

**AGREEMENT BETWEEN THE COUNTY OF SAN MATEO AND CAPITAL PROGRAM MANAGEMENT, INC.**

This Agreement is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2023, by and between the County of San Mateo, a political subdivision of the state of California, hereinafter called "County," and Capital Program Management, Inc., hereinafter called "Contractor."

\* \* \*

Whereas, pursuant to Section 31000 of the California Government Code, County may contract with independent contractors for the furnishing of such services to or for County or any Department thereof; and

Whereas, it is necessary and desirable that Contractor be retained for the purpose of providing on-call construction management services.

**Now, therefore, it is agreed by the parties to this Agreement as follows:**

**1. Exhibits and Attachments**

The following exhibits and attachments are attached to this Agreement and incorporated into this Agreement by this reference:

- Exhibit A—Services
- Exhibit B—Payments and Rates
- Attachment I—§ 504 Compliance
- Attachment IP – Intellectual Property

**2. Services to be performed by Contractor**

In consideration of the payments set forth in this Agreement and in Exhibit B, Contractor shall perform services for County in accordance with the terms, conditions, and specifications set forth in this Agreement and in Exhibit A.

**3. Payments**

In consideration of the services provided by Contractor in accordance with all terms, conditions, and specifications set forth in this Agreement and in Exhibit A, County shall make payment to Contractor based on the rates and in the manner specified in Exhibit B. County reserves the right to withhold payment if County determines that the quantity or quality of the work performed is unacceptable. In no event shall County's total fiscal obligation under this Agreement exceed **ONE MILLION DOLLARS (\$1,000,000.00)**. In the event that the County makes any advance payments, Contractor agrees to refund any amounts in excess of the amount owed by the County at the time of contract termination or expiration. Contractor is not entitled to payment for work not performed as required by this agreement.

#### **4. Term**

Subject to compliance with all terms and conditions, **the term of this Agreement shall commence on the date on which the Agreement is fully executed by the parties and shall run through March 13, 2026.**

#### **5. Termination**

This Agreement may be terminated by Contractor or by the Parks Director or his/her designee at any time without a requirement of good cause upon thirty (30) days' advance written notice to the other party. Subject to availability of funding, Contractor shall be entitled to receive payment for work/services provided prior to termination of the Agreement. Such payment shall be that prorated portion of the full payment determined by comparing the work/services actually completed to the work/services required by the Agreement.

County may terminate this Agreement, or a portion of the services referenced in the Attachments and Exhibits based upon the unavailability of Federal, State, or County funds by providing written notice to Contractor as soon as is reasonably possible after County learns of said unavailability of outside funding.

County may terminate this Agreement for cause. In order to terminate for cause, County must first give Contractor notice of the alleged breach. Contractor shall have five business days after receipt of such notice to respond and a total of ten calendar days after receipt of such notice to cure the alleged breach. If Contractor fails to cure the breach within this period, County may immediately terminate this Agreement without further action. The option available in this paragraph is separate from the ability to terminate without cause with appropriate notice described above. In the event that County provides notice of an alleged breach pursuant to this section, County may, in extreme circumstances, immediately suspend performance of services and payment under this Agreement pending the resolution of the process described in this paragraph. County has sole discretion to determine what constitutes an extreme circumstance for purposes of this paragraph, and County shall use reasonable judgment in making that determination.

#### **6. Contract Materials**

At the end of this Agreement, or in the event of termination, all finished or unfinished documents, data, studies, maps, photographs, reports, and other written materials (collectively referred to as "contract materials") prepared by Contractor under this Agreement shall become the property of County and shall be promptly delivered to County. Upon termination, Contractor may make and retain a copy of such contract materials if permitted by law.

#### **7. Relationship of Parties**

Contractor agrees and understands that the work/services performed under this Agreement are performed as an independent contractor and not as an employee of County and that neither Contractor nor its employees acquire any of the rights, privileges, powers, or advantages of County employees.

8. **Hold Harmless**

a. **General Hold Harmless**

Contractor shall indemnify and save harmless County and its officers, agents, employees, and servants from all claims, suits, or actions of every name, kind, and description resulting from this Agreement, the performance of any work or services required of Contractor under this Agreement, or payments made pursuant to this Agreement brought for, or on account of, any of the following:

(A) injuries to or death of any person, including Contractor or its employees/officers/agents;

(B) damage to any property of any kind whatsoever and to whomsoever belonging;

(C) any sanctions, penalties, or claims of damages resulting from Contractor's failure to comply, if applicable, with the requirements set forth in the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended; or

(D) any other loss or cost, including but not limited to that caused by the concurrent active or passive negligence of County and/or its officers, agents, employees, or servants. However, Contractor's duty to indemnify and save harmless under this Section shall not apply to injuries or damage for which County has been found in a court of competent jurisdiction to be solely liable by reason of its own negligence or willful misconduct.

