

NONDISCLOSURE AND USE OF INFORMATION
AGREEMENT

THIS NONDISCLOSURE AGREEMENT ("NDA") is by and between the County of Alameda ("County"), and _____ ("Contractor", together with the County, collectively, the "Parties), and shall begin on the execution date set forth below. The Parties agree as follows:

1. The Contractor acknowledges Contractor will be exposed to and may review drawings, specifications, information, data, and/or records that constitute secure, valuable, confidential, and proprietary information, know-how, and trade secrets belonging to the County, its agents, entities, or affiliates and/or third parties ("Confidential Information") as part of the procurement process for the **Santa Rita Jail Critical Operations** Project ("Project").
2. In consideration of being provided such Confidential Information, the Contractor agrees to hold the same in strict confidence and shall take all reasonable measures to prevent unauthorized or improper disclosure or use of the Confidential Information. The Contractor agrees that all such Confidential Information:
 - (a) Shall be used only for the purpose of bidding for the Project; and,
 - (b) The Contractor agrees that it shall only disclose this Confidential Information to its authorized personnel bidding on this Project. The Contractor further represents and warrants that the Contractor will implement and maintain reasonable security procedures and practices appropriate to the nature of the information, to protect the Confidential Information from unauthorized access, destruction, use, modification, or disclosure. The Contractor further agrees not to use the data for a secondary commercial purpose not related to this Project.
 - (c) Upon completion of the bidding process, the Contractor agrees to return to the County all any and all drawings, specifications, information, data, and/or records that constitute secure, valuable, confidential, and proprietary information, know-how, and trade secrets, belonging to County, its agents, entities, or affiliates.
3. The Contractor agrees that any third parties owning any Confidential Information that the County shares with the Contractor are express third party beneficiaries of this Agreement.
4. The Contractor agrees that for any violation of any provision of this NDA, the County may seek a restraining order and/or injunction against the Contractor in addition to any other remedy the County may have by law. The County reserves all rights that may be applicable to such a proceeding.
5. This Agreement shall be governed by and interpreted in accordance with the laws of the State of California. The Parties recognize that the courts of California are the proper venue for enforcement of this NDA, and the venue for all actions shall lie in the County of Alameda.

6. The Parties agree that Confidential Information shall not include (a) information that is in the public domain through no violation of this NDA; (b) information that the Contractor can demonstrate was already in its possession and was not acquired, directly or indirectly, from the County on a confidential basis; or (c) information that is independently developed by the Contractor without the use of or reference to the Confidential Information.

7. The Contractor shall be liable for the actions of, or any disclosure or use by, its employees, agents, subcontractors or representatives in violation of this NDA; however, such liability shall not limit or prevent any actions by the County directly against such employees, agents, or representatives for improper disclosure and/or use. In no event shall the Contractor or its employees, agents, or representatives take any actions related to Confidential Information that is inconsistent with holding Confidential Information in strict confidence. The Contractor shall immediately notify County in writing if it becomes aware of the possibility of any misuse, improper disclosure, or misappropriation of the Confidential Information by the Contractor or any of its employees, agents, or representatives. However, nothing in this Agreement shall obligate the County to monitor or enforce the Contractor's compliance with the terms of this Agreement.

8. Nothing in this Agreement is intended to or shall prevent the Contractor from complying with lawful disclosure orders of a court or governmental or regulatory agency ("Required Disclosure"). In the event Confidential Information becomes subject to a Required Disclosure, the Contractor agrees to notify the County immediately of the request. If the request is made in writing, the Contractor shall immediately provide the County with a copy of the request. The County may seek a court order to defend the confidentiality of the Confidential Information. If the disclosure of such Confidential Information is required to prevent the Contractor from being held in contempt or subject to other penalty, the Contractor agrees to furnish only such portion of the Confidential Information as it is legally compelled to disclose and to redact any and all Confidential Information not required to be disclosed by law or order. Moreover, prior to disclosing the Confidential Information, the Contractor shall provide the County the opportunity to seek a court order preventing the disclosure of the Confidential Information and will cooperate with any lawful requests from the County should the County decide to seek such a court order.

County of Alameda:

Contractor

 Signature

 Name

 Title

 Date

 Signature

 Name

 Title

 Date