

## AGREEMENT

This Agreement made and entered into this 22<sup>nd</sup> day of March, 2022, between the **County of San Mateo Parks Department, 455 County Center Redwood City, CA 94063** ("County"), and American Ramp Company, 601 McKinley Street, Joplin, MO 64801 ("Contractor").

Contractor and County agree as follows:

**ARTICLE 1 - THE PROJECT.** Contractor agrees to obtain all necessary permits and licenses as are required by law, furnish all labor and materials, including required tools, implements, and appliances and to perform all the work in a good and workmanlike manner, free from any and all liens and claims of mechanics, material, men, subcontractors, artisans, machinists, teamsters, and laborers required in the bid proposal, all in strict compliance with the plans, drawings, and other Contract Documents, required for the Project, which, for purposes of this Agreement, refers to the following:

**County of San Mateo Parks Department  
Quarry Park Pump Track Project**

Unless otherwise specifically noted, the Contractor shall provide and pay for all labor, materials, equipment, transportation, and other facilities and services necessary for the proper execution and completion of the Project. The Contractor shall at all times enforce strict discipline and good order among Contractor's employees and shall not employ on the Project any unfit person or anyone not skilled in the task assigned.

**ARTICLE 2 - THE AGREEMENT:** The Contractor and the County agree that the Contract Documents are composed of all those documents described in paragraph 2.1 of the General Conditions, all of which are incorporated herein by reference. The specifications and drawings are to be read together such that any work exhibited in the drawings and not mentioned in the specifications, or vice versa, is to be executed as if both mentioned in the specifications and set forth in the drawings to the true intent and meaning of the said drawings and specifications, when taken together. But no part of said specifications that is in conflict with any portion of this Agreement shall be considered as part of this Agreement.

**ARTICLE 3 - CONTRACTOR'S LICENSE:** Contractor shall have, and maintain in good standing, and require the same of all its subcontractors, the appropriate classification of California State contractor's license during the entire term of this Project. Contractor confirms that, pursuant to SB 854, it has registered with the California Department of Industrial Relations (DIR) and that it has, through the date of this Agreement, paid all annual renewal fees due to the DIR. Contractor shall pay all annual renewal fees to the DIR that come due during the term of the Agreement.

**ARTICLE 4 - COMPLETION DATE / NOTICE TO PROCEED:** Contractor agrees that all work required to be performed by the Contract Documents shall be completed by the milestone dates specified in the Section 00800 Special Provisions. Contractor acknowledges that it shall be liable for liquidated damages as set forth in this Agreement if the Project is not completed by these dates.

If the Notice to Proceed and/or the Agreement is issued more than ten (10) but less than ninety (90) days after the "Letter of Intent to Award Contract", Contractor's sole remedy shall be an extension to the Completion Date, measured by the number of days beyond ten (10) it took to issue the Notice to Proceed. In such instances, Contractor shall not be entitled to any monetary damages or other compensation for lost profit or overhead or for increased cost of performance.

The term "day" as used in the Contract Documents shall mean calendar day.

**ARTICLE 5 - CONTRACT SUM:** The contract sum is the total amount payable by the County to Contractor for the performance of work under the Contract Documents. The contract sum is **Three Hundred Twenty-two Thousand Dollars (\$322,000)** ("Contract Sum"), unless modified in writing in accordance with the Contract Documents.

**ARTICLE 6 - LIQUIDATED DAMAGES:** The Completion Date specified in Article 4 is of the essence of the Agreement. The Contractor shall complete the Project by the date specified in Article 4 unless the County agrees in writing to an extension of time.

Failure to complete the Project within the time and in the manner provided for by the Contract Documents shall subject the Contractor to liquidated damages. The actual occurrence of damages and the actual amount of the damages which the County would suffer if the Project were not completed within the specified times set forth are dependent upon many circumstances and conditions which could prevail in various combinations and, from the nature of the case, it is impracticable and extremely difficult to fix the actual damages. Damages which the County would suffer in the event of delay include, but are not limited to, loss of the use of the Project, disruption of school activities, costs of administration, inspection, supervision and the loss suffered by the public within the County.