The duty of Contractor to indemnify and save harmless as set forth by this Section shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

b. **Intellectual Property Indemnification**

Contractor hereby certifies that it owns, controls, and/or licenses and retains all right, title, and/or interest in and to any intellectual property it uses in relation to this Agreement, including the design, look, feel, features, source code, content, and/or other technology relating to any part of the services it provides under this Agreement and including all related patents, inventions, trademarks, and copyrights, all applications therefor, and all trade names, service marks, know how, and trade secrets (collectively referred to as "IP Rights") except as otherwise noted by this Agreement.

Contractor warrants that the services it provides under this Agreement do not infringe, violate, trespass, or constitute the unauthorized use or misappropriation of any IP Rights of any third party. Contractor shall defend, indemnify, and hold harmless County from and against all liabilities, costs, damages, losses, and expenses (including reasonable attorney fees) arising out of or related to any claim by a third party that the services provided under this Agreement infringe or violate any third-party's IP Rights provided any such right is enforceable in the United States. Contractor's duty to defend, indemnify, and hold harmless under this Section applies only provided that: (a) County notifies Contractor promptly in writing of any notice of any such third-party claim; (b) County cooperates with Contractor, at Contractor's expense, in all reasonable respects in connection with the investigation and defense of any such third-party claim; (c) Contractor retains sole control of the defense of any action on any such claim and all

negotiations for its settlement or compromise (provided Contractor shall not have the right to settle any criminal action, suit, or proceeding without County's prior written consent, not to be unreasonably withheld, and provided further that any settlement permitted under this Section shall not impose any financial or other obligation on County, impair any right of County, or contain any stipulation, admission, or acknowledgement of wrongdoing on the part of County without County's prior written consent, not to be unreasonably withheld); and (d) should services under this Agreement become, or in Contractor's opinion be likely to become, the subject of such a claim, or in the event such a third party claim or threatened claim causes County's reasonable use of the services under this Agreement to be seriously endangered or disrupted, Contractor shall, at Contractor's option and expense, either: (i) procure for County the right to continue using the services without infringement or (ii) replace or modify the services so that they become non-infringing but remain functionally equivalent.

Notwithstanding anything in this Section to the contrary, Contractor will have no obligation or liability to County under this Section to the extent any otherwise covered claim is based upon: (a) any aspects of the services under this Agreement which have been modified by or for County (other than modification performed by, or at the direction of, Contractor) in such a way as to cause the alleged infringement at issue; and/or (b) any aspects of the services under this Agreement which have been used by County in a manner prohibited by this Agreement.

The duty of Contractor to indemnify and save harmless as set forth by this Section shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

## **9. Assignability and Subcontracting**

Contractor shall not assign this Agreement or any portion of it to a third party or subcontract with a third party to provide services required by Contractor under this Agreement without the prior written consent of County. Any such assignment or subcontract without County's prior written consent shall give County the right to automatically and immediately terminate this Agreement without penalty or advance notice.

## **10. Insurance**

### **a. General Requirements**

Contractor shall not commence work or be required to commence work under this Agreement unless and until all insurance required under this Section has been obtained and such insurance has been approved by County's Risk Management, and Contractor shall use diligence to obtain such insurance and to obtain such approval. Contractor shall furnish County with certificates of insurance evidencing the required coverage, and there shall be a specific contractual liability endorsement extending Contractor's coverage to include the contractual liability assumed by Contractor pursuant to this Agreement. Certificates of Insurance shall be filed with the County within ten (10) business days after Contractor's execution of the contract. These certificates shall specify or be endorsed to provide that thirty (30) days' notice must be given, in writing, to County of any pending change in the limits of liability or of any cancellation or modification of the policy.

**b. Workers' Compensation and Employer's Liability Insurance**

Contractor shall have in effect during the entire term of this Agreement workers' compensation and employer's liability insurance providing full statutory coverage. In signing this Agreement, Contractor certifies, as required by Section 1861 of the California Labor Code, that (a) it is aware of the provisions of Section 3700 of the California Labor Code, which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the Labor Code, and (b) it will comply with such provisions before commencing the performance of work under this Agreement.

**c. Liability Insurance**

Contractor shall take out and maintain during the term of this Agreement such bodily injury liability and property damage liability insurance as shall protect Contractor and all of its employees/officers/agents while performing work covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as any and all claims for property damage which may arise from Contractor's operations under this Agreement, whether such operations be by Contractor, any subcontractor, anyone directly or indirectly employed by either of them, or an agent of either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall not be less than the amounts specified below:

- (a) Comprehensive General Liability.....\$1,000,000
- (b) Motor Vehicle Liability Insurance.....\$1,000,000
- (c) Professional Liability.....\$1,000,000

County and its officers, agents, employees, and servants shall be named as additional insured on any such policies of insurance, which shall also contain a provision that (a) the insurance afforded thereby to County and its officers, agents, employees, and servants shall be primary insurance to the full limits of liability of the policy and (b) if the County or its officers, agents, employees, and servants have other insurance against the loss covered by such a policy, such other insurance shall be excess insurance only.

