

## AMENDMENT TO CONTRACT

# 1

The County of San Benito ("COUNTY") and In Studio Architecture ("CONTRACTOR") enter into this agreement on the date stated next to the signatures below. In consideration of the mutual promises set forth herein, the parties agree as follows:

### 1. Existing Contract.

#### a. Initial Contract.

COUNTY and CONTRACTOR acknowledge that the parties entered into a contract, dated June 13, 2017.

#### b. Prior Amendments. (Check one.)

The initial contract previously has not been amended.

The initial contract previously has been amended. The date(s) of prior amendments are as follows:

#### c. Incorporation of Original Contract.

The initial contract and any prior amendments to the initial contract (hereafter collectively referred to as the "original contract") are attached to this amendment as Exhibit 1 and made a part of this amended contract.

### 2. Purpose of this Amendment.

The purpose of this amendment is to change the agreement between the parties in the following particulars:

#### a. Term of the Contract. (Check one.)

The term of the original contract is not modified.

The term of the original contract (Exhibit 1) is extended from the current expiration date of December 31, 2018, to a new expiration date of June 30, 2019.

#### b. Scope of Services. (Check one.)

The services specified in the original contract (Exhibit 1) are not modified.

The services specified in the original contract (Exhibit 1) are modified as specified below: (Check one.)

The services specified in the original contract are modified only as specified below:

The services specified in the original contract are deleted in their entirety and replaced with the following services:

#### New Scope of Services:

(Insert new services.)

**c. Payment Terms. (Check one.)**

- The payment terms in the original contract (Exhibit 1) are not modified.
- The payment terms in the original contract (Exhibit 1) are modified as specified below: (Check one.)

The payment terms are modified only as specified below:

**Modified Payment Terms:**

The payment terms are deleted in their entirety and replaced with the following payment terms:

**New Payment Terms:**

**B-1. BILLING**

Charges for services rendered pursuant to the terms and conditions of this contract shall be invoiced on the following basis: (Check one.)

- One month in arrears.
- Upon the complete performance of the services specified in the original agreement (Exhibit 1) and this amendment.
- The basis specified in paragraph B-4.

**B-2. PAYMENT**

Payment shall be made by COUNTY to CONTRACTOR at the address specified in paragraph 8 of the original contract, net thirty (30) days from the invoice date.

**B-3. COMPENSATION**

COUNTY shall pay to CONTRACTOR: (Check one.)

- a total lump sum payment of \$ \_\_\_\_\_, or
- a total sum not to exceed \_\_\_\_\_,

for services rendered pursuant to the terms and conditions of the original contract (Exhibit 1) and this amendment, and pursuant to any special compensation terms specified in paragraph B-4.

**B-4. SPECIAL COMPENSATION TERMS: (Check one.)**

- There are no additional terms of compensation.
- The following specific terms of compensation shall apply:

d. **Other Terms.** (Check one.)

There are no other terms of the original contract that are modified.

Other terms of the original contract are modified only as specified below:


**Other Modified or New Terms:**  
(Insert other modified or new terms.)

3. **Other Terms.**

All other terms and conditions of the original contract (Exhibit 1) which are not changed by this amendment shall remain the same.

**CONTRACTOR:**

In Studio Architecture

  
By: Alex Reynoso, Principal

11.15.18

Date

**COUNTY:**

San Benito County Board of Supervisors

By: Anthony Botelho, Chair

Date

**APPROVED AS TO LEGAL FORM:**

San Benito County Counsel's Office

  
By: G. Michael Ziman, Deputy County Counsel

November 27, 2018

Date

**EXHIBIT 1  
TO AMENDMENT #   1**

**ORIGINAL  
CONTRACT**

(Please attach the initial contract and any prior amendments, from the most recent to the initial contract, in reverse chronological order.)

## CONTRACT

The COUNTY OF SAN BENITO ("COUNTY") and In Studio Architecture ("CONTRACTOR") enter into this contract which shall be effective on the date stated in Paragraph 1.

**1. Duration of Contract.**

This contract shall commence on June 13, 2017, and end on December 31, 2018, unless sooner terminated as specified herein.

**2. Scope of Services.**

CONTRACTOR, for COUNTY's benefit shall perform the services specified on Attachment A to this contract. Attachment A is made a part of this contract.

**3. Compensation for Services.**

In consideration for CONTRACTOR's performance, COUNTY shall pay compensation to CONTRACTOR according to the terms specified in Attachment B. Attachment B is made a part of this contract.

**4. General Terms and Conditions.**

The rights and duties of the parties to this contract are governed by the general terms and conditions mutually agreed to and listed in Attachment C. Attachment C is made a part of this contract.

**5. Insurance Limits.**

CONTRACTOR shall maintain the following insurance policy limits of coverage consistent with the further insurance requirements specified in Attachment C.

