifications and Proposal (exhibits to Appendix "A"), below and shall not substitute

Subconsultants unless approved by written instrument executed and approved by the County in writing.

- 20.3 To the extent Consultant is permitted by County in writing to subcontract, assign or subcontract any portion of this Agreement or any duties or obligations hereunder, Consultant shall comply with all applicable prompt payment laws and regulations (including, without limitation, California Civil Code Section California §3321. Consultant shall remain fully liable and responsible for all acts and omissions of its Subconsultants in connection with the Services or the Project as if it engaged in the acts and omissions directly.
- 20.4 Consultant shall not employ or engage, or attempt to employ or engage, any person who is or was employed by County or any department thereof at any time that this Agreement is in effect, during the term of this Agreement and for a period of two years after the termination of this Agreement or the completion of the Services, without the written consent of County.

21. Small Local and Emerging Business (SLEB) Participation:

Consultant shall subcontract with XXXXXX, for services to be provided under this Agreement in an amount equal to twenty percent (20%) of the contract value of this Agreement in accordance with County's Small and Emerging Local Business provision, which includes but is not limited to:

- 21.1 SLEB subcontractor(s) is (are) independently owned and operated (*i.e.*, is not owned or operated in any way by Prime), nor do any employees of either entity work for the other.
- 21.2 As is applicable, Consultant shall ensure that the certification status of participating SLEB subcontractors is maintained in compliance with the SLEB Program for the term of this Agreement.
- 21.3 Consultant shall not substitute or add any small and/or emerging local business(s) listed in this Agreement without prior written approval from the County. Requests to substitute or add a small and/or emerging local business shall be submitted in writing to the County contract representative identified under Section 6.1 above. The consultant will not be able to substitute the subcontractor without prior written approval from the Alameda County Auditor-Controller Agency, Office of Contract Compliance (OCC).
- 21.4 All SLEB participation, except for SLEB prime contractor, must be tracked and monitored utilizing the Elation Compliance System. Consultant and Consultant's small and/or emerging local businesses participating subcontractors on the awarded contract are required to use the Elation web-based Compliance System as described in Appendix D (Contract Compliance Reporting Requirements) to report and validate payments made by Prime Contractors to the certified small and/or emerging local businesses. It is the Contractor's responsibility to ensure that they and their subcontractors are registered and trained as required to utilize the Elation Compliance System. SLEB prime contractor with SLEB subcontractors must enter payments made to subcontractors in the Elation System and ensure that SLEB subcontractors confirm payments received.
- 21.5 County will be under no obligation to pay Consultant for the percent committed to a SLEB subcontractor if the work is not performed by the listed small and/or emerging local business.

21.6 For further information regarding the Small Local Emerging Business participation requirements and utilization of the Alameda County Contract Compliance System contact the County Auditor- Controller's Office of Contract Compliance (OCC) via E-mail at ACSLEBcompliance@acgov.org.

County will be under no obligation to pay a consultant for the percent committed to a SLEB (whether SLEB is a prime or subcontractor) if the work is not performed by the listed small and/or emerging local business.

For further information regarding the Small Local Emerging Business participation requirements and utilization of the Alameda County Contract Compliance System contact the County Auditor- Controller's Office of Contract Compliance (OCC) via E-mail at ACSLEBcompliance@acgov.org.

22 First Source Program. For contracts over \$100,000, Consultant shall provide County ten (10) working days to refer to Consultant, potential candidates to be considered by Consultant to fill any new or vacant positions that are necessary to fulfill their contractual obligations to the County that Consultant has available during the contract term before advertising to the general public.

23 Non-Discrimination, Equal Employment Opportunity and Business Practices

Consultant shall not discriminate against any employee or applicant for employment, nor against any Subconsultant or applicant for a subcontract, because of race, color, religious creed, age, sex, actual or perceived sexual orientation, national origin, disability as defined by the ADA (as defined below) or veteran's status. To the extent applicable, Consultant shall comply with all federal, state and local laws (including, without limitation, County ordinances, rules and regulations) regarding non-discrimination, equal employment opportunity, affirmative action, and occupational-safety-health concerns, shall comply with all applicable rules and regulations thereunder, and shall comply with same as each may be amended from time to time.

24 Drug-Free Workplace Policy

Consultant acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on County premises. Consultant agrees that any violation of this prohibition by Consultant, its employees, agents or assigns shall be deemed a material breach of this Agreement.