In the event of the breach of any provision of this Section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, County, at its option, may, notwithstanding any other provision of this Agreement to the contrary, immediately declare a material breach of this Agreement and suspend all further work and payment pursuant to this Agreement.

**d. Compensation**

All insurance required by the paragraphs of this section shall be obtained and maintained by the Contractor at its own expense and County shall not compensate Contractor for said insurance expenses other than as they are included in the Contract prices the County pays for the various items of work.

Nothing herein contained shall be construed as limiting in anyway the extent to which the Contractor may be held responsible for payments of damages resulting from its operation.

## **11. Compliance With Laws**

All services to be performed by Contractor pursuant to this Agreement shall be performed in accordance with all applicable Federal, State, County, and municipal laws, ordinances, regulations, and executive orders, including but not limited to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Federal Regulations promulgated thereunder, as amended (if applicable), the Business Associate requirements set forth in Attachment H (if attached), the Americans with Disabilities Act of 1990, as amended, and Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of disability in programs and activities receiving any Federal or County financial assistance, as well as any required economic or other sanctions imposed by the United States government or under state law in effect during the term of the Agreement. Such services shall also be performed in accordance with all applicable ordinances and regulations, including but not limited to appropriate licensure, certification regulations, provisions pertaining to confidentiality of records, and applicable quality assurance regulations. In the event of a conflict between the terms of this Agreement and any applicable State, Federal, County, or municipal law, regulation, or executive order, the requirements of the applicable law, regulation, or executive order will take precedence over the requirements set forth in this Agreement.

Further, Contractor certifies that it and all of its subcontractors will adhere to all applicable provisions of Chapter 4.107 of the San Mateo County Ordinance Code, which regulates the use of disposable food service ware. Accordingly, Contractor shall not use any non-recyclable plastic disposable food service ware when providing prepared food on property owned or leased by the County and instead shall use biodegradable, compostable, reusable, or recyclable plastic food service ware on property owned or leased by the County.

Contractor will timely and accurately complete, sign, and submit all necessary documentation of compliance.

## **12. Non-Discrimination and Other Requirements**

### **a. General Non-discrimination**

No person shall be denied any services provided pursuant to this Agreement (except as limited by the scope of services) on the grounds of race, color, national origin, ancestry, age, disability (physical or mental), sex, sexual orientation, gender identity, marital or domestic partner status, religion, political beliefs or affiliation, familial or parental status (including pregnancy), medical condition (cancer-related), military service, or genetic information.

### **b. Equal Employment Opportunity**

Contractor shall ensure equal employment opportunity based on objective standards of recruitment, classification, selection, promotion, compensation, performance evaluation, and management relations for all employees under this Agreement. Contractor's equal employment policies shall be made available to County upon request.

**c. Section 504 of the Rehabilitation Act of 1973**

Contractor shall comply with Section 504 of the Rehabilitation Act of 1973, as amended, which provides that no otherwise qualified individual with a disability shall, solely by reason of a disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination in the performance of any services this Agreement. This Section applies only to contractors who are providing services to members of the public under this Agreement.

**d. Compliance with County's Equal Benefits Ordinance**

Contractor shall comply with all laws relating to the provision of benefits to its employees and their spouses or domestic partners, including, but not limited to, such laws prohibiting discrimination in the provision of such benefits on the basis that the spouse or domestic partner of the Contractor's employee is of the same or opposite sex as the employee.

**e. Discrimination Against Individuals with Disabilities**

The nondiscrimination requirements of 41 C.F.R. 60-741.5(a) are incorporated into this Agreement as if fully set forth here, and Contractor and any subcontractor shall abide by the requirements of 41 C.F.R. 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.

**f. History of Discrimination**

Contractor certifies that no finding of discrimination has been issued in the past 365 days against Contractor by the Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing, or any other investigative entity. If any finding(s) of discrimination have been issued against Contractor within the past 365 days by the Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing, or other investigative entity, Contractor shall provide County with a written explanation of the outcome(s) or remedy for the discrimination prior to execution of this Agreement. Failure to comply with this Section shall constitute a material breach of this Agreement and subjects the Agreement to immediate termination at the sole option of the County.

**g. Reporting; Violation of Non-discrimination Provisions**

Contractor shall report to the County Executive Officer the filing in any court or with any administrative agency of any complaint or allegation of discrimination on any of the bases prohibited by this Section of the Agreement or the Section titled "Compliance with Laws". Such duty shall include reporting of the filing of any and all charges with the Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing, or any other entity charged with the investigation or adjudication of allegations covered by this subsection within 30 days of such filing, provided that within such 30 days such entity has not notified Contractor that such charges are dismissed or otherwise unfounded. Such notification shall include a general description of the circumstances involved and a general description of the kind of discrimination alleged (for example, gender-, sexual orientation-, religion-, or race-based discrimination).

