

**AGREEMENT FOR ON-CALL ENGINEERING SERVICES
BETWEEN THE COUNTY OF SAN MATEO AND
ARUP NORTH AMERICA LIMITED**

THIS AGREEMENT, entered into this ____ day of _____, 2012, by and between the COUNTY OF SAN MATEO, hereinafter called "County," and Arup North America Limited, hereinafter called "Contractor";

W I T N E S S E T H:

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

WHEREAS, it is necessary and desirable that Contractor be retained for the purpose of providing engineering and other related professional and technical services required for the delivery of various types of capital improvement projects.

NOW, THEREFORE, IT IS HEREBY AGREED BY THE PARTIES HERETO AS FOLLOWS:

1. Exhibits and Attachments

The following exhibits and attachments are included hereto and incorporated by reference herein:

Exhibit A – Services

Exhibit B – Payments and Rates

Exhibit C – General Obligation of Contractor

Attachment I - § 504 Compliance

Attachment IP – Intellectual Property Rights

2. Services to be performed by Contractor

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

3. Payments

In consideration of the services provided by Contractor in accordance with all terms, conditions and specifications set forth herein and in Exhibit "A" and Exhibit "C", County shall make payment to Contractor based on the rates and in the manner specified in Exhibit "B." The County reserves the right to withhold payment if the County determines that the

quantity or quality of the work performed is unacceptable. In no event shall the County's total fiscal obligation under this Agreement exceed Five Hundred Thousand Dollars and No/100s [\$500,000.00].

4. Term and Termination

Subject to compliance with all terms and conditions, the term of this Agreement shall be from October 23, 2012 to October 22, 2015.

This Agreement may be terminated by Contractor, the Director of Department of Public Works and Parks or his/her designee at any time without a requirement of good cause upon thirty (30) days' written notice to the other party.

In the event of termination, all finished or unfinished documents, data, studies, maps, photographs, reports, and materials (hereafter referred to as materials) prepared by Contractor under this Agreement shall become the property of the County and shall be promptly delivered to the County. Upon termination, the Contractor may make and retain a copy of such materials. 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 portion of the full payment, which is determined by comparing the work/services completed to the work/services required by the Agreement.

5. Availability of Funds

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

6. 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 the County and that Contractor acquires none of the rights, privileges, powers, or advantages of County employees.

7. Hold Harmless

Contractor shall indemnify and save harmless County, its officers, agents, employees, and servants from all claims, suits, or actions of every name, kind, and description, brought for, or on account of, injuries to or death of any person, including Contractor, or damage to any property of any kind whatsoever and to whomsoever belonging to the extent caused by the negligence, recklessness or willful misconduct of Contractor, its employees or subs, and any sanctions, penalties, or claims of damages resulting from Contractor's failure to comply with the requirements set forth in the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended, provided that this 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 herein, shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

8. Assignability and Subcontracting

Contractor shall not assign this Agreement or any portion thereof 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 the County's prior written consent shall give County the right to automatically and immediately terminate this Agreement.

9. Insurance

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

- (1) **Worker's Compensation and Employer's Liability Insurance** The Contractor shall have in effect during the entire life of this Agreement Workers' Compensation and Employer's Liability Insurance providing full statutory coverage. In signing this Agreement, the Contractor certifies, as required by Section 1861 of the California Labor Code, that it is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of the Code, and will comply with such provisions before commencing the performance of the work of this Agreement.
- (2) **Liability Insurance.** The Contractor shall take out and maintain during the life of this Agreement such Bodily Injury Liability and Property Damage Liability Insurance as shall protect him/her 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 contractors operations under this Agreement, whether such operations be by himself/herself or by any subcontractor or by anyone directly or indirectly employed by either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall be not less than the amount specified below.

Such insurance shall include:

- (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 the insurance afforded thereby to the County, its officers, agents, employees and servants shall be primary insurance to the full limits of liability of the policy, and that if the County or its officers and employees 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, the County of San Mateo 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 pursuant to this Agreement.

10. Compliance with laws; payment of Permits/Licenses

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, including, but not limited to, Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended, and 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 handicap 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. Further, Contractor certifies that the Contractor 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.

In the event of a conflict between the terms of this agreement and State, Federal, County, or municipal law or regulations, the requirements of the applicable law will take precedence over the requirements set forth in this Agreement.

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

11. Non-Discrimination and Other Requirements

- A. *Section 504 applies only to Contractors who are providing services to members of the public.* Contractor shall comply with § 504 of the Rehabilitation Act of 1973, which provides that no otherwise qualified handicapped individual 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 this Agreement.
- B. *General non-discrimination.* No person shall, on the grounds of race, color, religion, ancestry, gender, age (over 40), national origin, medical condition (cancer), physical or

mental disability, sexual orientation, pregnancy, childbirth or related medical condition, marital status, or political affiliation be denied any benefits or subject to discrimination under this Agreement.

- C. *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 of San Mateo upon request.
- D. *Violation of Non-discrimination provisions.* 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:
 - i) termination of this Agreement;
 - ii) disqualification of the Contractor from bidding on or being awarded a County contract for a period of up to 3 years;
 - iii) liquidated damages of \$2,500 per violation;
 - 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 examine Contractor's employment records with respect to compliance with this paragraph and/or to set off all or any portion of the amount described in this paragraph against amounts due to Contractor under the Contract or any other Contract between Contractor and County.

Contractor shall report to the County Manager the filing by any person in any court of any complaint of discrimination or the filing by any person of any and all charges with the Equal Employment Opportunity Commission, the Fair Employment and Housing Commission or any other entity charged with the investigation of allegations 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 the name of the complainant, a copy of such complaint, and a description of the circumstance. Contractor shall provide County with a copy of their response to the Complaint when filed.

- E. *Compliance with Equal Benefits Ordinance.* With respect to the provision of employee benefits, Contractor shall comply with the County Ordinance, which prohibits contractors from discriminating in the provision of employee benefits between an employee with a domestic partner and an employee with a spouse.
- F. The Contractor shall comply fully with the non-discrimination requirements required by 41 CFR 60-741.5(a), which is incorporated herein as if fully set forth.

12. Compliance with Contractor Employee Jury Service Ordinance

Contractor shall comply with the County Ordinance with respect to provision of jury duty pay to employees and have and adhere to a written policy that provides that its employees shall receive from the Contractor, on an annual basis, no less than five days of regular pay for actual jury service in San Mateo County. The policy may provide that employees deposit any fees received for such jury service with the Contractor or that the Contractor deduct from the employees' regular pay the fees received for jury service.

13. Retention of Records, Right to Monitor and Audit

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

(b) Reporting and Record Keeping: Contractor shall comply with all program and fiscal reporting requirements set forth by appropriate Federal, State and local agencies, and as required by the County.