- (a) Comprehensive general liability insurance: \$1,000,000
- (b) Professional liability insurance: \$1,000,000
- (c) Comprehensive motor vehicle liability insurance: \$250,000/\$500,000

**6. Termination.**

The number of days of advance written notice required for termination of this contract is 30.

**7. Specific Terms and Conditions (check one)**

- There are no additional provisions to this contract.
- The rights and duties of the parties to this contract are additionally governed by the specific, additional terms mutually agreed to and listed in Attachment D. Attachment D is made a part of this contract.
- The rights and duties of the parties to this contract are additionally governed by the specific, additional terms mutually agreed to and listed in Attachment E. Attachment E is made a part of this contract.

**8. Information about Contract Administrators.**

The following names, titles, addresses, and telephone numbers are the pertinent information for the respective contract administrators for the parties.

Contract Administrator for COUNTY:

Name: Larry Perlin

Title: Resource Management Agency Director

Address: 2301 Technology Parkway

Hollister, California 95023

Telephone No.: 831-636-4170

Fax No.: 831-636-4176

Contract Administrator for CONTRACTOR:

Name: Alex Reynoso

Title: Principal

Address: 250 Main Street

Salinas, CA 93901

Telephone No.: 831-320-2655

Fax No.:

**SIGNATURES**

APPROVED BY COUNTY:

\_\_\_\_\_

Name: Jaime De La Cruz

Chair, Board of Supervisors

Date: \_\_\_\_\_

APPROVED BY CONTRACTOR:

\_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**APPROVED AS TO LEGAL FORM:**

San Benito County Counsel's Office

\_\_\_\_\_

By: Shirley L. Murphy, Deputy County Counsel

Date: \_\_\_\_\_

## ATTACHMENT A

### SCOPE OF SERVICES

CONTRACTOR shall provide architectural and engineering services for the Phase II renovation of the County's existing facility located at 1161 San Felipe Road in Hollister, CA. Services shall include the following:

1. **Project:** A Building Tenant Improvement to accommodate a Homeless Service Center consisting of approximately 4,320 square foot building upgrade and space layout.

### BASIC SERVICES TO BE RENDERED BY CONTRACTOR

#### 1. General

1.1.5.1.1 CONTRACTOR'S Basic Services consist of the design services, including landscaping architectural services and landscape irrigation design, and all civil, structural, mechanical, and electrical engineering services, normally required to complete the Project.

#### 1.2. Schematic Design Phase

1.2.1. The CONTRACTOR shall review all information concerning the Project delivered or communicated by the COUNTY to the CONTRACTOR to ascertain the requirements of the Project and shall arrive at a mutual understanding of such requirements with the COUNTY.

1.2.2. The CONTRACTOR shall provide a preliminary evaluation of the COUNTY's Project, schedule, and construction budget requirements, each in terms of the other.

1.2.3. Based on a mutual understanding of the COUNTY's requirements, the CONTRACTOR shall prepare for the COUNTY's written approval, Schematic Design Documents, which include schematic design studies, site utilization plans, a description of the Project showing, among other things, the scale and relationship of the components of the Project, preparation of a written statement of Probable Project Construction Cost and a written time schedule for the performance of the work that itemizes constraints and critical path issues.

1.2.4. The CONTRACTOR shall submit to the COUNTY a preliminary Statement of Probable Project Construction Cost based on current area, volume, and other unit costs.

#### 1.3. Design Development Phase

1.3.1. Following COUNTY's written approval of the Schematic Design Documents and Statement of Probable Project Construction Cost, CONTRACTOR shall provide all necessary architectural and engineering services to prepare Design Development Documents fixing and describing the size and character of the project and which shall include site and floor plans, elevations and other approved drawings and shall outline the specifications of the entire Project as to kind and quality of materials,

categories of proposed work such as architectural, structural, mechanical and electrical systems, types of structures and all such other work as may be required.

- 1.3.2. The CONTRACTOR shall advise the COUNTY of any adjustments to the preliminary Statement of Probable Project Construction Cost.

#### **1.4. Contract Documents Phase**

- 1.4.1. Following the COUNTY's written approval of the Design Development Documents and any adjustments to the construction budget, the CONTRACTOR shall prepare for the written approval of COUNTY, Contract Documents consisting of complete working drawings and specifications setting forth in detail sufficient for construction the work to be done and the materials, workmanship, finishes and equipment required for the architectural, structural, mechanical, electrical system and utility-service-connected equipment and site work.
- 1.4.2. Unless the COUNTY informs CONTRACTOR that COUNTY will be responsible for preparing bid documents, the CONTRACTOR shall prepare all bid documents during the Contract Documents Phase of the Project, and forward them to the COUNTY for written approval and adoption by the Board of Supervisors prior to their use.
- 1.4.3. The CONTRACTOR shall submit the Contract Documents to the governing agency for plan check, and make the necessary corrections to secure permit approval.
- 1.4.4. The CONTRACTOR shall give the COUNTY, at the time of permit approval of the final form of the Contract Documents, CONTRACTOR'S final estimate Statement of Probable Project Construction Cost.