Violation of the non-discrimination provisions of this Agreement shall be considered a breach of this Agreement and subject the Contractor to penalties, to be determined by the County Executive Officer, including but not limited to the following:

- i. termination of this Agreement;
- ii. disqualification of the Contractor from being considered for or being awarded a County contract for a period of up to 3 years;
- iii. liquidated damages of \$2,500 per violation; and/or
- iv. imposition of other appropriate contractual and civil remedies and sanctions, as determined by the County Executive Officer.

To effectuate the provisions of this Section, the County Executive Officer shall have the authority to offset all or any portion of the amount described in this Section against amounts due to Contractor under this Agreement or any other agreement between Contractor and County.

#### **h. Compliance with Living Wage Ordinance**

As required by Chapter 2.88 of the San Mateo County Ordinance Code, Contractor certifies all contractor(s) and subcontractor(s) obligated under this contract shall fully comply with the provisions of the County of San Mateo Living Wage Ordinance, including, but not limited to, paying all Covered Employees the current Living Wage and providing notice to all Covered Employees and Subcontractors as required under the Ordinance.

#### **13. Compliance with County Employee Jury Service Ordinance**

Contractor shall comply with Chapter 2.85 of the County's Ordinance Code, which states that Contractor shall have and adhere to a written policy providing that its employees, to the extent they are full-time employees and live in San Mateo County, shall receive from the Contractor, on an annual basis, no fewer than five days of regular pay for jury service in San Mateo County, with jury pay being provided only for each day of actual jury service. The policy may provide that such employees deposit any fees received for such jury service with Contractor or that the Contractor may deduct from an employee's regular pay the fees received for jury service in San Mateo County. By signing this Agreement, Contractor certifies that it has and adheres to a policy consistent with Chapter 2.85. For purposes of this Section, if Contractor has no employees in San Mateo County, it is sufficient for Contractor to provide the following written statement to County: "For purposes of San Mateo County's jury service ordinance, Contractor certifies that it has no full-time employees who live in San Mateo County. To the extent that it hires any such employees during the term of its Agreement with San Mateo County, Contractor shall adopt a policy that complies with Chapter 2.85 of the County's Ordinance Code." The requirements of Chapter 2.85 do not apply unless this Agreement's total value listed in the Section titled "Payments", exceeds two-hundred thousand dollars (\$200,000); Contractor acknowledges that Chapter 2.85's requirements will apply if this Agreement is amended such that its total value exceeds that threshold amount.



**14. Retention of Records; Right to Monitor and Audit**

(a) Contractor shall maintain all required records relating to services provided under this Agreement for three (3) years after County makes final payment and all other pending matters are closed, and Contractor shall be subject to the examination and/or audit by County, a Federal grantor agency, and the State of California.

(b) Contractor shall comply with all program and fiscal reporting requirements set forth by applicable Federal, State, and local agencies and as required by County.

(c) Contractor agrees upon reasonable notice to provide to County, to any Federal or State department having monitoring or review authority, to County's authorized representative, and/or to any of their respective audit agencies access to and the right to examine all records and documents necessary to determine compliance with relevant Federal, State, and local statutes, rules, and regulations, to determine compliance with this Agreement, and to evaluate the quality, appropriateness, and timeliness of services performed.

**15. Merger Clause; Amendments**

This Agreement, including the Exhibits and Attachments attached to this Agreement and incorporated by reference, constitutes the sole Agreement of the parties to this Agreement and correctly states the rights, duties, and obligations of each party as of this document's date. In the event that any term, condition, provision, requirement, or specification set forth in the body of this Agreement conflicts with or is inconsistent with any term, condition, provision, requirement, or specification in any Exhibit and/or Attachment to this Agreement, the provisions of the body of the Agreement shall prevail. Any prior agreement, promises, negotiations, or representations between the parties not expressly stated in this document are not binding. All subsequent modifications or amendments shall be in writing and signed by the parties.

**16. Construction Claims**

Contractor is hereby notified of Section 9204 and Section 20104 et seq. of the Public Contract Code as those sections relate to the resolution of construction claims, and to Section 3186 of the Civil Code, as amended January 1, 1999, with regard to stop notices and public entity's rights to retain monies in order to provide for that entity's reasonable cost of litigation. The Contractor is further notified that all provisions of Sections 9204 et seq. and 20104 et seq. of the Public Contract Code and Section 3186 of the Civil Code, as outlined above, shall be considered as incorporated into and become integral part of this contract.

**17. Controlling Law; Venue**

The validity of this Agreement and of its terms, the rights and duties of the parties under this Agreement, the interpretation of this Agreement, the performance of this Agreement, and any other dispute of any nature arising out of this Agreement shall be governed by the laws of the State of California without regard to its choice of law or conflict of law rules. Any dispute arising out of this Agreement shall be venued either in the San Mateo County Superior Court or in the United States District Court for the Northern District of California.