25 Compliance with Americans with Disabilities Act

Consultant acknowledges that, pursuant to the Americans with Disabilities Act ("ADA"), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Consultant shall provide the Services specified in this Agreement in a manner that complies with the standard of care established under this Agreement regarding the ADA and any and all other applicable federal, state and local disability rights legislation. Consultant agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement, and further agrees that any violation of this prohibition on the part of Consultant, its employees, agents or assigns shall constitute a material breach of this Agreement.

26 Disputes

26.1 Should any question arise as to the meaning and intent of this Agreement, the question shall, prior to any other action or resort to any other legal remedy, be referred to the

County General Services Agency Director or his designee, and a principal of the Consultant who shall attempt, in good faith, to resolve the dispute. Such referral may be initiated by written request from either party and a meeting between the County representative, and principal of the Consultant shall then take place within five days of the request.

- 26.2 Provided that County continues to compensate Consultant in accordance with this Agreement, Consultant shall continue its Services throughout the course of any and all disputes. Nothing in this Agreement shall allow Consultant to discontinue Services during the course of any dispute, and Consultant's failure to continue Services during any and all disputes shall be considered a material breach of this Agreement. Consultant agrees that the existence or continued existence of a dispute does not excuse performance under any provision of this Agreement, including but not limited to, the time to complete the Services. The Consultant also agrees that should Consultant discontinue Services due to a dispute or disputes; County may terminate this Agreement for cause as provided herein.
- 26.3 In the event of claims exceeding \$50,000, as a precondition to litigation, the parties shall first participate in non-binding mediation pursuant to the construction mediation procedures of the American Arbitration Association ("AAA"), in Oakland, before a mediator mutually agreeable to the parties, and in the event the parties are unable to agree, selected by a judge of the Alameda County Superior Court from an approved list of AAA qualified construction mediators. The parties may agree to engage in discovery prior to mediation, but if they do, they shall follow the procedures prescribed in the California Code of Civil Procedure, Section 2019, et seq. and discovery so conducted shall apply in any subsequent litigation as if conducted in that litigation.

27 Agreement Made in California; Venue

- 27.1 This Agreement shall be deemed to have been executed in the City of Oakland, County of Alameda. The formation, interpretation, and performance of this Agreement shall be governed by the laws of the State of California, excluding its conflict of laws rules. The venue for all litigation relative to the formation, interpretation, and performance of this Agreement shall be in the County of Alameda. Consultant waives CCP §394.
- 27.2 The parties shall execute one original and six copies of this Agreement.

28 Compliance with Laws

- 28.1 Consultant represents that it will comply with all applicable laws in the performance of the Services, regardless of whether such laws are specifically stated in this Agreement and regardless of whether such laws are in effect on the date hereof. Consultant shall comply with all security requirements imposed by authorities with jurisdiction over the Project, and will provide all information, work histories and/or verifications as requested by such authorities for security clearances or compliance.
- 28.2 Consultant further represents that all plans, drawings, specifications, designs and any other product of the Services will comply with all applicable laws, codes and regulations, consistent with the standard of care in this Agreement.

29 Construction

All section and paragraph captions are for reference only and shall not be considered in construing this Agreement. Each signatory to this Agreement for Consultant shall have joint and several responsibility and liability to perform the terms of this Agreement.

30 Miscellaneous

- 30.1 As between the parties to this Agreement: as to all acts or failures to act by either party to this Agreement, any applicable statute of limitations shall commence to run on the date of issuance by County of the final Certificate for Payment, or termination of this Agreement, whichever is earlier. This section shall not apply to latent defects as defined by California law or negligence claims, as to which the statute of limitations shall be as defined by law. However, the applicable statutes of repose, California Code of Civil Procedure Sections §§ 337.1 and 337.15, shall continue to apply.
- 30.2 Any provisions or portion thereof of this Agreement, which is prohibited by, unlawful or unenforceable under any applicable law of any jurisdiction, shall as to such jurisdiction be ineffective without affecting other provisions of this Agreement. If the provisions of such applicable law may be waived, they are hereby waived to the end that this Agreement may be deemed to be a valid and binding agreement enforceable in accordance with its terms. If any provisions or portion thereof of this Agreement are prohibited by, unlawful, or unenforceable under any applicable law and are therefore stricken or deemed waived, the remainder of such provisions and this Agreement shall be interpreted to achieve the goals or intent of the stricken or waived provisions or portions thereof to the extent such interpretation is consistent with applicable law.
- 30.3 Either party's waiver of any breach, or the omission or failure of either party, at any time, to enforce any right reserved to it, or to require performance of any of the terms, covenants, conditions or other provisions of this Agreement, including the timing of any such performance, shall not be a waiver of any other right to which any party is entitled, and shall not in any way affect, limit, modify or waive that party's right thereafter to enforce or compel strict compliance with every term, covenant, condition or other provision hereof, any course of dealing or custom of the trade or oral representations notwithstanding.