(c) Contractor agrees to provide to County, to any Federal or State department having monitoring or review authority, to County's authorized representatives, and/or their appropriate audit agencies upon reasonable notice, 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, and this Agreement, and to evaluate the quality, appropriateness and timeliness of services performed.

14. Merger Clause

This Agreement, including the Exhibits attached hereto and incorporated herein by reference, constitutes the sole Agreement of the parties hereto 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 this body of the 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 this 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 shall be in writing and signed by the parties.

15. Controlling Law and Venue

The validity of this Agreement and of its terms or provisions, as well as the rights and duties of the parties hereunder, the interpretation, and performance of this Agreement shall be governed by the laws of the State of California. Any dispute arising out of this Agreement shall be venued either in the San Mateo County Superior Court or the United States District Court for the Northern District of California.

16. Notices

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

In the case of County, to:

County of San Mateo
Department of Public Works
555 County Center, 5th Floor
Redwood City, CA 94063
Telephone: (650) 363-4100
Facsimile: (650) 361-8220

In the case of Contractor, to:

Arup North America Limited
560 Mission Street, Suite 700
San Francisco, CA 94105
Telephone: (415) 957-9445
Facsimile: (415) 957-9096

In the event that the facsimile transmission is not possible, notice shall be given both by United States mail and an overnight courier as outlined above.

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have affixed their hands.

COUNTY OF SAN MATEO

By: _____
President, Board of Supervisors, San Mateo County

Date: _____

ATTEST:

By: _____
Clerk of Said Board

Arup North America Limited


Contractor's Signature

Date: 10/12/12

Long Form Agreement/Non Business Associate v 8/19/08

Exhibit "A" – Services

In consideration of the payments set forth in Exhibit "B", Contractor shall provide the following services at the request of the Director of Public Works or the Director's designee:

1. In consideration of the payments set forth in Exhibit "B", Contractor shall provide on-call engineering professional services that may include but not be limited to general surveying, topographic surveys, construction staking, hydraulic and hydrologic studies, geotechnical engineering and geotechnical studies, civil engineering design, structural engineering, project management, construction management, environmental study and document preparation, independent investigation of existing conditions, proposed solutions and schematic plans, cost analysis and preparation of independent cost estimates, feasibility studies, preparation of specifications and drawings, projected schedules, construction observation and administration, reports and coordination with applicable code enforcing and environmental agencies, site analysis, coordination with applicable local, state, and federal jurisdictions, and regulatory permit acquisition for a variety of public works type projects.
2. When County Public Works identifies a project that would benefit from Contractor's consulting services, the County will request the Contractor prepare and submit a proposal for such project. The Contractor will then propose a detailed scope of services, a not-to-exceed fee, and a timetable for completing the proposed project. If and when County Public Works approves the scope of services, not-to-exceed fee, and timetable (the "Approved Project"), the County Public Works may issue a task order authorizing the Contractor to begin work on the Approved Project. Contractor agrees to complete the Approved Project for an amount equal to or less than the Approved Project not-to-exceed fee and within the time limits set forth in the Approved Project timetable.

Exhibit "B" – Payments and Rates

In consideration of the services provided by Contractor in Exhibit "A", County shall pay Contractor based on the following fee schedule:

1. In consideration of the services provided by Contractor in Exhibit "A", County shall pay Contractor upon receipt in Accounting Section of the Department of Public Works and Parks of a written itemized invoice identifying the task order, County project number (if applicable), specific work completed, number of hours involved and breakdown of charges. The Approved Project total not-to-exceed amount will be stipulated in each task order. Costs for services deemed necessary by the County for completion of each task order shall be authorized in writing prior to proceeding with the work. Billing rates for services provided under this Agreement shall be based upon the Contractor's most recent fee schedule and by reference made a part of this Agreement. The County reserves the right to withhold payment if the County determines that the quantity or quality of the work performed is unacceptable.
2. The County shall pay Contractor reimbursable expenses. The Contractor shall be entitled to mileage, meals and lodging at the same rate granted to employees of the County whenever the Contractor is required to travel outside of San Mateo County in the performance of his duties under this Agreement. Such travel must first be approved in writing by the County. The Contractor shall also be reimbursed for expenses associated with reproduction (drawings, project manuals, reports, etc.); telephone or fax outside 650, 415, 408, 510, 707, and 925 area codes; fees paid for securing necessary permits and approvals of authorities having jurisdiction over the project; and special delivery service.
3. The County's total fiscal obligation under this Agreement shall not exceed \$500,000 unless said amount is authorized to be increased by the County Board of Supervisors by written amendment to this agreement. Specific projects that may be assigned to the Contractor shall have individual not-to-exceed amounts as stated in the specific task orders. The sum of individual task order not-to-exceed fees for multiple projects that may be assigned to the Contractor shall not exceed the total \$500,000 not-to-exceed amount for this Agreement without prior written approval by the County Board of Supervisors.

Exhibit "C" – General Obligation of Contractor

1. **Contractor Personnel**

The Contractor shall provide the County with resumes of the key staff members to be assigned to said project in advance of commencing any professional services. Once the County approves the key staff to be assigned to the project, any substitutions or additions shall be subject to written approval by the County. The County reserves the right to reject any personnel the Contractor proposes for use on the project.

Contractor represents that it is qualified to furnish the services described under this Agreement. Contractor further declares that one or more members or employees of its firm and that of its sub-contractors, if so required by the State, if any, are licensed by the State of California to perform their services and that these services will be performed by them or under their direct supervision. Contractor shall furnish to County for approval, upon execution of this Agreement, a list of all firms or corporations to be employed as sub-contractors.

Nothing in this Agreement abrogates the professional responsibilities of the Contractor and/or sub-contractors with respect to design defects, errors, omissions, or malpractice.

2. **Corrections and/or Revisions**

Contractor shall make and provide to the County all necessary corrections and/or revisions to the project design and document when it is determined by the Director of Public Works and Parks or his designated representative, that such changes are necessary for the project and are due to oversights, omissions or errors of Contractor.

3. **General Obligations of County**

County shall be responsible for providing any available data required by the Contractor as stipulated in any approved Task Order.

County shall examine documents submitted by Contractor and shall render comments and direction pertaining thereto promptly (up to two weeks or otherwise upon written agreement by County and Contractor), as stipulated in approved Task Orders.

4. **Payment Upon Suspension, Abandonment of Project, or Termination of Agreement**

If any Task Order is suspended for more than thirty (30) calendar days, or abandoned in all or part, Contractor shall be paid for services performed prior to receipt of thirty (30) days written notice from County of such suspension or abandonment, together with reimbursable expenses then due. In the event that the County abandons any Final Task Order the County may specifically authorize additional work necessary to properly close out the project.

If this Agreement or any Task Order is suspended or terminated due to fault of Contractor, County shall be obligated to compensate Contractor only for that portion of Contractor's services that were satisfactorily performed.