## **18. Notices**

Any notice, request, demand, or other communication required or permitted under this Agreement shall be deemed to be properly given when both: (1) transmitted via facsimile to the telephone number listed below or transmitted via email to the email address listed below; and (2) sent to the physical address listed below by either being deposited in the United States mail, postage prepaid, or deposited for overnight delivery, charges prepaid, with an established overnight courier that provides a tracking number showing confirmation of receipt.

In the case of County, to:

Name/Title: Hannah Ormshaw, Assistant Director of Parks  
Address: 455 County Center 4<sup>th</sup> Floor, Redwood City, CA 94063  
Telephone: (650) 599-1377  
Email: hormshaw@smcgov.org

In the case of Contractor, to:

Name/Title: Mike Wassermann, Principal in Charge  
Address: 493 Seaport Court, Suite 103, Redwood City, CA94063  
Telephone: (650) 737-4067  
Email: mike@capitalpm.com

## **19. Electronic Signature**

Both County and Contractor wish to permit this Agreement and future documents relating to this Agreement to be digitally signed in accordance with California law and County's Electronic Signature Administrative Memo. Any party to this Agreement may revoke such agreement to permit electronic signatures at any time in relation to all future documents by providing notice pursuant to this Agreement.

## **20. Payment of Permits/Licenses**

Contractor bears the sole responsibility to obtain any license, permit, or approval required from any agency for work/services to be performed under this Agreement at Contractor's own expense prior to commencement of said work/services. Failure to do so will result in forfeit of any right to compensation under this Agreement.

## **21. Prevailing Wage**

The services contemplated under this Agreement may include "public works" within the meaning of Labor Code Section 1720 *et seq.* When applicable, Contractor hereby agrees to pay not less than prevailing rates of wages and be responsible for compliance with all the provisions of the California Labor Code, Article 2-Wages, Chapter 1, Part 7, Division 2, Section 1770 *et seq.* A copy of the prevailing wage scale established by the Department of Industrial Relations is on file in the office of the Director of Public Works, and available at [www.dir.ca.gov/DLSR](http://www.dir.ca.gov/DLSR) or by phone at 415-703-4774. California Labor Code Section 1776(a) requires each contractor and subcontractor keep accurate payroll records of trades workers on all public works projects and to submit copies of certified payroll records upon request.

Contractor expressly covenants and agrees to comply with all the provisions of the Labor Code of the State of California. Any labor on public works over eight (8) hours during any one calendar day, and forty (40) hours in any one calendar week, shall comply with California overtime laws. Contractor agrees to the payment of not less than the prevailing wage rates, when applicable, and further agrees to the forfeitures provided for in said Labor Code and as set forth in Section 7 (“Legal Relations and Responsibility”) of the Standard Specifications and all amendments thereto, in the event of a violation of any of the provisions thereof during the course of execution of this Contract.

When applicable, the Contractor expressly agrees to be responsible for compliance with all the provisions of Sections 1771, 1771.4, 1774-1776, 1777.5, 1813, 1815, and 1860 of the California Labor Code. Additionally, in accordance with the provisions of Section 3700 of the California Labor Code, every contractor will be required to secure the payment of compensation to his or her employees.

Additionally, for any services on projects which constitute “public works” within the meaning of Labor Code Section 1720 *et seq.*, the following provisions apply:

- No contractor or subcontractor may be listed on a bid proposal for a public works project (submitted after March 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)].
- No contractor or subcontractor may be awarded a contract for public work on a public works project (awarded on or after April 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5.
- All “public works” projects are subject to compliance monitoring and enforcement by the Department of Industrial Relations.

\* \* \*

In witness of and in agreement with this Agreement's terms, the parties, by their duly authorized representatives, affix their respective signatures:

For Contractor: **Capital Program Management, Inc.**

Mike Wassermann  
Contractor Signature

2/13/23  
Date

Mike Wassermann  
Contractor Name (please print)

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COUNTY OF SAN MATEO

By:

President, Board of Supervisors, San Mateo County

Date:

ATTEST:

By:

Clerk of Said Board

## Exhibit A

### **Section 1: Introduction**

This Agreement contemplates that Contractor will, upon request from the San Mateo County Parks Department (the "Department"), develop a brief project proposal based on the scope of work provided by the Department, as well as a schedule for completing the scope of work issued by the Department, and an outline of the costs required to complete the requested work. The scope of work, schedule, and fee will be negotiated, and approved in the form of a Task Order. Contractor understands and agrees that entering into this Agreement with County does not guarantee that Contractor will be requested to submit a proposal for any particular project, nor that the Contractor will receive any assignments pursuant to the contract.