31 Entire Agreement; Modifications of Agreement

- 31.1 The Agreement, and any written modification to the Agreement shall represent the entire and integrated Agreement between the parties hereto regarding the subject matter of this Agreement and shall constitute the exclusive statement of the terms of the parties' Agreement. The Agreement, and any written modification to the Agreement, shall supersede any and all prior negotiations, representations or agreements, either written or oral, express or implied, that relate in any way to the subject matter of this Agreement or written modification, and the parties represent and agree that they are entering into this Agreement and any subsequent written modification in sole reliance upon the information set forth in the Agreement or written modification and the parties are not and will not rely on any other information. All prior negotiations, representations or agreements, either written or oral, express or implied that relate in any way to the subject matter of this Agreement shall not be admissible or referred to hereafter in the interpretation or enforcement of this Agreement.
- 31.2 Consultant, in any price proposals for changes in the Services that increase the Agreement amount, or for any additional Services, shall break out and list its costs and use percentage markups. Consultant shall require its Subconsultants (if any) to do the same, and the Subconsultants' price proposals shall accompany Consultant's price proposals.
- 31.3 Consultant and its Subconsultants shall, upon request by County, permit inspection of all original unaltered Agreement bid estimates, subcontract Agreements, purchase orders relating to any change, and documents substantiating all costs associated with all cost proposals.

- 31.4 Changes in the Services made pursuant to this Section and extensions of the Agreement time necessary by reason thereof shall not in any way release Consultant's representations and agreements pursuant to this Agreement.
- 31.5 This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved by a fully authorized representative of both County and Consultant expressing such an intention in the case of a modification or by the party waiving in the case of a waiver.
- 31.6 Whenever the words "as directed," "as required," "as permitted," or words of like effect are used, it shall be understood as the direction, requirement, or permission of County. The words "approval," "acceptable," "satisfactory," or words of like import, shall mean approved by, or acceptable to, or satisfactory to County, unless otherwise indicated by the context.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates shown below their respective authorized signatures.

“County” COUNTY OF ALAMEDA, a political subdivision of the State of California

By: _____ Date: _____
[NAME / TITLE]

“Consultant” [COMPANY NAME]

By: _____ Its: _____
[NAME] [TITLE]

Date: _____

Approved as to form:

County Counsel

END OF DOCUMENT

APPENDIX A

SERVICES TO BE PROVIDED BY CONSULTANT

1. This is an appendix attached to, and made a part of and incorporated by reference with Agreement dated **[MONTH DAY YEAR]**, between the County of Alameda (“County”) and **[COMPANY NAME]** (“Consultant”), providing for professional services.

1.1 The County’s Proposed **[PROJECT NAME]** Project-

1.1.1 The County’s proposal for **[PROJECT NAME]** Project

1.2 Consultant Team

Consultant’s team consists of:

[COMPANY NAME]	[TITLE]
[COMPANY NAME]	[TITLE]
[COMPANY NAME]	[TITLE]

Consultant shall provide **XXXX** services, and is the prime consultant. Consultant, its team, their expertise, experience and proposed staffing, is set forth in Consultant’s Proposal dated **[MONTH DAY YEAR]**, incorporated into this Appendix by this reference, and attached to this Appendix as its Exhibit 1. The limits of this incorporation by reference are set forth in Section 3 of this Appendix.

1.3 Scope of Project

XXXXXX

The proposed project team consists of **XXXXXX** providing and **XXXXXX** providing **XXXXXX** of those services.