#### **1.5. Bidding and Negotiations Phase**

- 1.5.1. Following the governing agency and COUNTY's written approval of Contract Documents and COUNTY's written acceptance of CONTRACTOR'S final Statement of Probable Project Construction Cost, CONTRACTOR shall reproduce the Contract Documents in the number requested by the COUNTY and distribute the Contract Documents among interested bidders. CONTRACTOR shall also direct the obtaining of bids, and shall assist the COUNTY in evaluating contract proposals or bids and substitutions proposed by bidders, and in awarding the construction contract. All sets of Contract Documents, which does not include those for the use of the CONTRACTOR or its consultants, requested by the COUNTY shall be reproduced at COUNTY'S cost, reproductions shall be done at COUNTY'S requested location and billed directly to COUNTY.
- 1.5.2. CONTRACTOR'S Statement of Probable Project Construction Cost at the time of permit approval of the Contract Documents shall be current as of that date. Should bids be received more than ninety (90) days after the date of that Project Construction Cost, the CONTRACTOR'S Project Construction Cost shall be escalated by the cost-of-construction in the then current mutually agreed upon recognized building cost index.



1.5.3. The CONTRACTOR shall review the qualifications of all bidders for the construction of the Project, and shall make recommendations to the COUNTY as to whether, in the CONTRACTOR'S professional opinion, a bidder meets the minimum requirements.

#### **1.6. Construction Administration Phase**

- 1.6.1. The construction phase shall begin on the date stated in the official Notice to Proceed and, solely for purposes of payment of the CONTRACTOR, shall be deemed complete upon COUNTY's written approval of CONTRACTOR'S final certificate for payment to the Construction Contractor. Such certification and payment shall not constitute an admission by CONTRACTOR or COUNTY that the Project has been completed in accordance with Contract Documents or in conformance with this Agreement.
- 1.6.2. All instructions to the Construction Contractor shall be forwarded through the CONTRACTOR. The CONTRACTOR shall advise, consult with, and serve as the COUNTY's representative in the general administration of the Contract for Construction and in COUNTY's dealings with the Construction Contractor, however, the CONTRACTOR will have authority to act on behalf of the COUNTY only to the extent provided in the Contract Documents.
- 1.6.3. The CONTRACTOR shall timely provide COUNTY with copies of all correspondence between the CONTRACTOR and the Construction Contractor.
- 1.6.4. The CONTRACTOR shall timely review and approve, take exception to or take other appropriate action upon the Construction Contractor's submittals such as Shop Drawings, Product Data and Samples for conformance to design intent and information in the Contract Documents.
- 1.6.5. CONTRACTOR shall include requirements in the Contract Documents that the the Construction Contractor prepare an accurate set of as built record drawings indicating dimensions and locations of buried utility lines (showing as-built dimensions) which shall be updated monthly and forwarded to the COUNTY upon completion of the Project. While CONTRACTOR cannot guarantee precise accuracy of such drawings, CONTRACTOR shall exercise reasonable care in reviewing such drawings to determine their general compliance with the Contract Documents. CONTRACTOR shall have no responsibility for their conformity to field conditions. Except that in the event that the CONTRACTOR, consistent with standards of due care, becomes aware of non-conformity with field conditions, CONTRACTOR shall have a duty immediately to notify the COUNTY in writing.
- 1.6.6. The CONTRACTOR shall, at all times, have access to the Project wherever it is in preparation and progress. The Construction Contractor shall provide facilities for such access so that the CONTRACTOR may perform its functions under the Agreement and Contract Documents.
- 1.6.7. In the discharge of its duties of observation and interpretation, the CONTRACTOR shall require the Construction Contractors to comply with

the Contract Documents, and shall guard the COUNTY against defects and deficiencies in the work of the Construction Contractor. The CONTRACTOR shall advise and consult with the COUNTY concerning the Construction Contractor's compliance with the Contract Documents and shall assist the COUNTY in securing the Construction Contractor's compliance. The CONTRACTOR shall visit the site, both as the CONTRACTOR deems necessary and as requested by the COUNTY, to maintain familiarity with the quality and progress of the Project, to determine that the Construction Contractor's work substantially complies with all documents, drawings, plans and specifications and that the Project is progressing in substantial accordance with the Contract Documents. Such observations are to be distinguished from the continuous inspection provided by the Project Inspector. The CONTRACTOR shall not be required to make inspections, exhaustive or continuous on-site observations to check the quality or quantity of the work.

1.6.8. The CONTRACTOR shall notify the COUNTY promptly of any significant defect in materials, equipment, or workmanship, and of any default by any Construction Contractor in the orderly and timely prosecution of the Project.