5. Performance of Services if Contractor is not Diligent in Performing Work

In the event Contractor is not diligent in pursuing the designated services as specified in each Task Order, the Director of Public Works and Parks or the respective designated representative may, at his option, seven (7) days after written notice to Contractor, perform any such required engineering services or retain a different Contractor to do the same, and the cost associated with having said work completed by means other than the Contractor will be retained from any sums not yet paid to the Contractor.

6. Authorization to Proceed

Contractor shall commence work upon receipt of the Task Order.

6.1 Time of Completion of Each Task

Contractor agrees to perform the professional services for the Task Order within the time limits set forth in the project schedule required by this Agreement. Any change in the scope of services as outlined in the Task Order will require a revised time table.

County agrees to exercise due diligence in performing its tasks to implement the Contractor's time schedule.

7. County's Review and Approval

Between each phase of work and at critical progress points there shall be a review and approval period by County and other agencies. County shall reject Contractor's submittal if changes and/or comments transmitted to Contractor by County during previous review were not addressed by Contractor in current submittal.

8. Changes in Work

The Director of Public Works or the respective designated representative may order changes in scope or character of work in writing which are mutually acceptable, either decreasing or increasing the amount 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. Increased compensation for changes shall be determined in accordance with Section 6 of the Agreement. Compensation shall first have been agreed to in writing by County.

In the event that changes are ordered pursuant to this Section, the schedule for progress and completion and compensation as provided with respective Task Order shall be adjusted by negotiation between Contractor and County.

9. Interest of Contractor/Contractor Independent of County

In accepting this Agreement, Contractor covenants that it presently has no interest, and shall not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of these services hereunder. Contractor further covenants that, in the performance of this Agreement, no subcontractor or person having such an interest shall be employed throughout the term of this Agreement. Contractor certifies that no one who has or will have any financial interest under this Agreement is an officer or employee of the County.

In the performance of the engineering services necessary for compliance with this Agreement, Contractor, and any of its sub-contractors or employees, shall be, and is at all times considered, an Independent Contractor, and is not an agent or employee of the County. Contractor has, and shall retain, the right to exercise full control and supervision of the services, and full control over the employment, direction, compensation and discharge of all persons assisting him in the performance of his engineering services hereunder to include any and all sub-contractors employed for the project described herein. Contractor shall be solely responsible for all matters relating to payment of his employees, including compliance with social security, withholding, and all other regulations governing such matters, and shall be solely responsible for his own acts and those of his subordinates and employees.

10. General Provisions

- (a) The Contractor acknowledges that time is of the essence for all projects defined in approved Task Order(s) and agrees to complete all work within the time frame as stipulated within said Task Order(s). Time extensions shall only be approved with prior written approval of the County and failure to complete services according to a mutually agreed upon schedule may be grounds for contract termination.
- (b) The Contractor upon becoming aware of factors which would result in delays shall be responsible for alerting County to potential delays well in advance in order that possible mitigation measures may be evaluated. Contractor shall detail the nature and reasons for potential delays and shall provide the County with possible mitigation measures for consideration.
- (c) On matters pertaining to Task Orders to be performed and the time taken by Contractor to perform such services, the decision of the Director of Public Works and Parks or the respective designated representative will be final after discussions between County and Contractor.
- (d) The Contractor warrants that he/she has not employed or retained any company or persons, other than a bona fide employee working for the Contractor, to solicit or secure this Agreement, and that he/she has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or formation of this

Agreement. For breach or violation of this warranty, the County shall have the right to annul this Agreement without liability or at its discretion to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

11. Ownership of Documents

Consistent with Attachment IP, all tracings, sketches, plans, specifications, estimates, maps, design calculations, quantity calculations, supporting documents, studies, survey notes, and other documents prepared by Contractor or sub-Contractors under the terms of this Agreement shall be delivered to and become the property of the County without restriction or limitation on their use. However, should County re-use or utilize data or drawings not for their intended use then County shall be solely liable and indemnify Contractor against such use. Computer files used by Contractor to produce the final set of plans and specifications shall also be delivered in AutoCAD, Access, Excel and Word electronic form on compact disks or other media acceptable to the County at no additional cost and become the property of the County.

12. Jobsite Safety and Environmental Protection

Neither the professional activities of the Contractor nor the presence of the Contractor or his or her employees and sub-contractors at a construction site, shall relieve the General Contractor and any other entity of their obligations, duties and responsibilities including, but not limited to, construction means, methods, sequence, techniques or procedures necessary for performing, superintending or coordinating all portions of the Work of construction in accordance with the contract documents and any health or safety or environmental protection precautions required by any regulatory agencies. The Contractor and his or her personnel have no authority to exercise any control over any construction contractor or other entity or their employees in connection with their work or any health or safety precautions. The Contractor agrees that the General Contractor is solely responsible for jobsite safety, and environmental protection, and warrants that this intent shall be made evident in the County's Agreement with the General Contractor. The Contractor also agrees that the County, the Contractor and any other County Contractors that may be providing services at the construction site shall be indemnified and shall be made additional insured's under the General Contractor's general liability insurance policy.

Attachment I

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

The undersigned (hereinafter called the "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.

RICHARD COFFIN

Name of 504 Person - Type or Print

ARUP NORTH AMERICA LIMITED

Name of Contractor(s) - Type or Print

560 MISSION STREET, STE 700

Street Address or P.O. Box

SAN FRANCISCO, CA 94105

City, State, Zip Code

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

[Signature]

Signature

PRINCIPAL

Title of Authorized Official

10/12/12

Date

*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

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 Schedule I 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.

**County of San Mateo
Contractor's Declaration Form**

I. CONTRACTOR INFORMATION

Contractor Name:	Arup North America Limited	Phone:	(415) 957-9445
Contact Person:	Richard Coffin	Fax:	(415) 957-9096
Address:	560 Mission Street, Suite 700 San Francisco, CA 94105		

II. EQUAL BENEFITS (check one or more boxes)

Contractors with contracts in excess of \$5,000 must treat spouses and domestic partners equally as to employee benefits.

- ☒ Contractor complies with the County's Equal Benefits Ordinance by:
- ☒ offering equal benefits to employees with spouses and employees with domestic partners.
 - ☐ offering a cash equivalent payment to eligible employees in lieu of equal benefits.
- ☐ Contractor does not comply with the County's Equal Benefits Ordinance.
- ☐ Contractor is exempt from this requirement because:
- ☐ Contractor has no employees, does not provide benefits to employees' spouses, or the contract is for \$5,000 or less.
 - ☐ Contractor is a party to a collective bargaining agreement that began on _____ (date) and expires on _____ (date), and intends to offer equal benefits when said agreement expires.