1.4 Consultant’s Milestone Schedule and Deliverables

- 1.4.1 **XXXXXX**
- 1.4.2 **XXXXXX**
- 1.4.3 **XXXXXX**

1.5 Personnel and Sub consultants

Consultant shall use only the personnel and sub consultants identified in its Statement of Qualifications and Proposal, attached hereto as Exhibit 1, in performing the Services.

2. General Requirements

2.1 General Criteria Governing Consultant’s Service.

2.1.1 Plans, material specifications, design calculations, site data [and any cost estimates] required to be prepared by Consultant shall be prepared by licensed personnel or personnel under the direction of licensed personnel. As required by the California Code of Regulations, “Responsible Charge” for such Services shall be with a Registered Architect or Engineer licensed in the State of California.

2.1.2 The Project shall be developed and designed to meet all applicable and the most current codes, laws, regulations, and professional standards. Certain exceptions are possible, but only when the County grants a written exemption to a specific standard or regulation.

- 2.1.3 Consultant shall review existing County data, reports, plans, and other information regarding the site, and perform field investigations as necessary to become familiar with the site. Consultant shall make an independent assessment of the accuracy of the information provided by the County concerning existing conditions (including but not limited to existing utilities and structures) and conduct such further investigations of existing conditions as are necessary for Consultant to perform the Services. Consultant shall rely on the results of its independent investigations and not on information provided by County. Consultant shall review supplied design information and advise County of its adequacy for Consultant's work and advise County of any further design or other services necessary to complete the Project.
- 2.1.4 Unless otherwise permitted in writing by County, Consultant shall not specify or recommend unique, innovative, proprietary or sole source equipment, systems or materials. In the event Consultant requests to specify or recommend a proprietary or sole source design or equipment, Consultant shall provide County with a written evaluation of whether all periodic maintenance and replacement of parts, equipment or systems, can be performed normally and without excessive cost or time. County will consider such evaluation in making its decision.

2.2 General Scope of Consultant's Services

- 2.2.1 Consultant's services shall include all professional services within the scope of Consultant's professional discipline (including Consultant's team's professional disciplines) necessary to accomplish the tasks defined throughout this Appendix. These services will include, but are not limited to, the services outlined in Consultant's proposed scope of services annexed to this Appendix as its Exhibit 1. Consultant shall have adequate personnel, facilities, equipment and supplies to complete Consultant's Services.
- 2.2.2 Performance of Services will require Consultant to work with, meet with, and attend meetings with County staff, with other governmental agencies, and with such other consultants as Consultant determines necessary, to the extent necessary for performance of Consultant's duties under this Agreement (including, but not limited to, Consultant's express duties of coordination with other consultants).
- 2.2.3 Consultant shall engage all appropriate specialty subconsultants as are necessary for proper completion of Consultant's Services in accordance with the scope of work specified herein and utilizing the consultants as specified in Exhibit 1, at the sole expense of Consultant. Consultant's contracts with its subconsultants (and their contracts with their subconsultants) shall incorporate this Agreement by reference to the extent not inconsistent with the subconsultant's scope of work. Consultant shall secure County's approval for any subconsultants not listed in Exhibits 1 and this Appendix. Consultant shall require each of its subconsultants to execute agreements containing a standard of care and indemnity provisions coextensive with those in this Agreement and which will indemnify and hold County harmless from any negligent errors or omissions of the Subconsultants.
- 2.2.4 Consultant shall provide County with written evaluations, when applicable, of the effect of any and all governmental and private regulations, licenses, patents, permits, and any other type of applicable restriction and associated requirements on the Services and its incorporation and its incorporation into the Project, including but not limited to, all requirements imposed by the Office of Statewide Health Planning & Development (OSHPD), Division of State Architect, Regional Water Quality Control Board, California Uniform Building Code and California Regulations (including but not limited to Title 24). Consultant may incorporate these written evaluations into its deliverables as expository of the report and design solutions provided.

2.3 Coordination of Services with the Project, County's Consultant Team, and County Staff

- 2.3.1 Consultant shall fully coordinate its Services with the services of all engineering disciplines and subconsultants involved in completing the Project. The objective of this coordination shall be the development of a comprehensive and workable design for the site work portion of the Project and preliminary design for the balance of the Project, with consistency in engineering standards, any construction methods anticipated construction details, materials specifications, and approaches, to secure practical, consistent and economic design solutions. Consultant shall immediately advise County in writing if any County staff or consultant fails in any manner to coordinate its work with Consultant, and the nature of the non-compliance. County will have responsibility to then enforce compliance.
- 2.3.2 Consultant shall provide appropriate safety training for Consultant's personnel. Consultant shall review and train Consultant's personnel in appropriate safety procedures for work in the Project construction area. Consultant shall require all personnel under Consultant's direction to wear white hard hats when entering the construction area, and any other safety equipment such as orange vests and appropriate shoes, ear and eye protection whenever these precautions are required by OSHA safety standards. Consultant shall provide all safety equipment for Consultant's personnel.