1.6.9. The CONTRACTOR shall review and take other appropriate action upon contractually required submittals such as schedules, shop drawings, samples, product data and other required submissions of the Construction Contractor to determine general conformance with the Project design and specifications as set forth in the Contract Documents including submittals required for Change Orders. The CONTRACTOR will have the authority to recommend to the COUNTY to reject work and materials or submittals that do not conform to the Contract Documents. The CONTRACTOR'S approval of a specific item shall not be an approval of an assembly of which the item is a component. Whenever, in the CONTRACTOR'S reasonable judgment, it is considered necessary or advisable for the implementation of the intent of the Contract Documents, the CONTRACTOR will have authority to recommend to the COUNTY special inspection or testing of the work or materials in accordance with the Contract Documents whether or not such work or materials be then fabricated, installed, or completed. The CONTRACTOR will also have the authority to recommend to the COUNTY to approve substitution of materials or equipment when, in the CONTRACTOR'S reasonable judgment, such action is necessary to the accomplishment of the intent and purpose of the Contract Documents so long as substitution does not increase costs or time to complete the project. The CONTRACTOR'S actions as described in this paragraph shall be taken with reasonable promptness while allowing sufficient time in the CONTRACTOR'S professional judgment to permit adequate review. Review of such 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 Construction Contractor, all of which remains the responsibility of the Construction Contractor to the extent

required by the Contract Documents. CONTRACTOR'S approval of a submittal shall not constitute approval of substitutions or alternatives to the Construction Documents if not identified as such by the Construction Contractor. Such substitution proposal submittals shall be consistent with the submission requirements of the Construction Documents. The CONTRACTOR'S review shall not constitute approval of safety precautions or construction means, methods, techniques, sequences, or procedures. When professional certification of performance characteristics of materials, systems or equipment is required by the Contract Documents, the CONTRACTOR shall be entitled to rely upon such certification to establish that the materials, systems or equipment will meet the performance criteria required by the Contract Documents.

1.6.10. CONTRACTOR shall require the Construction Contractor to provide assistance in the utilization of any equipment or system such as initial start-up or testing, adjusting and balancing, preparation of operation and maintenance manuals and training personnel for operation and maintenance by including appropriate language in the Contract Documents, as agreed by CONTRACTOR and COUNTY.

1.6.11. The CONTRACTOR shall not be responsible for construction means, methods, techniques, sequences, or procedures, coordination of the Construction Contractor's subcontractor's work, or for safety precautions or programs in connection with the work. The CONTRACTOR shall not be responsible for acts or omissions of the Construction Contractor, subcontractors, or their agents or employees or of any other persons performing portions of the Project not employed or retained by CONTRACTOR, unless due to the CONTRACTOR'S intentional or negligent act or failure to act.

1.6.12. The CONTRACTOR will, consistent with standards of due care, make reasonable professional efforts to exclude substances that are banned by law for use in public works construction projects, including asbestos, lead based paint and PCB from new construction. In the event the COUNTY or CONTRACTOR is or becomes aware of the presence of, or exposure of persons to, asbestos, polychlorinated biphenyl (PCB) or any other toxic or hazardous contaminants, materials, air pollutants or water pollutants at the Project site ("Hazardous Substances"), or the substantial risk thereof, each shall have a duty immediately to notify the other in writing. The parties recognize, however, that neither CONTRACTOR nor the COUNTY is trained or licensed in the recognition or remediation of Hazardous Substances. If the CONTRACTOR has recommended and the COUNTY has agreed to retain a qualified consultant to evaluate the presence of asbestos and asbestos containing materials at a certain COUNTY facility included in the scope of this Agreement, in the event that said consultant recommends a procedure to deal with such materials, said consultant shall have the responsibility to draft specification language for the removal or other remediation of such materials, and subsequently may be required to certify that they have been properly removed or otherwise remediated. CONTRACTOR shall include consultant's recommendations and

specifications in the appropriate design documents for modernization and shall, as part of its Basic Services, provide designs and other bid documents consistent therewith.

When construction is properly completed, COUNTY's Consultant shall provide such certification as to Hazardous Substances as is required for such projects.