### **Section 2: Services**

In consideration of the payments set forth in Exhibit B, Contractor shall provide the following services:

#### Construction Management Services

Contractor may be asked to provide a variety of services, including, but not limited to:

1. Management, coordination, and administration of a project so the required construction activities are properly executed and completed in a timely fashion, on budget, and conform to the requirements of the project plans and specifications;
2. Coordinate testing of materials including, but not be limited to, compaction test, soil tests, concrete tests, and any other tests not mentioned but necessary to adhere to the project plans and specifications and the Department's approved Quality Assurance Program (QAP); and
3. Providing a point of contact for assigned projects.

The general services to be provided during the course of this agreement may include, but are not limited to:

1. Scheduling and attending a project kick-off meeting with the Department to discuss project goals including scope, schedule, budget, and construction logistics;
2. Maintaining accurate, orderly, and detailed records of all activities performed under the respective task order and making files readily available both in hard copy and electronic format at all times;
3. Scheduling and leading meetings with Contractors, representatives from the Department, representatives from other County Departments, regulatory agencies, and any other entities or individuals involved with the project;
4. Submitting written progress reports to the Department on a weekly basis, unless otherwise directed, including percentage of work completed, number and amount of change orders, update on the project budget, daily logs, statement of working days,

photographs of work, and any other pertinent information on the work of the Contractor;  
and

5. Other general tasks normally performed by certified construction managers.

The services to be provided during the pre-construction phase may include, but are not limited to:

1. Contractor procurement and bidding support;
2. Conducting a pre-construction conference with the project team including Department staff, the Contractor and subcontractors, and other stakeholders. Meeting minutes shall be taken and distributed to all parties;
3. Reviewing and approving plans, specifications, and estimates and submittals;
4. Reviewing and approving project schedules; and
5. Coordinating and reviewing responses to Requests for Information (RFI's) and submittals.

The services to be provided during the construction phase may include, but are not limited to:

1. Verifying, prior to commencement of work, that the Contractor has performed all necessary preconstruction activities, including notification of residents, installation of Best Management Practices (BMPs), and installation of Construction Advisory Signs;
2. Providing value engineering when requested based on the approved plans and specifications prior to the start of the work;
3. Coordinating technical inspection, management, and administration of the work on the project until final completion and acceptance of work by the Department;
4. Coordinating field inspections, at an interval to be determined by the Department and specified in the respective task order;
5. Verifying the work performed and materials furnished are in compliance with the approved plans, specifications, submittals, and any other requirements;
6. Ensuring that no work is completed that has not been properly approved or otherwise fails to conform to the approved plans, specifications, submittals, or other requirements;
7. Maintaining a record of statement of working days and distribute copies at the end of each working week to the Department, the Contractor, and other interested parties as determined by the Department;
8. Maintaining accurate, orderly and detailed daily job diary or log book describing all activities that occurred on the project on a daily basis, including a breakdown identified by trade and the personnel on site, equipment used (identified by model and make) and the number of hours the equipment was used on site, measurement of quantities of work

performed on a daily basis that matches the bid items in the project specifications, weather conditions, any site visits by the public or outside agencies, decisions reached, problems encountered, general and specific observations, and all other pertinent information relative to the performance of the project;

9. Maintaining accurate, orderly, and detailed files and written records and documents regarding the project, including correspondence, minutes, progress reports, shop drawings, submittals, construction contract documents, change orders, addenda, and approved SWPPP;
10. If work is to be performed on a time and materials basis, maintaining accurate and detailed records of work performed, track the hours worked by each individual, including identification by trade, the hours worked by equipment and the materials delivered and installed on site;
11. Reviewing all progress payment requests for accuracy of actual work completed in the field;
12. If disputes or claims arise during the course of the construction contract, Contractor shall provide written documentation and support for the Department, make recommendations on the validity of disputes or claims and shall support the Department in challenging the claims if deemed appropriate; and
13. Review all requests for Change Orders from the Contractor and obtain cost proposals from the Contractor, prepare a report recommending approval or disapproval on Change Orders providing detailed description evaluating the costs based on the quantities of labor, equipment, and materials.

The services to be provided during the project completion phase may include, but are not limited to:

1. Schedule, attend, and lead final walkthrough and coordinate inspections;
2. Creating detailed punch list reports of any discrepancies or deficiencies in the finished work to be resolved prior to project closing and ensuring Contractor completes punch list prior to filing the Notice of Completion;
3. Coordinating the preparation of "As-Built" record drawings, if required;
4. Preparing any necessary reports, forms, or documents as required by permit conditions and file with appropriate agencies;
5. Collecting guarantees from manufacturer, maintenance and operation manuals, warranties, and any other data required;
6. Providing all project closing documentation as formal recognition of the completion of a project, assurance that all the work has been completed, and assurance that all agreed upon project management processes have been executed; and

7. Providing a completion report that includes all daily logs, photographic records, approved submittals, correspondence, change orders, laboratory and plant testing reports, and any other documents obtained during the course of the project.