III. NON-DISCRIMINATION (check appropriate box)

- ☐ Finding(s) of discrimination have been issued against Contractor within the past year by the Equal Employment Opportunity Commission, Fair Employment and Housing Commission, or other investigative entity. Please see attached sheet of paper explaining the outcome(s) or remedy for the discrimination.
- ☒ No finding of discrimination has been issued in the past year against the Contractor by the Equal Employment Opportunity Commission, Fair Employment and Housing Commission, or any other entity.

IV. EMPLOYEE JURY SERVICE (check one or more boxes)

Contractors with original or amended contracts in excess of \$100,000 must have and adhere to a written policy that provides its employees living in San Mateo County up to five days regular pay for actual jury service in the County.

- ☒ Contractor complies with the County's Employee Jury Service Ordinance.
- ☐ Contractor does not comply with the County's Employee Jury Service Ordinance.
- ☐ Contractor is exempt from this requirement because:
- ☐ the contract is for \$100,000 or less.
 - ☐ Contractor is a party to a collective bargaining agreement that began on _____ (date) and expires on _____ (date), and intends to comply when the collective bargaining agreement expires.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that I am authorized to bind this entity contractually.


Signature

October 12, 2012
Date

Richard Coffin
Name

Principal
Title

**AGREEMENT FOR ON-CALL ENGINEERING SERVICES
BETWEEN THE COUNTY OF SAN MATEO AND
BKF ENGINEERS**

THIS AGREEMENT, entered into this _____ day of _____, 2012, by and between the COUNTY OF SAN MATEO, hereinafter called "County," and BKF Engineers, hereinafter called "Contractor";

W I T N E S S E T H:

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

WHEREAS, it is necessary and desirable that Contractor be retained for the purpose of providing engineering and other related professional and technical services required for the delivery of various types of capital improvement projects.

NOW, THEREFORE, IT IS HEREBY AGREED BY THE PARTIES HERETO AS FOLLOWS:

1. Exhibits and Attachments

The following exhibits and attachments are included hereto and incorporated by reference herein:

Exhibit A – Services

Exhibit B – Payments and Rates

Exhibit C – General Obligation of Contractor

Attachment I - § 504 Compliance

Attachment IP – Intellectual Property Rights

2. Services to be performed by Contractor

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

3. Payments

In consideration of the services provided by Contractor in accordance with all terms, conditions and specifications set forth herein and in Exhibit "A" and Exhibit "C", County shall make payment to Contractor based on the rates and in the manner specified in Exhibit "B." The County reserves the right to withhold payment if the County determines that the

quantity or quality of the work performed is unacceptable. In no event shall the County's total fiscal obligation under this Agreement exceed Five Hundred Thousand Dollars and No/100s [\$500,000.00].

4. Term and Termination

Subject to compliance with all terms and conditions, the term of this Agreement shall be from October 23, 2012 to October 22, 2015.

This Agreement may be terminated by Contractor, the Director of Department of Public Works and Parks or his/her designee at any time without a requirement of good cause upon thirty (30) days' written notice to the other party.

In the event of termination, all finished or unfinished documents, data, studies, maps, photographs, reports, and materials (hereafter referred to as materials) prepared by Contractor under this Agreement shall become the property of the County and shall be promptly delivered to the County. Upon termination, the Contractor may make and retain a copy of such materials. 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 portion of the full payment, which is determined by comparing the work/services completed to the work/services required by the Agreement.

5. Availability of Funds

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

6. 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 the County and that Contractor acquires none of the rights, privileges, powers, or advantages of County employees.

7. Hold Harmless

Contractor shall indemnify and save harmless County, its officers, agents, employees, and servants from all claims, suits, or actions of every name, kind, and description, brought for, or on account of: (A) injuries to or death of any person, including Contractor, or (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 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, its officers, agents, employees, or servants, resulting from the performance of any work required of Contractor or payments made pursuant to this Agreement, provided that this 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 herein, shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

8. Assignability and Subcontracting

Contractor shall not assign this Agreement or any portion thereof 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 the County's prior written consent shall give County the right to automatically and immediately terminate this Agreement.

9. Insurance

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

- (1) **Worker's Compensation and Employer's Liability Insurance** The Contractor shall have in effect during the entire life of this Agreement Workers' Compensation and Employer's Liability Insurance providing full statutory coverage. In signing this Agreement, the Contractor certifies, as required by Section 1861 of the California Labor Code, that it is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of the Code, and will comply with such provisions before commencing the performance of

the work of this Agreement.

- (2) **Liability Insurance.** The Contractor shall take out and maintain during the life of this Agreement such Bodily Injury Liability and Property Damage Liability Insurance as shall protect him/her 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 contractors operations under this Agreement, whether such operations be by himself/herself or by any sub-contractor or by anyone directly or indirectly employed by either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall be not less than the amount specified below.

Such insurance shall include:

- | | |
|---|-------------|
| (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 the insurance afforded thereby to the County, its officers, agents, employees and servants shall be primary insurance to the full limits of liability of the policy, and that if the County or its officers and employees 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, the County of San Mateo 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 pursuant to this Agreement.

10. Compliance with laws; payment of Permits/Licenses

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, including, but not limited to, Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended, and 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 handicap 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. Further, Contractor certifies that the Contractor 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.

In the event of a conflict between the terms of this agreement and State, Federal, County, or municipal law or regulations, the requirements of the applicable law will take precedence over the requirements set forth in this Agreement.

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

11. Non-Discrimination and Other Requirements

- A. *Section 504 applies only to Contractors who are providing services to members of the public.* Contractor shall comply with § 504 of the Rehabilitation Act of 1973, which provides that no otherwise qualified handicapped individual 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 this Agreement.
- B. *General non-discrimination.* No person shall, on the grounds of race, color, religion, ancestry, gender, age (over 40), national origin, medical condition (cancer), physical or mental disability, sexual orientation, pregnancy, childbirth or related medical condition, marital status, or political affiliation be denied any benefits or subject to discrimination under this Agreement.
- C. *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 of San Mateo upon request.
- D. *Violation of Non-discrimination provisions.* 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:
 - i) termination of this Agreement;
 - ii) disqualification of the Contractor from bidding on or being awarded a County contract for a period of up to 3 years;
 - iii) liquidated damages of \$2,500 per violation;
 - 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 examine Contractor's employment records with respect to compliance with this paragraph and/or to set off all or any portion of the amount described in this paragraph against amounts due to Contractor under the Contract or any other Contract between Contractor and County.

Contractor shall report to the County Manager the filing by any person in any court of any complaint of discrimination or the filing by any person of any and all charges with the Equal Employment Opportunity Commission, the Fair Employment and Housing Commission or any other entity charged with the investigation of allegations 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 the name of the complainant, a copy of such complaint, and a description of the circumstance. Contractor shall provide County with a copy of their response to the Complaint when filed.