- 1.6.13. Based on the CONTRACTOR'S observations, and an evaluation of each Project Application for Payment, the CONTRACTOR will review & certify the amounts due to the Construction Contractor and will issue Project Certificates for Payment on CONTRACTOR'S standard form incorporating the appropriate amount in accordance with the Contract Documents. The issuance of a Project Certificate for Payment shall constitute a representation to the COUNTY based upon CONTRACTOR'S observations at the site and data comprising the Construction Contractor's applications for payment, that the work has progressed to the point indicated and the quality of the Project work is in accordance with the Contract Documents and that the Construction Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate of Payment shall not be a representation that the CONTRACTOR has (1) made exhaustive or continuous on-site inspections to check the quality of quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, or (3) ascertained how or for what purpose the Construction Contractor has used money previously paid on account of the Contract Sum.
- 1.6.14. Notwithstanding anything else in this Agreement the CONTRACTOR shall assist the COUNTY in evaluating and responding to claims, disputes and other matters in question between the Construction Contractor and the COUNTY and in such instances provide such truthful testimonial assistance as may be required by the COUNTY.
- 1.6.15. The CONTRACTOR will provide construction advice to the COUNTY on apparent deficiencies in construction, both during construction and after acceptance of the Project.
- 1.6.16. The CONTRACTOR shall recommend, prepare and process the necessary change orders. Payment of fees to the CONTRACTOR as a result of change orders shall be handled as follows:
  - 1.6.16.1. COUNTY initiated change orders. If a change order is requested by the COUNTY, the CONTRACTOR'S fee for such change order shall be calculated on a percentage or hourly basis as agreed in writing by the COUNTY and the CONTRACTOR prior to commencement of work on the change order. If a change order is solicited by the COUNTY from the Construction Contractor but not subsequently authorized by the COUNTY, the CONTRACTOR shall be paid for time spent on the proposed change order as an Additional Service.
  - 1.6.16.2. Change orders due to CONTRACTOR negligence. When a change order is necessitated as a result of negligence in the exercise of CONTRACTOR'S professional duties, the CONTRACTOR'S fees shall not be calculated by reference to the cost of any change order work

which would not have been necessitated had the work been included in the bid documents.

- 1.6.16.3. Change orders beyond COUNTY or CONTRACTOR control. If a change order is necessitated as a result of changes in law, in-field changes required by governing agencies after document approval, unknown, unforeseeable or hidden conditions, or actual conditions inconsistent with available drawings of existing conditions, such change orders shall be handled in the same manner as COUNTY initiated change orders.
- 1.6.17. The CONTRACTOR shall provide a color schedule of all finish materials in the Project for the COUNTY's review and approval.
- 1.6.18. The CONTRACTOR shall determine the date of final completion and make the final on-site observations of the job with representatives of the COUNTY and the Construction Contractor.
- 1.6.19. The CONTRACTOR shall issue the final Certificate for Payment and any other documents required to be recorded by law or generally accepted architectural or construction contract practice upon compliance with the requirements of the Contract Documents, provided that such certification shall not constitute an admission that the Project has been completed in accordance with Contract Documents or in conformance with this Agreement.
- 1.6.20. The CONTRACTOR shall assemble and deliver to COUNTY all written guarantees, instruction books, diagrams and charts required of the Construction Contractors and provide the COUNTY with one set of reproducible drawings showing the Project "as built" upon issuance of the CONTRACTOR'S certificate of completion with the location of underground sewer, water and all utility connections and services specially noted.

**END OF ATTACHMENT A**

**ATTACHMENT B  
Payment Schedule**

**B-1. BILLING**

Charges for services rendered pursuant to the terms and conditions of this contract shall be invoiced on the following basis: (check one)

- One month in arrears.
- Upon the complete performance of the services specified in Attachment A.
- The basis specified in paragraph B-4.

**B-2. PAYMENT**

Payment shall be made by COUNTY to CONTRACTOR at the address specified in paragraph 8 of this contract, net thirty (30) days from the invoice date.

**B-3. COMPENSATION**

COUNTY shall pay to CONTRACTOR: (check one)

- a total lump sum payment of \$ \_\_\_\_\_, or
- a total sum not to exceed \$ 80,925.00

for services rendered pursuant to the terms and conditions of this contract and pursuant to any special compensation terms specified in this attachment, Attachment B.

**B-4. SPECIAL COMPENSATION TERMS: (check one)**

- There are no additional terms of compensation.
- The following specific terms of compensation shall apply:

A. Compensation shall be distributed by phase as follows:

Schematic Design (SD):	\$11,250
Design Development (DD):	\$11,250
Construction Documents (CD):	\$42,425
Back Check (BC):	\$4,000
Bidding (BD):	\$3,000
Construction Administration:	
Not to exceed 6 months	\$7,000
Reimbursable expenses	\$2,000

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Total	\$80,925
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**END OF ATTACHMENT B**

## ATTACHMENT C

### General Terms and Conditions

#### C-1. INDEMNIFICATION.

CONTRACTOR and COUNTY each agree to indemnify, defend and save harmless the other party and the other party's officers and employees, from and against any and all claims and losses whatsoever arising out of, or in any way related to, the indemnifying party's performance under this contract, including, but not limited to, claims for property damage, personal injury, death, and any legal expenses (such as attorneys' fees, court costs, investigation costs, and experts' fees) incurred by the indemnitee in connection with such claims or losses. A party's "performance" includes the party's action or inaction and the action or inaction of that party's officers and employees.