Furthermore, Contractor will need to provide or perform, at the San Mateo County Parks Department's request, the following:

1. A point of contact or project manager for the Agreement and to be the primary point of communication between San Mateo County Parks Department staff and the Contractor;
2. A project-specific scope of work and cost estimate for as needed services under the Agreement, for the San Mateo County Parks Department to execute a Task Order with the Contractor;
3. Closely with San Mateo County Parks Department staff and Contractors at each stage of the assignment as outlined in the respective Task Order(s);
4. Meeting agendas, record meeting minutes, and distribute meeting minutes to all attendees;
5. Backup documentation (e.g., quantity take offs, calculations, AutoCAD drawings, field data); and
6. A project schedule and provide updates to the schedule, as needed.

### **Section 3: Task Order(s) and Task Order Process**

Upon receipt of a task order outlining the requested scope of services, Contractor shall, within one business week, provide the San Mateo County Parks Department with a cost estimate and project schedule. Once the San Mateo County Parks Department has approved, in writing, the fee for services and project schedule, Contractor shall schedule and coordinate a project kick-off meeting. In emergency situations, Contractor may be asked to provide cost estimates and project schedules in less than one business week.

If deemed necessary, at the sole discretion of the San Mateo County Parks Department, Contractor may be required to contract with sub-Contractor(s) for supportive services. Should Contractor be required to contract with sub-Contractor(s) for supportive services, Contractor will be required to ensure that all sub-Contractor(s) satisfy all County contracting standards, requirements, best practices, and regulations. County must approve the use of all subcontractors in writing before execution of a task order or commencement of work.

### **Section 4: Changes in Work**

The Director of Parks or their designated representative may order changes, in writing, to the scope or character of work which are mutually acceptable, either decreasing or increasing the amount and duration of Contractor's services. In the event that such changes are ordered, Contractor shall be entitled to compensation of all work previously directed by County and performed by Contractor prior to receipt of notice of change.



## Exhibit B

In consideration of the services provided by Contractor described in Exhibit A and subject to the terms of the Agreement, County shall pay Contractor based on the following fee schedule and terms:

### **Capital Program Management, Inc. Personnel and Material Rates On-Call Construction Management Services**

#### **Section 1: Personnel Rates**

Classification	Hourly Billing Rates*		Effective Date of Hourly Rate		% Escalation Increase	Average Hourly Rate
	Straight Time	Overtime	From	To		
President	\$222.00	N/A	1/1/2023	12/31/2023	2%	\$222.00
Vice President	\$222.00	N/A	1/1/2023	12/31/2023	2%	\$222.00
Program Director	\$222.00	N/A	1/1/2023	12/31/2023	2%	\$222.00
Principal-in-Charge	\$222.00	N/A	1/1/2023	12/31/2023	2%	\$222.00
Senior Construction Manager	\$222.00	N/A	1/1/2023	12/31/2023	2%	\$222.00
Senior Project Manager	\$222.00	N/A	1/1/2023	12/31/2023	2%	\$222.00
Project/Construction Manager	\$197.00	N/A	1/1/2023	12/31/2023	2%	\$197.00
Construction Manager	\$197.00	N/A	1/1/2023	12/31/2023	2%	\$197.00
Assistant Project/Construction Manager	\$171.00	N/A	1/1/2023	12/31/2023	2%	\$171.00
Senior Estimator	\$197.00	N/A	1/1/2023	12/31/2023	2%	\$197.00
Estimator	\$151.00	N/A	1/1/2023	12/31/2023	2%	\$151.00
Director of Budget & Accounting	\$222.00	N/A	1/1/2023	12/31/2023	2%	\$222.00
Administrative Support/Clerical	\$64.00	N/A	1/1/2023	12/31/2023	2%	\$64.00
Senior Budget Analyst	\$197.00	N/A	1/1/2023	12/31/2023	2%	\$197.00
Budget Analyst	\$151.00	N/A	1/1/2023	12/31/2023	2%	\$151.00
Assistant Budget Analyst	\$113.00	N/A	1/1/2023	12/31/2023	2%	\$113.00
Contract Manager	\$197.00	N/A	1/1/2023	12/31/2023	2%	\$197.00
Contract Administrator	\$171.00	N/A	1/1/2023	12/31/2023	2%	\$171.00

\*Beginning January 1, 2024, the hourly billing rates will increase two (2) percent every year through March 13, 2026.

## **Section 2: Schedule of Other Direct Cost Items**

Other reimbursable expenses at cost. The only pre-approved reimbursable expenses are for reprographics and postage. All other reimbursable expenses must have the County's prior approval. There are no reimbursable travel expenses and no charge for time while traveling.