- E. *Compliance with Equal Benefits Ordinance.* With respect to the provision of employee benefits, Contractor shall comply with the County Ordinance, which prohibits contractors from discriminating in the provision of employee benefits between an employee with a domestic partner and an employee with a spouse.
- F. The Contractor shall comply fully with the non-discrimination requirements required by 41 CFR 60-741.5(a), which is incorporated herein as if fully set forth.

12. Compliance with Contractor Employee Jury Service Ordinance

Contractor shall comply with the County Ordinance with respect to provision of jury duty pay to employees and have and adhere to a written policy that provides that its employees shall receive from the Contractor, on an annual basis, no less than five days of regular pay for actual jury service in San Mateo County. The policy may provide that employees deposit any fees received for such jury service with the Contractor or that the Contractor deduct from the employees' regular pay the fees received for jury service.

13. Retention of Records, Right to Monitor and Audit

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

(b) Reporting and Record Keeping: Contractor shall comply with all program and fiscal reporting requirements set forth by appropriate Federal, State and local agencies, and as required by the County.

(c) Contractor agrees to provide to County, to any Federal or State department having monitoring or review authority, to County's authorized representatives, and/or their appropriate audit agencies upon reasonable notice, 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, and this Agreement, and to evaluate the quality, appropriateness and timeliness of services performed.

14. Merger Clause

This Agreement, including the Exhibits attached hereto and incorporated herein by reference, constitutes the sole Agreement of the parties hereto 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 this body of the 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 this 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 shall be in writing and signed by the parties.

15. Controlling Law and Venue

The validity of this Agreement and of its terms or provisions, as well as the rights and duties of the parties hereunder, the interpretation, and performance of this Agreement shall be governed by the laws of the State of California. Any dispute arising out of this Agreement shall be venued either in the San Mateo County Superior Court or the United States District Court for the Northern District of California.

16. Notices

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

In the case of County, to:

County of San Mateo
Department of Public Works
555 County Center, 5th Floor
Redwood City, CA 94063
Telephone: (650) 363-4100
Facsimile: (650) 361-8220

In the case of Contractor, to:

BKF Engineers
255 Shoreline Drive, Suite 200
Redwood City, CA 94065
Telephone: (650) 482-6300
Facsimile: (650) 482-6399

In the event that the facsimile transmission is not possible, notice shall be given both by United States mail and an overnight courier as outlined above.

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have affixed their hands.

COUNTY OF SAN MATEO

By: _____
President, Board of Supervisors, San Mateo County

Date: _____

ATTEST:

By: _____
Clerk of Said Board

BKF Engineers


Contractor's Signature

Date: 9/20/12

Long Form Agreement/Non Business Associate v 8/19/08

Exhibit "A" – Services

In consideration of the payments set forth in Exhibit "B", Contractor shall provide the following services at the request of the Director of Public Works or the Director's designee:

1. In consideration of the payments set forth in Exhibit "B", Contractor shall provide on-call engineering professional services that may include but not be limited to general surveying, topographic surveys, construction staking, hydraulic and hydrologic studies, geotechnical engineering and geotechnical studies, civil engineering design, structural engineering, project management, construction management, environmental study and document preparation, independent investigation of existing conditions, proposed solutions and schematic plans, cost analysis and preparation of independent cost estimates, feasibility studies, preparation of specifications and drawings, projected schedules, construction observation and administration, reports and coordination with applicable code enforcing and environmental agencies, site analysis, coordination with applicable local, state, and federal jurisdictions, and regulatory permit acquisition for a variety of public works type projects.
2. When County Public Works identifies a project that would benefit from Contractor's consulting services, the County will request the Contractor prepare and submit a proposal for such project. The Contractor will then propose a detailed scope of services, a not-to-exceed fee, and a timetable for completing the proposed project. If and when County Public Works approves the scope of services, not-to-exceed fee, and timetable (the "Approved Project"), the County Public Works may issue a task order authorizing the Contractor to begin work on the Approved Project. Contractor agrees to complete the Approved Project for an amount equal to or less than the Approved Project not-to-exceed fee and within the time limits set forth in the Approved Project timetable.

Exhibit "B" – Payments and Rates

In consideration of the services provided by Contractor in Exhibit "A", County shall pay Contractor based on the following fee schedule:

1. In consideration of the services provided by Contractor in Exhibit "A", County shall pay Contractor upon receipt in Accounting Section of the Department of Public Works and Parks of a written itemized invoice identifying the task order, County project number (if applicable), specific work completed, number of hours involved and breakdown of charges. The Approved Project total not-to-exceed amount will be stipulated in each task order. Costs for services deemed necessary by the County for completion of each task order shall be authorized in writing prior to proceeding with the work. Billing rates for services provided under this Agreement shall be based upon the Contractor's most recent fee schedule and by reference made a part of this Agreement. The County reserves the right to withhold payment if the County determines that the quantity or quality of the work performed is unacceptable.
2. The County shall pay Contractor reimbursable expenses. The Contractor shall be entitled to mileage, meals and lodging at the same rate granted to employees of the County whenever the Contractor is required to travel outside of San Mateo County in the performance of his duties under this Agreement. Such travel must first be approved in writing by the County. The Contractor shall also be reimbursed for expenses associated with reproduction (drawings, project manuals, reports, etc.); telephone or fax outside 650, 415, 408, 510, 707, and 925 area codes; fees paid for securing necessary permits and approvals of authorities having jurisdiction over the project; and special delivery service.
3. The County's total fiscal obligation under this Agreement shall not exceed \$500,000 unless said amount is authorized to be increased by the County Board of Supervisors by written amendment to this agreement. Specific projects that may be assigned to the Contractor shall have individual not-to-exceed amounts as stated in the specific task orders. The sum of individual task order not-to-exceed fees for multiple projects that may be assigned to the Contractor shall not exceed the total \$500,000 not-to-exceed amount for this Agreement without prior written approval by the County Board of Supervisors.

Exhibit "C" – General Obligation of Contractor

1. **Contractor Personnel**

The Contractor shall provide the County with resumes of the key staff members to be assigned to said project in advance of commencing any professional services. Once the County approves the key staff to be assigned to the project, any substitutions or additions shall be subject to written approval by the County. The County reserves the right to reject any personnel the Contractor proposes for use on the project.

Contractor represents that it is qualified to furnish the services described under this Agreement. Contractor further declares that one or more members or employees of its firm and that of its sub-contractors, if so required by the State, if any, are licensed by the State of California to perform their services and that these services will be performed by them or under their direct supervision. Contractor shall furnish to County for approval, upon execution of this Agreement, a list of all firms or corporations to be employed as sub-contractors.

Nothing in this Agreement abrogates the professional responsibilities of the Contractor and/or sub-contractors with respect to design defects, errors, omissions, or malpractice.