Accordingly, the parties agree that the amount herein set forth shall be presumed to be the amount of damages which the County shall directly incur upon failure of the Contractor to complete the Project within the time specified: **One Thousand Dollars (\$1,000.00)**, plus the extra inspection costs incurred by the County, during or as a result of each calendar day by which the substantial completion of the Project is delayed beyond the date specified in Article 4 of the Agreement and **One Thousand Dollars (\$1,000.00)**, plus the extra inspection costs incurred by the County, during or as a result of each calendar day by which final completion of the Project is delayed beyond the date specified in the Article 4 of the Agreement.

If the Contractor becomes liable for liquidated damages under this section, the County, in addition to all other remedies provided by law, shall have the right to withhold any and all retained percentages of payments, and to collect the interest thereon, which would otherwise be or become due the Contractor until the liability of the Contractor under this section has been finally determined. If the retained percentage is not sufficient to discharge all liabilities of the Contractor incurred under this Article, the Contractor and its sureties shall continue to remain liable to the County until all such liabilities are satisfied in full.

If the County accepts any work or makes any payment under this Agreement after a default by reason of delays, the payment or payments shall in no respect constitute a waiver or modification of any Agreement provisions regarding time of completion and liquidated damages.

**ARTICLE 7 - EARLY COMPLETION:** Regardless of the cause therefore, the Contractor may not maintain any claim or cause of action against the County for damages incurred as a result of its failure or inability to complete its work on the Project in a shorter period than established in Article 4 of this Agreement, the parties stipulating that such period is a reasonable time within which to perform the work on the Project.

**ARTICLE 8 - PAYMENT:** The County agrees to pay the Contractor in current funds for the performance of the Agreement the amount proposed in this bid, including approved change orders, and to make payments on account thereof as follows: Each calendar month, ninety-five percent (95%) of the value, proportionate to the amount of the Agreement, of labor and materials incorporated in the Project up to the first day of that month as estimated by the County, and Project Manager, less the aggregate of previous payments. On substantial completion of the entire Project, a sum sufficient to increase the total payments to ninety-five percent (95%) of the contract sum set forth in Article 5 of this Agreement, and thirty-five (35) days after the Notice of Completion has been recorded, provided the Project is fully completed and the

Agreement fully performed, the balance due under the Agreement. The payment of progress payments by the County shall not be construed as an acceptance of the work done up to the time of such payments, except as to such matters as are open and obvious. The entire Project is to be subjected to inspection and approval of the County or Project Manager to defects not obvious upon inspection during the progress of the work at the time when it shall be claimed by the Contractor that the Agreement is completed. The County and Project Manager shall exercise all reasonable diligence in the discovery, and report to the Contractor as the Project progresses, materials and labor which are not satisfactory to the County, so as to avoid unnecessary trouble and cost to the Contractor in making good defective parts or work.

In accordance with the provisions of Public Contract Code section 22300, the County shall, at the request and expense of the Contractor, permit the substitution of securities or the payment of funds equivalent to the amount of monies withheld as retention from progress payments.

**ARTICLE 9 - EARLY TERMINATION:** Notwithstanding any provision herein to the contrary, if for any fiscal year of this Agreement the governing body of the County fails to appropriate or allocate funds for future periodic payments under the Agreement after exercising reasonable efforts to do so, the County may, upon thirty (30) days written notice, order work on the project to cease. The County will remain obligated to pay for the work already performed but shall not be obligated to pay the balance remaining unpaid beyond the fiscal period for which funds have been appropriated or allocated and for which the work has not been done.

**ARTICLE 10 - TERMINATION FOR CAUSE:** If Contractor (1) should be adjudged bankrupt; (2) should make a general assignment for the benefit of its creditors; (3) should persistently or repeatedly refuse or fail, except in cases for which an extension of time is provided, to supply enough properly skilled workers or proper materials; (4) should fail to make prompt payment to subcontractors or for material or labor; (5) persistently disregards laws, ordinances or the instructions of the County; or if any of its subcontractors should persistently violate any of the provisions of the Agreement; or (6) a receiver should be appointed on account of Contractor's insolvency, then the County may serve written notice upon the Contractor and its surety of its intention to terminate the Agreement. Unless, within five (5) days after the serving of such notice, such violations shall cease and satisfactory arrangements for corrections thereof be made, the Agreement shall, upon the expiration of said five (5) days, at the County's option, terminate.