2.4 Deliverables and Completion Dates Required Under This Agreement

Required deliverables are discussed in Section 4 below, and in Consultant's proposed scope of work annexed as Exhibit 1. Each deliverable shall be reviewed with representatives of the County. The County shall make a reasonable determination of the acceptability of the deliverables. Consultant shall promptly correct deficiencies that County reasonably identifies in the deliverables and shall promptly make modifications to conform with Project requirements and modifications to achieve acceptability of deliverables to County, and the cost thereof is included in the fee for Basic Services. (If Consultant should disagree with County's determination, Consultant shall make the changes requested by County under a reservation of rights to request additional compensation and shall submit separate supporting documentation for the additional charge).

2.5 Monthly Progress Update

With each request for payment, Consultant shall provide County with a written Monthly Progress Update. The Monthly Progress Update shall cover the Consultant's percent complete for each phase of the work as outlined in the "Monthly Billing Breakdown" in accordance with Appendix B, Item 2. If applicable, the Monthly Progress Update shall identify any actions and approvals needed, and any problems in performing the Services (whether by Consultant, County or any third party) of which Consultant becomes aware.

3. Consultant's Proposal

- 3.1 The Consultant has prepared and supplied County with a proposed scope of work dated [MONTH DAY YEAR] which is attached to this Appendix as its Exhibit 1 and incorporated herein by this reference ("Proposal"). Consultant's Proposal represents Consultant's initial proposed scope of services. This Agreement (and its appendices) the Proposal are deemed complimentary; what is called for by one is as binding as if called for in both, and shall be performed by Consultant. In the case of direct conflict between this Agreement and the Proposal, then the following rules apply:
- 3.2 Regarding any conflict (direct or indirect) between the Proposal and either the Agreement Form, Appendix B Compensation Form, or Appendix C Insurance, the terms of the Agreement Form, Appendix B Compensation, and Appendix C Insurance shall have precedence.
- 3.3 Regarding any conflict (direct or indirect) between the Proposal and this Appendix A, the more stringent requirements providing the County with the broader scope of services shall have precedence, such that the scope of work described in this Appendix "A" and the scope of work described in the Proposal shall both be performed to the greatest extent feasible.

4 Basic Services

4.1 Consultants shall provide services in accordance with scope in section 1.3 above.

5 Additional Services

All Services identified in the Agreement, including but not limited to the Agreement form, the other appendices, and in the foregoing sections of this Appendix A are “Basic Services.” The County may request Consultant to provide services in addition to Basic Services, referred to hereafter as (Additional Services). Additional Services must be authorized by County in writing prior to performance. Consultant shall be compensated for Additional Services as provided herein unless the parties agree on lump sum compensation for particular work activities. (Under no circumstances shall Additional Services be deemed to include work or services necessary because of Consultant’s errors, omissions or conflicts of any type in Consultant’s work product. All such services shall be performed at no cost to County, including, but not limited to, any required corrections or revisions to reports, drawings or specifications that are a result of any errors or omissions by Consultant. Nor shall Additional Services include work performed prior to written notice and written agreement upon the Additional Services).

END OF APPENDIX A

APPENDIX B

PAYMENTS TO CONSULTANT

This is an appendix attached to, and made a part of and incorporated by reference with Agreement dated [MONTH DAY YEAR], between the County of Alameda (“County”) and XXXXXX (“Consultant”), providing for professional services.

1. Amount of Compensation for Services of Consultant

1.1. Excluding Additional Services only, the amount of compensation to be paid to Consultant for all services under this Agreement shall not exceed XXXXXX. A cost proposal shall be provided with the Consultant’s Task Order proposal response. Total compensation due Consultant shall be the actual amount invoiced based upon the Consultant’s hourly billing. Reimbursable Expenses are included in the NTE. The NTE also includes within its scope the scope of all subconsultants and their reimbursables, and shall constitute full compensation for the Services.