2. **Corrections and/or Revisions**

Contractor shall make and provide to the County all necessary corrections and/or revisions to the project design and document when it is determined by the Director of Public Works and Parks or his designated representative, that such changes are necessary for the project and are due to oversights, omissions or errors of Contractor.

3. **General Obligations of County**

County shall be responsible for providing any available data required by the Contractor as stipulated in any approved Task Order.

County shall examine documents submitted by Contractor and shall render comments and direction pertaining thereto promptly (up to two weeks or otherwise upon written agreement by County and Contractor), as stipulated in approved Task Orders.

4. **Payment Upon Suspension, Abandonment of Project, or Termination of Agreement**

If any Task Order is suspended for more than thirty (30) calendar days, or abandoned in all or part, Contractor shall be paid for services performed prior to receipt of thirty (30) days written notice from County of such suspension or abandonment, together with reimbursable expenses then due. In the event that the County abandons any Final Task Order the County may specifically authorize additional work necessary to properly close out the project.

If this Agreement or any Task Order is suspended or terminated due to fault of Contractor, County shall be obligated to compensate Contractor only for that portion of Contractor's services that were satisfactorily performed.

5. Performance of Services if Contractor is not Diligent in Performing Work

In the event Contractor is not diligent in pursuing the designated services as specified in each Task Order, the Director of Public Works and Parks or the respective designated representative may, at his option, seven (7) days after written notice to Contractor, perform any such required engineering services or retain a different Contractor to do the same, and the cost associated with having said work completed by means other than the Contractor will be retained from any sums not yet paid to the Contractor.

6. Authorization to Proceed

Contractor shall commence work upon receipt of the Task Order.

6.1 Time of Completion of Each Task

Contractor agrees to perform the professional services for the Task Order within the time limits set forth in the project schedule required by this Agreement. Any change in the scope of services as outlined in the Task Order will require a revised time table.

County agrees to exercise due diligence in performing its tasks to implement the Contractor's time schedule.

7. County's Review and Approval

Between each phase of work and at critical progress points there shall be a review and approval period by County and other agencies. County shall reject Contractor's submittal if changes and/or comments transmitted to Contractor by County during previous review were not addressed by Contractor in current submittal.

8. Changes in Work

The Director of Public Works or the respective designated representative may order changes in scope or character of work in writing which are mutually acceptable, either decreasing or increasing the amount 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. Increased compensation for changes shall be determined in accordance with Section 6 of the Agreement. Compensation shall first have been agreed to in writing by County.

In the event that changes are ordered pursuant to this Section, the schedule for progress and completion and compensation as provided with respective Task Order shall be adjusted by negotiation between Contractor and County.

9. Interest of Contractor/Contractor Independent of County

In accepting this Agreement, Contractor covenants that it presently has no interest, and shall not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of these services hereunder. Contractor further covenants that, in the performance of this Agreement, no subcontractor or person having such an interest shall be employed throughout the term of this Agreement. Contractor certifies that no one who has or will have any financial interest under this Agreement is an officer or employee of the County.

In the performance of the engineering services necessary for compliance with this Agreement, Contractor, and any of its sub-contractors or employees, shall be, and is at all times considered, an Independent Contractor, and is not an agent or employee of the County. Contractor has, and shall retain, the right to exercise full control and supervision of the services, and full control over the employment, direction, compensation and discharge of all persons assisting him in the performance of his engineering services hereunder to include any and all sub-contractors employed for the project described herein. Contractor shall be solely responsible for all matters relating to payment of his employees, including compliance with social security, withholding, and all other regulations governing such matters, and shall be solely responsible for his own acts and those of his subordinates and employees.

10. General Provisions

- (a) The Contractor acknowledges that time is of the essence for all projects defined in approved Task Order(s) and agrees to complete all work within the time frame as stipulated within said Task Order(s). Time extensions shall only be approved with prior written approval of the County and failure to complete services according to a mutually agreed upon schedule may be grounds for contract termination.
- (b) The Contractor upon becoming aware of factors which would result in delays shall be responsible for alerting County to potential delays well in advance in order that possible mitigation measures may be evaluated. Contractor shall detail the nature and reasons for potential delays and shall provide the County with possible mitigation measures for consideration.
- (c) On matters pertaining to Task Orders to be performed and the time taken by Contractor to perform such services, the decision of the Director of Public Works and Parks or the respective designated representative will be final after discussions between County and Contractor.
- (d) The Contractor warrants that he/she has not employed or retained any company or persons, other than a bona fide employee working for the Contractor, to solicit or secure this Agreement, and that he/she has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or formation of this

Agreement. For breach or violation of this warranty, the County shall have the right to annul this Agreement without liability or at its discretion to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

11. Ownership of Documents

Consistent with Attachment IP, all tracings, sketches, plans, specifications, estimates, maps, design calculations, quantity calculations, supporting documents, studies, survey notes, and other documents prepared by Contractor or sub-Contractors under the terms of this Agreement shall be delivered to and become the property of the County without restriction or limitation on their use. However, should County re-use or utilize data or drawings not for their intended use then County shall be solely liable and indemnify Contractor against such use. Computer files used by Contractor to produce the final set of plans and specifications shall also be delivered in AutoCAD, Access, Excel and Word electronic form on compact disks or other media acceptable to the County at no additional cost and become the property of the County.

12. Jobsite Safety and Environmental Protection

Neither the professional activities of the Contractor nor the presence of the Contractor or his or her employees and sub-contractors at a construction site, shall relieve the General Contractor and any other entity of their obligations, duties and responsibilities including, but not limited to, construction means, methods, sequence, techniques or procedures necessary for performing, superintending or coordinating all portions of the Work of construction in accordance with the contract documents and any health or safety or environmental protection precautions required by any regulatory agencies. The Contractor and his or her personnel have no authority to exercise any control over any construction contractor or other entity or their employees in connection with their work or any health or safety precautions. The Contractor agrees that the General Contractor is solely responsible for jobsite safety, and environmental protection, and warrants that this intent shall be made evident in the County's Agreement with the General Contractor. The Contractor also agrees that the County, the Contractor and any other County Contractors that may be providing services at the construction site shall be indemnified and shall be made additional insured's under the General Contractor's general liability insurance policy.

Attachment I

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

The undersigned (hereinafter called the "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.

Linda Schmid

Name of 504 Person - Type or Print

BKF Engineers

Name of Contractor(s) - Type or Print

255 Shoreline Dr., Suite 200

Street Address or P.O. Box

Redwood City, CA 94065

City, State, Zip Code

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

Jamie O'Sheerty

Signature

Principal/Vice Pres.

Title of Authorized Official

9/20/12

Date

*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

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 Schedule I 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.