In the event of any such termination, the County shall immediately serve written notice thereof upon the surety and the Contractor, and the surety shall have the right to take over and perform the Agreement; provided, however, that if the surety, within ten (10) days after the serving upon it of Notice of Termination, does not give the County written notice of its intention to take over and perform the Agreement or does not commence performance within ten (10) days from the date of the serving of such notice, the County may take over the Project and prosecute the same to completion by Agreement or by any other method it may deem advisable, for the account and at the expense of the Contractor, and the Contractor and the surety shall be liable to the County for any excess cost occasioned the County thereby. In such event, the County may without liability for so doing, take possession of and utilize in completing the Project, such materials, appliances and other property belonging to the Contractor as may be on the site of the Project and necessary therefore. In such case the Contractor shall not be entitled to receive any further payment until the Project is finished. If the unpaid balance of the contract sum shall exceed the expense of finishing the Project, including compensation for additional managerial and administrative services, such excess shall be paid to the Contractor. If such expense shall exceed such unpaid balance, the Contractor shall pay the difference to the County.

**ARTICLE 11 - PERFORMING A PORTION OF THE WORK:** If the Contractor fails to correct defective work or persistently fails to carry out the work in accordance with the Contract Documents, the County, by written order, may order the Contractor to stop the work, or any portion thereof, until the cause of such order has been eliminated. The County shall not have any duty to stop the work for the benefit of the Contractor or any other person or entity. If the County chooses to correct or carry out the work itself, it shall normally give the Contractor seven (7) days after providing written notice to commence and continue correction of such default or neglect with diligence and promptness. If, however, the condition constitutes

an emergency which may subject the County to penalties or termination of the Project by outside jurisdictional agencies, the County may do so without notice to the Contractor. In either case, an appropriate change order shall be issued, deducting, from the payments then or thereafter due the Contractor the cost of correcting such deficiencies, including compensation for the Project Manager's and consultants' additional services made necessary by such default, neglect, or failure. If payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor and its surety shall pay the County the difference.

**ARTICLE 12 - USE OF SUBCONTRACTORS:** Contractor agrees that, as required by State law and the Instruction to Bidders, all subcontractors which will perform work on this project shall be listed on the Designation of Subcontractors form, provided with the Contract Documents.

**ARTICLE 13 - PREVAILING WAGE RATES:** In accordance with the provisions of section 1720, *et seq.*, of the California Labor Code, the Director of the California Department of Industrial Relations has determined the general prevailing rates or wages and employer payments for health and welfare, pension, vacation, travel time, and subsistence pay as provided for in section 1770, *et seq.*, of the California Labor Code. Pursuant to the California Labor Code, the general prevailing rate of per diem wages and for holiday and overtime work shall be paid to all workers employed by the Contractor selected for this project. Copies of prevailing rates of per diem wages are available upon request at the County's Offices or at [www.dir.ca.gov](http://www.dir.ca.gov). If this project is state funded, the Department of Industrial Relations will monitor and enforce compliance with applicable prevailing wage requirements on this project through the Compliance Monitoring Unit (CMU) and enforce compliance with applicable prevailing wage requirements in accordance with the California Labor Code, including sections 1771, 1774, 1776, 1777.5, 1813, and 1815. Further information regarding this requirement is available at <https://www.dir.ca.gov/t8/16450.html>.

Contractor may be responsible for paying subcontractors' employees' prevailing wages if it does not comply with the provisions of Labor Code sections 1770, *et seq.*

***The Contractor and each subcontractor shall keep or cause to be kept an accurate record showing the names and occupations of all laborers, workers and mechanics employed by it in connection with the execution of this Agreement or any subcontract thereunder, and showing also the actual per diem wage paid to each of such workers, which records shall be open at all reasonable hours to inspection by the County, its officers and agents and to the representatives of the Division of Labor Standards Enforcement of the State Department of Industrial Relations (DIR). Attention is directed to the provisions in section 1777.5 and section 1777.6 of the Labor Code concerning the employment of apprentices by the Contractor or any subcontractor under it.***

Pursuant to Senate Bill (SB) 854, Contractor will electronically submit certified payroll records to the Labor Commissioner/DIR unless the Labor Commissioner excuses Contractor from this requirement. The parties understand and agree that the project will be subject to compliance monitoring and enforcement by the DIR.