#### C-2. GENERAL INSURANCE REQUIREMENTS.

Without limiting CONTRACTOR's duty to indemnify COUNTY, CONTRACTOR shall comply with the insurance coverage requirements set forth in the contract and in this attachment. Those insurance policies mandated by Paragraph C-3 shall satisfy the following requirements:

- (a) Each policy shall be issued by a company authorized by law to transact business in the State of California.
- (b) Each policy shall provide that COUNTY shall be given notice in writing at least thirty (30) days in advance of any change, cancellation, or nonrenewal thereof.
- (c) The comprehensive motor vehicle and comprehensive general liability policies shall each provide an endorsement naming the County of San Benito and its officers, agents and employees as additional insureds.
- (d) The required coverage shall be maintained in effect throughout the term of this contract.

CONTRACTOR shall require all subcontractors performing work under this contract to obtain substantially the identical insurance coverage required of CONTRACTOR pursuant to this agreement.

#### C-3. INSURANCE COVERAGE REQUIREMENTS.

If required by paragraph 5 of the contract, CONTRACTOR shall maintain the following insurance policies in full force and effect during the term of this contract:

- (a) Comprehensive general liability insurance. CONTRACTOR shall maintain comprehensive general liability insurance, covering all of CONTRACTOR's operations with a combined single limit of not less than the amount set out in paragraph 5 of this contract.
- (b) Professional liability insurance. CONTRACTOR shall maintain professional liability insurance with liability limits of not less than the amount set out in paragraph 5 of this contract.

- (c) Comprehensive motor vehicle liability insurance. CONTRACTOR shall maintain comprehensive motor vehicle insurance covering all motor vehicles (including owned, non-owned and hired) used in providing services under this contract, with a combined single limit of not less than the amount set out in Paragraph 5 of this contract.
- (d) Workers' compensation insurance. CONTRACTOR shall maintain a workers' compensation plan covering all of its employees as required by California Labor Code Section 3700, either through workers' compensation insurance issued by an insurance company or through a plan of self-insurance certified by the State Director of Industrial Relations. If CONTRACTOR elects to be self-insured, the certificate of insurance otherwise required by this contract shall be replaced with a consent to self-insure issued by the State Director of Industrial Relations.

#### **C-4. CERTIFICATE OF INSURANCE.**

Prior to the commencement of performance of services by CONTRACTOR and prior to any obligations of COUNTY, CONTRACTOR shall file certificates of insurance with COUNTY, showing that CONTRACTOR has in effect the insurance required by this contract. CONTRACTOR shall file a new or amended certificate promptly after any change is made in any insurance policy which would alter the information on the certificate then on file. In lieu of providing proof of insurance, CONTRACTOR may provide proof of self-insurance meeting requirements equivalent to those imposed herein. CONTRACTOR warrants that CONTRACTOR's self-insurance provides substantially the same protection to COUNTY as the insurance required herein. CONTRACTOR further agrees to notify COUNTY in the event any change in self-insurance occurs that would alter the obligations undertaken in this contract within thirty (30) days of such change.

#### **C-5. RECORDS TO BE MAINTAINED.**

CONTRACTOR shall keep and maintain accurate records of all costs incurred and all time expended for work under this contract. CONTRACTOR shall contractually require that all of CONTRACTOR's subcontractors performing work called for under this contract also keep and maintain such records. All such records, whether kept by CONTRACTOR or any subcontractor, shall be made available to COUNTY or its authorized representative, or officials of the State of California for review or audit during normal business hours, upon reasonable advance notice given by COUNTY, its authorized representative, or officials of the State of California.

#### **C-6. RETENTION OF RECORDS.**

CONTRACTOR shall maintain and preserve all records related to this contract for a period of three years from the close of the fiscal year in which final payment under this contract is made. CONTRACTOR shall also contractually require the maintenance of such records in the possession of any third party performing work related to this contract for the same period of time. Such records shall be retained beyond the three-year period, if any audit involving such records is then pending, until the audit findings are resolved. The obligation to insure the maintenance of the records beyond the initial three year period shall arise only if the COUNTY notifies CONTRACTOR of the commencement of an audit prior to the expiration of the three year period.



#### **C-7. TITLE TO DOCUMENTS; COPYRIGHT.**

All reports and other materials collected or produced by the CONTRACTOR or any subcontractor of CONTRACTOR shall, after completion and acceptance of the contract, become the property of COUNTY, and shall not be subject to any copyright claimed by the CONTRACTOR, subcontractor, or their agents or employees. CONTRACTOR may retain copies of all such materials exclusively for administrative purposes. Any use of completed or uncompleted documents for other projects by CONTRACTOR, any subcontractor, or any of their agents or employees, without the prior written consent of COUNTY is prohibited.