**County of San Mateo
Contractor's Declaration Form**

I. CONTRACTOR INFORMATION

Contractor Name:	<u>BKF Engineers</u>	Phone:	<u>(650) 482-6300</u>
Contact Person:	<u>Linda Schmid</u>	Fax:	<u>(650) 482-6399</u>
Address:	<u>255 Shoreline Dr., Suite 200 Redwood City, CA 94065</u>		

II. EQUAL BENEFITS (check one or more boxes)

Contractors with contracts in excess of \$5,000 must treat spouses and domestic partners equally as to employee benefits.

- ☒ Contractor complies with the County's Equal Benefits Ordinance by:
- ☒ offering equal benefits to employees with spouses and employees with domestic partners.
 - ☐ offering a cash equivalent payment to eligible employees in lieu of equal benefits.
- ☐ Contractor does not comply with the County's Equal Benefits Ordinance.
- ☐ Contractor is exempt from this requirement because:
- ☐ Contractor has no employees, does not provide benefits to employees' spouses, or the contract is for \$5,000 or less.
 - ☐ Contractor is a party to a collective bargaining agreement that began on _____ (date) and expires on _____ (date), and intends to offer equal benefits when said agreement expires.

III. NON-DISCRIMINATION (check appropriate box)

- ☐ Finding(s) of discrimination have been issued against Contractor within the past year by the Equal Employment Opportunity Commission, Fair Employment and Housing Commission, or other investigative entity. Please see attached sheet of paper explaining the outcome(s) or remedy for the discrimination.
- ☒ No finding of discrimination has been issued in the past year against the Contractor by the Equal Employment Opportunity Commission, Fair Employment and Housing Commission, or any other entity.

IV. EMPLOYEE JURY SERVICE (check one or more boxes)

Contractors with original or amended contracts in excess of \$100,000 must have and adhere to a written policy that provides its employees living in San Mateo County up to five days regular pay for actual jury service in the County.

- ☒ Contractor complies with the County's Employee Jury Service Ordinance.
- ☐ Contractor does not comply with the County's Employee Jury Service Ordinance.
- ☐ Contractor is exempt from this requirement because:
- ☐ the contract is for \$100,000 or less.
 - ☐ Contractor is a party to a collective bargaining agreement that began on _____ (date) and expires on _____ (date), and intends to comply when the collective bargaining agreement expires.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that I am authorized to bind this entity contractually.

Janine O'Flaherty
Signature

9/20/12
Date

Janine O'Flaherty
Name

Principal/Vice Pres.
Title

**AGREEMENT FOR ON-CALL ENGINEERING SERVICES
BETWEEN THE COUNTY OF SAN MATEO AND
CARDNO ENTRIX**

THIS AGREEMENT, entered into this _____ day of _____, 2012, by
and between the COUNTY OF SAN MATEO, hereinafter called "County," and Cardno
Entrix, hereinafter called "Contractor";

W I T N E S S E T H:

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

WHEREAS, it is necessary and desirable that Contractor be retained for the purpose
of providing engineering and other related professional and technical services required for
the delivery of various types of capital improvement projects.

**NOW, THEREFORE, IT IS HEREBY AGREED BY THE PARTIES HERETO
AS FOLLOWS:**

1. Exhibits and Attachments

The following exhibits and attachments are included hereto and incorporated by reference
herein:

Exhibit A – Services
Exhibit B – Payments and Rates
Exhibit C – General Obligation of Contractor
Attachment I - § 504 Compliance
Attachment IP – Intellectual Property Rights

2. Services to be performed by Contractor

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

3. Payments

In consideration of the services provided by Contractor in accordance with all terms,
conditions and specifications set forth herein and in Exhibit "A" and Exhibit "C", County
shall make payment to Contractor based on the rates and in the manner specified in Exhibit
"B." The County reserves the right to withhold payment if the County determines that the

quantity or quality of the work performed is unacceptable. In no event shall the County's total fiscal obligation under this Agreement exceed Five Hundred Thousand Dollars and No/100s [\$500,000.00].

4. Term and Termination

Subject to compliance with all terms and conditions, the term of this Agreement shall be from October 23, 2012 to October 22, 2015.

This Agreement may be terminated by Contractor, the Director of Department of Public Works and Parks or his/her designee at any time without a requirement of good cause upon thirty (30) days' written notice to the other party.

In the event of termination, all finished or unfinished documents, data, studies, maps, photographs, reports, and materials (hereafter referred to as materials) prepared by Contractor under this Agreement shall become the property of the County and shall be promptly delivered to the County. Upon termination, the Contractor may make and retain a copy of such materials. 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 portion of the full payment, which is determined by comparing the work/services completed to the work/services required by the Agreement.

5. Availability of Funds

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

6. 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 the County and that Contractor acquires none of the rights, privileges, powers, or advantages of County employees.

7. Hold Harmless

Contractor shall indemnify and save harmless County, its officers, agents, employees, and servants from all claims, suits, or actions of every name, kind, and description, brought for, or on account of: (A) injuries to or death of any person, including Contractor, or (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 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, its officers, agents, employees, or servants, resulting from the performance of any work required of Contractor or payments made pursuant to this Agreement, provided that this 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 herein, shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

8. Assignability and Subcontracting

Contractor shall not assign this Agreement or any portion thereof 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 the County's prior written consent shall give County the right to automatically and immediately terminate this Agreement.

9. Insurance

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

- (1) **Worker's Compensation and Employer's Liability Insurance** The Contractor shall have in effect during the entire life of this Agreement Workers' Compensation and Employer's Liability Insurance providing full statutory coverage. In signing this Agreement, the Contractor certifies, as required by Section 1861 of the California Labor Code, that it is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of the Code, and will comply with such provisions before commencing the performance of

the work of this Agreement.

- (2) **Liability Insurance.** The Contractor shall take out and maintain during the life of this Agreement such Bodily Injury Liability and Property Damage Liability Insurance as shall protect him/her 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 contractors operations under this Agreement, whether such operations be by himself/herself or by any sub-contractor or by anyone directly or indirectly employed by either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall be not less than the amount specified below.

Such insurance shall include:

- | | |
|---|-------------|
| (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 the insurance afforded thereby to the County, its officers, agents, employees and servants shall be primary insurance to the full limits of liability of the policy, and that if the County or its officers and employees 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, the County of San Mateo 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 pursuant to this Agreement.

10. Compliance with laws; payment of Permits/Licenses

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, including, but not limited to, Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended, and 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 handicap 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. Further, Contractor certifies that the Contractor 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.

In the event of a conflict between the terms of this agreement and State, Federal, County, or municipal law or regulations, the requirements of the applicable law will take precedence over the requirements set forth in this Agreement.