This Agreement may be subject to a labor compliance program, as described in Section 1771.5 of the Labor Code. As required by law, the Department of Industrial Relations will monitor and enforce compliance with applicable prevailing wage requirements.

**ARTICLE 14 - WORKING HOURS:** In accordance with the provisions of the California Labor Code, eight (8) hours labor shall constitute a day's work, and no laborer, workman or mechanic in the employ of the Contractor, or any subcontractor, doing or contracting to do any part of the work contemplated by this Agreement, shall be required to or permitted to work more than eight (8) hours in one calendar day or forty (40) hours during any one calendar week unless such work is compensated at the lawful overtime rate set forth in the California Labor Code. The Contractor and each subcontractor shall also keep an accurate record showing the names and actual hours worked of all workers employed by it in connection with the work contemplated by this Agreement, which record shall be open at all reasonable hours to the inspection of the County, or its officers or agents and to the Chief of the Division of Labor Standards Enforcement of the DIR, its deputies or agents; and it is hereby further agreed that Contractor shall forfeit as a penalty to the County the sum of twenty-five dollars (\$25.00) for each laborer, workman or mechanic who is required or permitted to labor more than eight (8) hours a day or forty (40) hours a week in violation of this Article 14.

**ARTICLE 15 - EMPLOYMENT OF APPRENTICES:** Contractor agrees to comply with all provisions of the law regarding the employment of apprentices, including, but not limited to Labor Code §§ 1773.3, 1777.5, 1777.6 and 3077, *et seq.* These sections require that contractors and subcontractors employ apprentices in apprenticeable occupations in a ratio of not less than one (1) apprentice hour for each five (5) journeyman hours, unless an exemption is granted, and that contractors and subcontractors shall not discriminate among otherwise qualified employees as indentured apprentices on any public work on the grounds of race, religious creed, color, national origin, ancestry, sex, or age. Only apprentices who are in training under written apprenticeship agreements will be employed on public works in apprenticeable occupations. The responsibility for compliance with these provisions for all apprenticeable occupations rests with the Contractor.

**ARTICLE 16 - INSURANCE:** The Contractor shall procure and maintain for the duration of this Contract and for two years thereafter, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, and Contractor's agent, representatives, employees, or subcontractors. Contractor shall include in all of its contracts with Subcontractors provisions requiring such Subcontractors to meet the same insurance requirements as set forth herein.

Comprehensive or commercial general liability (CGL) insurance, on Insurance Office Services Form CG 00 01 (or a form at least as broad as Form CG 00 01) covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than \$1,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this Project and location or the general aggregate limit shall be twice the required occurrence limit.

Automobile Liability Insurance, on Insurance Services Office Form Number CA 0001 covering Code 1 (any auto) with limits no less than \$5,000,000 per accident for bodily injury and property damage.

Workers' Compensation, including Employers' Liability Insurance, as required by the State of California with Statutory Limits, and Employers' Liability insurance with a limit of no less than \$1,000,000 each accident, injury or disease. The Contractor shall require subcontractors to provide workers' compensation insurance for all subcontractors' employees engaged in Work under the subcontract. Any class of employee or employees not covered by a subcontractor's insurance shall be covered by the Contractor's insurance. If the Contractor fails to maintain such insurance, the County, at its sole option and without incurring any further obligation to provide insurance, may take out Workers' Compensation insurance to cover any compensation payable under the provisions of the Act by reason of any employee of the Contractor or a subcontractor being injured or killed, and to deduct the amount of the premium for such insurance from any sums due the Contractor. If injury occurs to any employee of the Contractor for which the employee, or its dependents in the event of its death, is entitled to compensation from the County under the provisions of

said Act, or from the sums due the Contractor under these Contract Documents the County may deduct and retain an amount sufficient to cover such compensation or payment of such compensation.