## **Section 3: Amount and Method of Payment**

Payment will be made within 30 days of receipt of a written itemized invoice to the San Mateo County Parks Department's Accounting Division. Invoices should be sent to [parks\\_accounting@smcgov.org](mailto:parks_accounting@smcgov.org) and include the following information: (1) the Agreement number; (2) complete scope of work; (3) specific work completed; (4) location of work; (5) Task Order number; and (6) a breakdown of charges. Payments will be made only once the work is completed and the County is properly invoiced. Invoices should be sent out monthly.

In any event, the total payment for services of Contractor shall not exceed **\$1,000,000.00**, and the County shall have the right to withhold payment if the County determines that the quantity and/or quality of the work performed is unacceptable.

## **Section 4: Notice to Proceed**

As described in Exhibit A, Contractor shall commence work upon receipt of a Notice to Proceed establishing a start date, the work duration, the not-to-exceed amount, and completion date.

## ATTACHMENT I

### Assurance of Compliance with Section 504 of the Rehabilitation Act of 1973, as Amended

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The undersigned (hereinafter called "Contractor(s)") hereby agrees that it will comply with Section 504 of the Rehabilitation Act of 1973, as amended, all requirements imposed by the applicable DHHS regulation, and all guidelines and interpretations issued pursuant thereto.

The Contractor(s) gives/give this assurance in consideration of for the purpose of obtaining contracts after the date of this assurance. The Contractor(s) recognizes/recognize and agrees/agree that contracts will be extended in reliance on the representations and agreements made in this assurance. This assurance is binding on the Contractor(s), its successors, transferees, and assignees, and the person or persons whose signatures appear below are authorized to sign this assurance on behalf of the Contractor(s).

The Contractor(s): (Check a or b)

- a. Employs fewer than 15 persons.
- b. Employs 15 or more persons and, pursuant to section 84.7 (a) of the regulation (45 C.F.R. 84.7 (a), has designated the following person(s) to coordinate its efforts to comply with the DHHS regulation.

**Name of 504 Person:** Susan Lockington

**Name of Contractor(s):** Capital Program Management, Inc.

**Street Address or P.O. Box:** 1851 Heritage Lane, Suite 210

**City, State, Zip Code:** Sacramento, CA 95825

I certify that the above information is complete and correct to the best of my knowledge

**Signature:** *Susan Lockington*

**Title of Authorized Official:** Director, Human Resources

**Date:** 2/14/2023

\*Exception: DHHS regulations state that: "If a recipient with fewer than 15 employees finds that, after consultation with a disabled person seeking its services, there is no method of complying with (the facility accessibility regulations) other than making a significant alteration in its existing facilities, the recipient may, as an alternative, refer the handicapped person to other providers of those services that are accessible."

## **Attachment IP**

### **Intellectual Property Rights**

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1. The County of San Mateo ("County"), shall and does own all titles, rights and interests in all Work Products created by Contractor and its subcontractors (collectively "Vendors") for the County under this Agreement. Contractor may not sell, transfer, or permit the use of any Work Products without the express written consent of the County.
2. "Work Products" are defined as all materials, tangible or not, created in whatever medium pursuant to this Agreement, including without limitation publications, promotional or educational materials, reports, manuals, specifications, drawings and sketches, computer programs, software and databases, schematics, marks, logos, graphic designs, notes, matters and combinations thereof, and all forms of intellectual property.
3. Contractor shall not dispute or contest, directly or indirectly, the County's exclusive right and title to the Work Products nor the validity of the intellectual property embodied therein. Contractor hereby assigns, and if later required by the County, shall assign to the County all titles, rights and interests in all Work Products. Contractor shall cooperate and cause subcontractors to cooperate in perfecting County's titles, rights or interests in any Work Product, including prompt execution of documents as presented by the County.
4. To the extent any of the Work Products may be protected by U.S. Copyright laws, Parties agree that the County commissions Vendors to create the copyrightable Work Products, which are intended to be work-made-for-hire for the sole benefit of the County and the copyright of which is vested in the County.
5. In the event that the title, rights, and/or interests in any Work Products are deemed not to be "work-made-for-hire" or not owned by the County, Contractor hereby assigns and shall require all persons performing work pursuant to this Agreement, including its subcontractors, to assign to the County all titles, rights, interests, and/or copyrights in such Work Product. Should such assignment and/or transfer become necessary or if at any time the County requests cooperation of Contractor to perfect the County's titles, rights or interests in any Work Product, Contractor agrees to promptly execute and to obtain execution of any documents (including assignments) required to perfect the titles, rights, and interests of the County in the Work Products with no additional charges to the County beyond that identified in this Agreement or subsequent change orders. The County, however, shall pay all filing fees required for the assignment, transfer, recording, and/or application.
6. Contractor agrees that before commencement of any subcontract work it will incorporate this **ATTACHMENT IP** to contractually bind or otherwise oblige its subcontractors and personnel performing work under this Agreement such that the County's titles, rights, and interests in Work Products are preserved and protected as intended herein.