1.2 “Reimbursable Expenses” means job-related expenses directly incurred by Consultant in the performance of services provided under the Agreement. Reimbursable expenses include mail and overnight delivery services, reproduction of reports, drawings, specifications, photographs and similar. Normal travel expenses to and from the site are included in the base contract. Out-of-State travel in connection with the project shall be approved in advance by County.

2. Monthly Billing Breakdown

2.1.1. County shall make monthly payments to Consultant in accordance with approved Monthly Billing Breakdown, which shall be submitted by Consultant for County’s approval prior to the first monthly invoice. The “Monthly Billing Breakdown” shall itemize separate categories for each consultant, each design and construction phase, along with a project schedule defining the timeline and cost for each category.

2.1.2. All invoices must include:

Purchase Order Number

Project Name

Project Address

Project Number

Project Manager Name

Description of service performed

Date range of services performed

Sent electronically to: gsa.accountspayable@acgov.org or via mail to GSA Capital Programs, 1401 Lakeside Dr., Suite 800, Oakland, CA 94612.

3. Methods of Payment to Consultant

3.1 For Basic Services on the Project. Consultant shall submit monthly invoices in accordance with the approved “Monthly Billing Breakdown” specifying the percentage complete for each billing category and itemized reimbursable expenses supported by invoices and appropriate backup documentation. Each invoice shall report on Consultant’s total billings.

3.2 For Additional Services. The County shall pay Consultant for Additional Services, as defined below, as follows:

3.2.1 General. For Additional Services of Consultant’s professional staff engaged directly on the Project, on the basis of a lump sum amount negotiated between the parties, or, at County’s option, based on hourly rates per Consultant’s Billing schedule with an agreed Not-to-Exceed amount.

3.2.2 Subconsultants. For Additional Services of Subconsultants employed by Consultant to render Additional Services, the amount billed to Consultant, therefore.

3.2.3 For Additional services on an hourly basis, Consultant agrees that all Subconsultant billing will be limited to a not-to-exceed amount upon prior written approval of the County.

4. Definitions

- 4.1. "Additional Services" mean services beyond the scope of the Services defined in this Agreement. Additional Services must be authorized in writing prior to proceeding.
- a) The Billing Rates listed in attached Appendix B-1 shall be used as a basis for payment and shall apply to all of Consultant's and Subconsultants' principals, professional personnel and others engaged directly on the Project. The Billing Rates shall remain constant throughout this Agreement, and shall not be adjusted for inflation, salary adjustments, cost changes, or any other reason.

END OF APPENDIX B

APPENDIX C

INSURANCE

This is an appendix attached to, and made a part of and incorporated by reference with Agreement dated [MONTH DAY YEAR], by and between the County of Alameda, (“County”) and [COMPANY NAME]

- A. Consultant is required to maintain at all times during the performance of this Agreement the following insurance coverage:
1. Workers’ Compensation Employers’ Liability limits not less than \$1,000,000 each occurrence, \$1,000,000 per disease, and \$1,000,000 each employee. Consultant’s Workers’ Compensation Insurance policy shall contain a Waiver of Subrogation. In the event Consultant is self-insured, it shall furnish Certificate of Permission to Self-Insure signed by Department of Industrial Relations Administration of Self-Insurance, State of California. Employers’ Liability Coverage endorsement shall specify as entity and endorsement holder the County, its Board of Supervisors, the individual members thereof, and all County officers, agents, employees, and volunteers.
 2. Occurrence-based Commercial General Liability Insurance or Business Owners Policy with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations, and \$2,000,000 Aggregate. This liability insurance shall include but shall not be limited to protection against claims arising from bodily and personal injury (including death resulting therefrom) and damage to property resulting from Consultant’s or subcontractor’s or subconsultant’s operations.
 3. Occurrence-based Comprehensive or Business Owners Automobile Liability Insurance with limits not less than \$1 million each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, if any, and Non-owned and hired auto coverage, as applicable.
 4. Professional Liability Insurance with limits not less than \$1,000,000 each claim and \$2,000,000 in the aggregate with respect to negligent acts, errors or omissions in connection with professional services to be provided under this Agreement, with deductible amounts acceptable to the County. Acceptance of Contractor’s insurance by County shall not relieve or decrease the liability of Contractor hereunder. Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of the Contractor.
- B. General Liability and Automobile Liability Insurance policies shall be endorsed to provide the following:
1. Name as Additional Insured County, its Board of Supervisors, the individual members thereof, and all County officers, agents, employees, and volunteers.
 2. That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought, but the addition of one or more entities shall not affect the insurer’s limit of liability.
- C. All policies shall be endorsed to provide thirty (30) days advance written notice to County of cancellation, and certificates of all policies and endorsements shall be mailed to County as provided in the Agreement per paragraph 17.1.3.
- D. County may, at its sole option, terminate this Agreement on 15 days’ notice to Consultant (but during such 15 day period Consultant has the opportunity to cure the default), in the event of any lapse of required insurance coverage. County may, at its option, secure sufficient insurance coverage to replace any required insurance coverage which has lapsed, and Consultant hereby acknowledges its liability to reimburse County for all costs associated with such replacement insurance coverage.
- E. Insurance shall be maintained through an insurer and with deductible amounts acceptable to County. Should any of the required insurance be provided under a claims-made form, Consultant shall maintain such coverage continuously throughout the term of this Agreement, without lapse, and shall provide a discovery period for a period of three years beyond the Agreement expiration, to the effect that, should occurrences during the Agreement term give rise to claims made within four years after expiration of the Agreement, such claims shall be covered by such claims-made policies.