The Contractor shall sign and file with the County the following certification prior to performing the Work of the Contract: "I am aware of the provisions of Section 3700 of the 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 that code, and I will comply with such provisions before commencing the performance of the Work of the Contract."

Fire insurance on all Work subject to loss or damage by fire. Contractor shall maintain fire insurance in an amount of fire insurance shall be sufficient to protect the Project and all appurtenant structures against loss of damage in full until the Work is accepted by the County.

Coverage for debris removal limits not less than \$1,000,000. In the event that the Contractor is performing abatement of hazardous or contaminated materials work or employs a subcontractor or entity for abatement of hazardous or contaminated materials, environmental liability and pollution insurance, with limits not less than \$1,000,000. The policy shall be written on an occurrence form and any deductible shall not exceed \$25,000.

Minimum Amounts Required. The amounts of insurance coverage stated above are the minimums that Contractor is required to procure and maintain. If Contractor maintains higher limits than the minimums stated above, the County requires, and shall be entitled to, coverage for the higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the County.

Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the County. At the option of the County, either the Contractor shall cause the insurer to reduce or eliminate such deductibles or self-insured retentions as respects the County, its officers, officials, employees and volunteers; or the Contractor shall provide a financial guarantee satisfactory to the County guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

Required Endorsements. The insurance policies required in this Article 16 of this Agreement shall contain or shall be endorsed to contain the following provisions:

(a) The County, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor, including materials, parts, or equipment furnished in connection with work or operation and automobiles owned, leased, hired, or borrowed by or on behalf of the Contractor. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10, CG 11 85 or both CG 20 10 and CG 20 37 if later revisions are used);

(b) For any claims related to the Project, the Contractor's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute to it; and

(c) Each insurance policy required by this Agreement shall provide that coverage shall not be canceled, except with prior written notice to the County.

Acceptability of Insurers: Insurance companies providing coverage required under this Agreement shall be legally licensed and admitted through the California Department of Insurance to engage in the business of furnishing insurance in the State of California. All insurance companies shall have an "A-VII" in Bests Rating Guide and shall be satisfactory to the County.

**Waiver of Subrogation:** Contractor hereby waives the right of subrogation which any insurer of Contractor may acquire from Contractor by virtue of payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the County for all work performed by the Contractor, its employees, agents, and subcontractors.

In the event of any damage, not insured by the County, as identified in this agreement under Builder's Risk/All Risk section, it shall be the Contractor's responsibility to perform at its expense all required repair and replacement including damage to adjacent areas.

**Verification of Coverage.** Before commencement of the Work under this Agreement, certificates of insurance shall be furnished to the County, with complete copies of policies to be furnished to the County promptly upon request. All policies of insurance, exclusions, deductibles, self-insured retentions, and certificates shall be reviewed by, and satisfactory to the County before Contractor commences work on the Project. Approval of the insurance by the County shall not relieve or decrease the extent to which the Contractor or subcontractor of any tier may be held responsible for payment of any and all damages resulting from its action, inaction or operations. Further, failure by Contractor to obtain the required documents prior to work beginning on the Project shall not relieve the Contractor of the obligation to obtain them or constitute a waiver by the County of Contractor's obligation to provide them. The County reserves the right to require complete, certified copies of all required insurance policies, including endorsements, required by this Agreement, at any time.

Liability insurance shall be on an occurrence basis. The coverage afforded thereby shall be primary and non-contributory to any other existing valid and collectable insurance to the full limit of liability stated in the declaration, and such insurance shall apply separately to each insured against whom claim is made or suit is brought, but the inclusion of more than one (1) insured shall not operate to increase the insurer's limits of liability.

Certificates of insurance shall state in particular those insured, the extent of insurance, location and operation to which the insurance applies, the expiration date, and cancellation and reduction notices. Certificates and insurance policies shall include the following clause: "This policy shall not be non-renewed, canceled, or reduced in required limits of liability or amounts of insurance until notice has been mailed to the County. Date of cancellation or reduction may not be less than thirty (30) days after the date of mailing notice." If, at any time during the life of this Agreement, the Contractor fails to maintain any item of the required insurance in full force and effect, all Work of this Agreement may, at the County's sole option, be discontinued immediately, and all payments due or that become due under the Agreement will be withheld, until notice is received by the County as provided hereinabove that such insurance has been restored to full force and effect and that the premiums therefrom have been paid for a period satisfactory to the County.