#### **C-8. INDEPENDENT CONTRACTOR.**

CONTRACTOR and its officers and employees, in the performance of this contract, are independent contractors in relation to COUNTY and not officers or employees of COUNTY. Nothing in this contract shall create any of the rights, powers, privileges or immunities of any officer or employee of COUNTY. CONTRACTOR shall be solely liable for all applicable taxes or benefits, including, but not limited to, federal and state income taxes, Social Security taxes, or ERISA retirement benefits, which taxes or benefits arise out of the performance of this contract. CONTRACTOR further represents to COUNTY that CONTRACTOR has no expectation of receiving any benefits incidental to employment.

#### **C-9. CONFLICT OF INTEREST.**

CONTRACTOR covenants that it presently has no interest and shall not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of the services hereunder. CONTRACTOR further covenants that, in the performance of this contract, no subcontractor or person having such an interest shall be used or employed.

#### **C-10. COMPLIANCE WITH APPLICABLE LAWS.**

CONTRACTOR shall comply with all applicable federal, state and local laws now, or hereafter, in force, and with any applicable regulations, in performing the work and providing the services specified in this contract. This obligation includes, without limitation, the acquisition, and maintenance of any permits, licenses, or other entitlements necessary to perform the duties imposed expressly or impliedly under this contract.

#### **C-11. NONDISCRIMINATION.**

CONTRACTOR shall not discriminate in the employment of persons necessary to perform this contract on any legally impermissible basis, including on the basis of the race, color, national origin, ancestry, religion, age, sex, or disability of such person.

#### **C-12. BANKRUPTCY.**

CONTRACTOR shall immediately notify COUNTY in the event that CONTRACTOR ceases conducting business in the normal manner, becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets, or avails itself of, or becomes subject to, any proceeding under the Federal Bankruptcy Act or any other statute of any state relating to insolvency or protection of the rights of creditors.

**C-13. PROHIBITION AGAINST ASSIGNMENT AND DELEGATION OF DUTIES.**

Except as specifically authorized herein, no rights under this contract may be assigned and no duties under this contract may be delegated by CONTRACTOR without the prior written consent of COUNTY, and any attempted assignment or delegation without such consent shall be void.

**C-14. NEGOTIATED CONTRACT.**

This contract has been arrived at through negotiation between the parties. Neither party is to be deemed the party which prepared this contract within the meaning of California Civil Code Section 1654.

**C-15. SEVERABILITY.**

Should any provision herein be found or deemed to be invalid, this contract shall be construed as not containing such provision, and all other provisions which are otherwise lawful shall remain in full force and effect. To this end, the provisions of this contract are declared to be severable.

**C-16. ENTIRE CONTRACT.**

This contract is the entire agreement of the parties. There are no understandings or agreements pertaining to this contract except as are expressly stated in writing in this contract or in any document attached hereto or incorporated herein by reference.

**C-17. TIME IS OF THE ESSENCE.**

Time is of the essence in the performance of this contract.

**C-18. TERMINATION.**

Either party may terminate this contract, with or without cause, at any time. In order to terminate this contract, the terminating party shall give advance written notice to the other party. The termination shall be effective no earlier than the expiration of the number of days specified in paragraph 6 of this contract. The termination notice shall be made as specified in paragraph C-19, below. In the event of termination, COUNTY shall pay CONTRACTOR for all work satisfactorily performed prior to the effective date of the termination.

**C-19. NOTICES.**

Notices to the parties in connection with the administration of this contract shall be given to the parties' contract administrator personally, by regular mail, or by facsimile transmission as more particularly specified in this paragraph. Notices will be deemed given on:

- (a) The day the notice is personally delivered to the contract administrator or the office of the party's contract administrator; or
- (b) Five days after the date the notice is deposited in the United States mail, addressed to a party's contract administrator as indicated in this contract, with first-class postage fully prepaid; or

- (c) On the day that the notice is transmitted by facsimile to a party's facsimile number specified in paragraph 8 of this contract, provided that an original of such notice is deposited in the United States mail, addressed to a party's contract administrator as indicated in this contract, on the same day as the facsimile transmission is made.

#### **C-20. RESPONSIBILITY OF CONTRACT ADMINISTRATORS.**

All matters concerning this contract which are within the responsibility of the parties shall be under the direction of, or shall be submitted to, the respective contract administrators or to the party's employee specified, in writing, by the contract administrator. A party may, in its sole discretion, change its designation of its contract administrator and shall promptly give written notice to the other party of any such change.

#### **C-21. MATERIALITY.**

The parties consider each and every term, covenant, and provision of this contract to be material and reasonable.

#### **C-22. WAIVER.**

Waiver by either party of a breach of any covenant of this contract will not be construed to be a continuing waiver of any subsequent breach. COUNTY's receipt of consideration with knowledge of CONTRACTOR's violation of a covenant does not waive its right to enforce any covenant of this contract. The parties shall not waive any provisions of this contract unless the waiver is in writing and signed by all parties.