- F. Certificates of insurance, in form and with insurers satisfactory to County, evidencing all coverages above shall be furnished to County before commencing any operation under this Agreement, with complete copies of policies promptly upon County request.
- G. Approval of the insurance by County shall not relieve or decrease the liability of Consultant hereunder.
- H. If Consultant is an association or partnership, the association or partnership shall be insured by any one of the following methods:
 - 1. Separate insurance policies issued with the association or partnership as named insured.
 - 2. All insurance policies required by this Agreement of one of the participants to include the association or partnership as named insured.
 - 3. The association or partnership must be a named insured on all of the policies required by this Agreement.

END OF APPENDIX C

APPENDIX D
SAMPLE TASK ORDER
ARCHITECTURAL AND ENGINEERING SERVICES

Task Order

CONTRACT NUMBER:

PROJECT NAME:

PROJECT LOCATION:

PROJECT NUMBER:

Pursuant to the terms of the Contract, including all attachments, between the County of Alameda and Komorous-Towey Architects, and all documents attached and incorporated by reference below herein, Vendor is awarded this Task Order. There will be no changes in this Task Order's Scope of Services or Budget described in the Request for Task Order Proposal and Vendor's Proposal without written approval by Director of GSA or as otherwise delegated by the Board of Supervisors within the delegated limit and authority. *Invoices for costs outside the approved budget and scope will not be reimbursed unless the additional costs have been previously approved in writing.*

Documents Attached:

- REQUEST FOR TASK ORDER PROPOSAL *(Provided by County)*
- CONFLICT OF INTEREST, INELIGIBILITY and VOLUNTARY EXCLUSION CERTIFICATION *(Provided by County)*
- TASK ORDER PROPOSAL RESPONSE *(Provided by Vendor)*
- FEE PROPOSAL SHEET *(Provided by Vendor)*
- PROJECT SCHEDULE *(Provided by Vendor)*

NOT-TO-EXCEED LIMIT OF CONSULTANTS AS-NEEDED AGREEMENT: \$ _____

FUNDS AWARDED TO DATE UNDER AGREEMENT: \$ _____

FUNDING APPROVED FOR THIS TASK ORDER: \$ _____

BALANCE AVAILABLE FOR FUTURE CONTRACT TASK ORDER/S: \$ _____

ACCEPTANCE OF TASK ORDER (TO BE SIGNED IF AWARDED PROJECT)

I hereby acknowledge the receipt of the Task Order and agree to implement the Project/Activity described, in accordance with the Contract, the attached “Request for Task Order Proposal”, “Task Order Proposal Response”, “Fee Proposal Sheet” and “Project Schedule”, subject to necessary approvals of the Deputy Director of Technical Services, or his/her designee.

(INSERT FIRM NAME)

(INSERT SIGNATORY NAME, TITLE)

DATE

COUNTY OF ALAMEDA, GENERAL SERVICES AGENCU

DEPUTY DIRECTOR, Capital Programs

DATE