Any failure to maintain any item of the required insurance may, at County's sole option, be considered material breach of the Agreement and, in such an event, the County may immediately terminate this Agreement.

**Subcontractors.** Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated in this Agreement and Contractor shall ensure that the County is an additional insured on insurance required from subcontractors. For CGL coverage, subcontractors shall provide coverage with a format at least as broad as ISO Form CG 20 38 04 13.

**Reservation of Rights to Implement Owner Controlled Insurance Program.**

Notwithstanding the foregoing requirements set forth in this Article 16 of the Agreement, the County hereby reserves the right to modify the insurance requirements set forth in the Agreement, including but not limited to reserving the right to implement an Owner Controlled Insurance Program ("OCIP") for the Project.

In the event an OCIP is implemented, the OCIP will provide certain specified insurance coverages for County, and any Contractor or Subcontractor working on the Project who are eligible for, and are properly enrolled in the OCIP. The insurance coverages that may potentially be included in the OCIP include, but are not limited to, workers compensation insurance, commercial general liability insurance, and excess liability insurance. The selection of insurance coverages that may be included in the OCIP, and the limits, terms, and conditions of coverage, shall be established by the County, in its sole discretion. The coverages included in the OCIP will be identified by County, in writing, if and when the County decides to implement an OCIP for the Project.

In the event an OCIP is implemented, Contractor and any Subcontractor eligible for the OCIP shall be required to enroll in the OCIP. As part of the OCIP enrollment process, Contractor and each eligible Subcontractor shall be required to provide information to County, or its agents, sufficient to enable County to determine each Contractor's and Subcontractor's reduction in insurance costs due to enrollment in the OCIP. In order to enroll in the OCIP, Contractor and any eligible Subcontractor will be required to accept an insurance credit, either by accepting a deductive credit to their contract price, or by agreeing to exclude from their contract price an amount equal to their reduction insurance costs due to enrollment in the OCIP. The methodology and procedures for identifying the insurance credit, and enrolling in the OCIP, will be established in writing, by the County, if and when an OCIP is implemented.

In the event an OCIP is implemented, Contractor and all Subcontractors will still be required to maintain other insurance coverages that are not provided under the OCIP. For example, Contractor and Subcontractor will generally still be required to maintain off-site workers compensation, off-site commercial general liability, and commercial automobile liability insurance consistent with the terms of the Agreement, or as further directed by County.

**ARTICLE 17 - INDEMNIFICATION AGAINST LIABILITY:** Notwithstanding any other provision of the Contract Documents, Contractor agrees to indemnify, defend and save harmless the County, its Governing Board, related entities and divisions, officers, agents, consultants and employees from and against any and all claims, demands, losses, defense costs, or liabilities of any kind or nature which they may sustain or incur or which may be imposed upon them for injury to or death of persons, damage to property, or delay or damage to another contractor, or for attorney's fees incurred in defending or prosecuting suits to enforce laws relating to public works contracts, resulting or arising out of, or in any manner connected with Contractor or Contractor's agents, employees or subcontractors' performance or failure to perform under the terms of the Contract Documents, excepting only liability arising out of the sole negligence or willful misconduct of the County. The parties stipulate that any such claims, demands, losses, defense costs, or liabilities would be above, beyond, and entirely separate from, those damages which would be liquidated pursuant to Article 6.

**ARTICLE 18 - 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.

**ARTICLE 19 - 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.

**ARTICLE 20 - 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.



**ARTICLE 21 - 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, and regulations, 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. 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 or regulation, the requirements of the applicable law or regulation 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 4.106 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. (This paragraph may be deleted without County Counsel Review if not relevant to this agreement)

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

**ARTICLE 22 - 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 Manager 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 Manager, 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 Manager.