#### **C-23. AUTHORITY AND CAPACITY.**

CONTRACTOR and CONTRACTOR's signatory each warrant and represent that each has full authority and capacity to enter into this contract.

#### **C-24. BINDING ON SUCCESSORS.**

All of the conditions, covenants and terms herein contained shall apply to, and bind, the heirs, successors, executors, administrators and assigns of CONTRACTOR. CONTRACTOR and all of CONTRACTOR's heirs, successors, executors, administrators, and assigns shall be jointly and severally liable under this contract.

#### **C-25. CUMULATION OF REMEDIES.**

All of the various rights, options, elections, powers and remedies of the parties shall be construed as cumulative, and no one of them exclusive of any other or of any other legal or equitable remedy which a party might otherwise have in the event of a breach or default of any condition, covenant or term by the other party. The exercise of any single right, option, election, power or remedy shall not, in any way, impair any other right, option, election, power or remedy until all duties and obligations imposed shall have been fully performed.

#### **C-26. INDEPENDENT ADVICE.**

Each party hereby represents and warrants that in executing this contract it does so with full knowledge of the rights and duties it may have with respect to the other. Each party also

represents and warrants that it has received independent legal advice from its attorney with respect to the matters set forth in this contract and the rights and duties arising out of this contract, or that such party willingly foregoes any such consultation.

**C-27. NO RELIANCE ON REPRESENTATIONS.**

Each party hereby represents and warrants that it is not relying, and has not relied, upon any representation or statement made by the other party with respect to the facts involved or its rights or duties. Each party understands and agrees that the facts relevant, or believed to be relevant to this contract may hereunder turn out to be other than, or different from the facts now known to such party as true, or believed by such party to be true. The parties expressly assume the risk of the facts turning out to be different and agree that this contract shall be effective in all respects and shall not be subject to rescission by reason of any such difference in facts.

**C-28. REDUCTION OF CONSIDERATION.**

CONTRACTOR agrees that COUNTY shall have the right to deduct from any payments specified in Attachment B any amount owed to COUNTY by CONTRACTOR as a result of any obligation arising prior to, or after, the execution of this contract. For purposes of this paragraph, obligations arising prior to, or after, the execution of this contract may include, without limitation, any property tax, secured or unsecured, which tax is in arrears. If COUNTY exercises the right to reduce the consideration specified in Attachment B, COUNTY, at the time of making a reduced payment, shall give CONTRACTOR notice of the amount of any off-set and the reason for the reduction.

**C-29. COUNTERPARTS.**

This contract may be executed in any number of counterparts, each of which so executed shall be deemed to be an original. The counterparts shall together constitute one contract.

**END OF ATTACHMENT C.**

**ATTACHMENT D**  
**Specific Terms and Conditions**

**Licensed Architects, Landscape Architects, Professional Engineers and  
Professional Land Surveyors**

The rights and duties of the parties to this contract are additionally governed by the following specific, additional terms and conditions:

**D-1. INDEMNIFICATION.** With regard to CONTRACTOR'S performance of design services under this contract, as those services are defined in California Civil Code section 2782.8, paragraph C-1 of Attachment C to this contract is hereby modified, superceded and replaced by this paragraph D-1. With regard to CONTRACTOR'S performance of services under this contract that are not described in section 2782.8, paragraph C-1 of Attachment C to this contract shall continue to govern the indemnification rights and obligations of the parties.

To the fullest extent permitted by law, CONTRACTOR shall defend, indemnify and hold harmless the COUNTY and its officers, agents, employees and representatives from and against any and all claims, actions, losses, injuries, damages or expenses of every name, kind, and description, including litigation costs and reasonable attorney's fees incurred, brought for or on account of, injury to or death of any person, including but not limited to workers, COUNTY's employees, and the public, or damage to property, which arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of CONTRACTOR, its officers, agents, employees, volunteers, representatives, contractors and subcontractors. This duty of CONTRACTOR includes the duty of defense, inclusive of that set forth in California Civil Code section 2778. The parties shall cooperate with each other in the investigation and disposition of any claim arising out of the activities under this contract. CONTRACTOR shall not be liable under this indemnification provision if COUNTY has been found in a court of competent jurisdiction to be solely liable by reason of its own negligence, recklessness or willful misconduct. CONTRACTOR'S indemnification obligations shall be apportioned pursuant to the principles of comparative fault, according to proof of COUNTY'S negligence, recklessness or willful misconduct, if any. The obligations set forth herein shall continue beyond the terms of this contract.

**D-2. ADDITIONAL SPECIFIC TERMS AND CONDITIONS:** (check one)

There are no additional specific terms and conditions.

The following additional specific terms and conditions shall apply: (Specify)

**END OF ATTACHMENT D.**