To effectuate the provisions of this Section, the County Manager 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. (If LWO is not applicable to this contract, you may delete this section without County Counsel review. Contact your assigned County Counsel if you are unsure if LWO is applicable)

**ARTICLE 23 - 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 if this Agreement's total value listed in the Section titled "Payments", is less than one-hundred thousand dollars (\$100,000), but Contractor acknowledges that Chapter 2.85's requirements will apply if this Agreement is amended such that its total value meets or exceeds that threshold amount.

**ARTICLE 24 - PAYMENT OF PERMITS/LICENSES:** Contractor bears 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.

**ARTICLE 25 - ACCOUNTING/RETENTION OF RECORDS:**

- 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 the 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.

**ARTICLE 26 - MISCELLANEOUS PROVISIONS:**

- a. **Entire Agreement:** This Agreement constitutes the entire agreement between the parties, and supersedes any prior agreement between the parties, oral or written, including the County's award of

the Project to Contractor, unless such agreement is expressly incorporated herein. The County makes no representations or warranties, express or implied, not specified in this Agreement.

b. Execution of Other Documents: The parties to this Agreement shall cooperate fully in the execution of any and all other documents and in the completion of any additional actions that may be necessary or appropriate to give full force and effect to the terms and intent of this Agreement.

c. Execution in Counterparts: This Agreement may be executed in counterparts such that the signatures may appear on separate signature pages. A copy, or an original, with all signatures appended together, shall be deemed a fully executed agreement.

d. Binding Effect: Contractor, by execution of this Agreement, acknowledges that Contractor has read this Agreement, understands it, and agrees to be bound by its terms and conditions. This Agreement shall inure to the benefit of and shall be binding upon the Contractor and the County and their respective successors and assigns.

e. Severability: If any provision of this Agreement shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

f. Amendments: The terms of this Agreement shall not be waived, altered, modified, supplemented or amended in any manner whatsoever except by written agreement signed by the parties.

g. Assignment of Agreement: The Contractor shall not assign or transfer by operation of law or otherwise any or all of its rights, burdens, duties or obligations without the prior written consent of the surety on the payment bond, the surety on the performance bond and the County.

h. Written Notice: Written notice shall be deemed to have been duly served if delivered in person to the individual or member of the firm or to an officer of the corporation for whom it was intended, or if delivered at or sent by registered or certified mail or courier to the last business address known to it who gives the notice.

i. 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.

j. 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. In the event of breach or other dispute arising out of this Agreement, County reserves the right to pursue all remedies, legal, contractual, administrative or otherwise against Contractor, including the recovery of any sanctions and penalties authorized by law.

[Signatures on the following page]

IN WITNESS WHEREOF the parties have executed this Agreement on the date first hereinabove written.

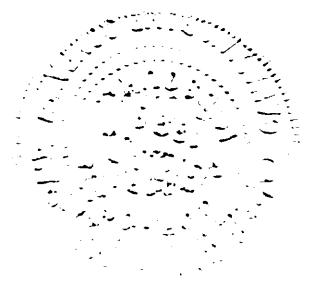
**CONTRACTOR,**

(By signing below, also certifies awareness of and compliance with Labor Code Sections 1861 and 3700 concerning Worker's Compensation Law.)

By: [Signature] 3-8-2022  
Signature Date

Type or Print Name: John Hunter

Official Capacity: Vice President (Affix Corporate Seal)



By: [Signature] 3-8-2022  
Signature Date

Type or Print Name: Nathan Bemo

Official Capacity: President

**Note to Contractor:**

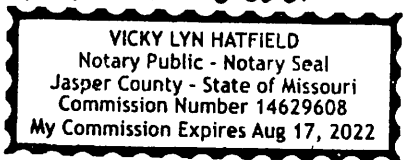
a. For corporations, the contract must be signed by two officers. The first signature must be that of the chairman of the board, president or vice president; the second signature must be that of the secretary or chief financial officer. The signatures must be acknowledged by a Notary Public and seal attached.

b. If Partnership, all partners should sign under the partnership name. The signatures must be acknowledged by a Notary Public and seal attached.

**County of San Mateo**

By: \_\_\_\_\_ Date \_\_\_\_\_  
Mr. Don Horsley Supervisor

*Vicky Lyn Hatfield notary  
March 8th 2022*





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