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

11. Non-Discrimination and Other Requirements

- A. *Section 504 applies only to Contractors who are providing services to members of the public.* Contractor shall comply with § 504 of the Rehabilitation Act of 1973, which provides that no otherwise qualified handicapped individual 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 this Agreement.
- B. *General non-discrimination.* No person shall, on the grounds of race, color, religion, ancestry, gender, age (over 40), national origin, medical condition (cancer), physical or mental disability, sexual orientation, pregnancy, childbirth or related medical condition, marital status, or political affiliation be denied any benefits or subject to discrimination under this Agreement.
- C. *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 of San Mateo upon request.
- D. *Violation of Non-discrimination provisions.* 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:
 - i) termination of this Agreement;
 - ii) disqualification of the Contractor from bidding on or being awarded a County contract for a period of up to 3 years;
 - iii) liquidated damages of \$2,500 per violation;
 - 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 examine Contractor's employment records with respect to compliance with this paragraph and/or to set off all or any portion of the amount described in this paragraph against amounts due to Contractor under the Contract or any other Contract between Contractor and County.

Contractor shall report to the County Manager the filing by any person in any court of any complaint of discrimination or the filing by any person of any and all charges with the Equal Employment Opportunity Commission, the Fair Employment and Housing Commission or any other entity charged with the investigation of allegations 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 the name of the complainant, a copy of such complaint, and a description of the circumstance. Contractor shall provide County with a copy of their response to the Complaint when filed.

- E. *Compliance with Equal Benefits Ordinance.* With respect to the provision of employee benefits, Contractor shall comply with the County Ordinance, which prohibits contractors from discriminating in the provision of employee benefits between an employee with a domestic partner and an employee with a spouse.
- F. The Contractor shall comply fully with the non-discrimination requirements required by 41 CFR 60-741.5(a), which is incorporated herein as if fully set forth.

12. Compliance with Contractor Employee Jury Service Ordinance

Contractor shall comply with the County Ordinance with respect to provision of jury duty pay to employees and have and adhere to a written policy that provides that its employees shall receive from the Contractor, on an annual basis, no less than five days of regular pay for actual jury service in San Mateo County. The policy may provide that employees deposit any fees received for such jury service with the Contractor or that the Contractor deduct from the employees' regular pay the fees received for jury service.

13. Retention of Records, Right to Monitor and Audit

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

(b) Reporting and Record Keeping: Contractor shall comply with all program and fiscal reporting requirements set forth by appropriate Federal, State and local agencies, and as required by the County.

(c) Contractor agrees to provide to County, to any Federal or State department having monitoring or review authority, to County's authorized representatives, and/or their appropriate audit agencies upon reasonable notice, 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, and this Agreement, and to evaluate the quality, appropriateness and timeliness of services performed.

14. Merger Clause

This Agreement, including the Exhibits attached hereto and incorporated herein by reference, constitutes the sole Agreement of the parties hereto 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 this body of the 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 this 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 shall be in writing and signed by the parties.

15. Controlling Law and Venue

The validity of this Agreement and of its terms or provisions, as well as the rights and duties of the parties hereunder, the interpretation, and performance of this Agreement shall be governed by the laws of the State of California. Any dispute arising out of this Agreement shall be venued either in the San Mateo County Superior Court or the United States District Court for the Northern District of California.

16. Notices

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

In the case of County, to:

County of San Mateo
Department of Public Works
555 County Center, 5th Floor
Redwood City, CA 94063
Telephone: (650) 363-4100
Facsimile: (650) 361-8220

In the case of Contractor, to:

Cardno Entrix
2300 Clayton Road, Suite 200
Concord, CA 94520
Telephone: (925) 935-9920
Facsimile: (925) 935-5368

In the event that the facsimile transmission is not possible, notice shall be given both by United States mail and an overnight courier as outlined above.

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have affixed their hands.

COUNTY OF SAN MATEO

By: _____
President, Board of Supervisors, San Mateo County

Date: _____

ATTEST:

By: _____
Clerk of Said Board

Cardno Entrix



Contractor's Signature

Date: 10-2-12

Long Form Agreement/Non Business Associate v 8/19/08

Exhibit "A" – Services

In consideration of the payments set forth in Exhibit "B", Contractor shall provide the following services at the request of the Director of Public Works or the Director's designee:

1. In consideration of the payments set forth in Exhibit "B", Contractor shall provide on-call engineering professional services that may include but not be limited to general surveying, topographic surveys, construction staking, hydraulic and hydrologic studies, geotechnical engineering and geotechnical studies, civil engineering design, structural engineering, project management, construction management, environmental study and document preparation, independent investigation of existing conditions, proposed solutions and schematic plans, cost analysis and preparation of independent cost estimates, feasibility studies, preparation of specifications and drawings, projected schedules, construction observation and administration, reports and coordination with applicable code enforcing and environmental agencies, site analysis, coordination with applicable local, state, and federal jurisdictions, and regulatory permit acquisition for a variety of public works type projects.
2. When County Public Works identifies a project that would benefit from Contractor's consulting services, the County will request the Contractor prepare and submit a proposal for such project. The Contractor will then propose a detailed scope of services, a not-to-exceed fee, and a timetable for completing the proposed project. If and when County Public Works approves the scope of services, not-to-exceed fee, and timetable (the "Approved Project"), the County Public Works may issue a task order authorizing the Contractor to begin work on the Approved Project. Contractor agrees to complete the Approved Project for an amount equal to or less than the Approved Project not-to-exceed fee and within the time limits set forth in the Approved Project timetable.

Exhibit "B" – Payments and Rates

In consideration of the services provided by Contractor in Exhibit "A", County shall pay Contractor based on the following fee schedule:

1. In consideration of the services provided by Contractor in Exhibit "A", County shall pay Contractor upon receipt in Accounting Section of the Department of Public Works and Parks of a written itemized invoice identifying the task order, County project number (if applicable), specific work completed, number of hours involved and breakdown of charges. The Approved Project total not-to-exceed amount will be stipulated in each task order. Costs for services deemed necessary by the County for completion of each task order shall be authorized in writing prior to proceeding with the work. Billing rates for services provided under this Agreement shall be based upon the Contractor's most recent fee schedule and by reference made a part of this Agreement. The County reserves the right to withhold payment if the County determines that the quantity or quality of the work performed is unacceptable.
2. The County shall pay Contractor reimbursable expenses. The Contractor shall be entitled to mileage, meals and lodging at the same rate granted to employees of the County whenever the Contractor is required to travel outside of San Mateo County in the performance of his duties under this Agreement. Such travel must first be approved in writing by the County. The Contractor shall also be reimbursed for expenses associated with reproduction (drawings, project manuals, reports, etc.); telephone or fax outside 650, 415, 408, 510, 707, and 925 area codes; fees paid for securing necessary permits and approvals of authorities having jurisdiction over the project; and special delivery service.
3. The County's total fiscal obligation under this Agreement shall not exceed \$500,000 unless said amount is authorized to be increased by the County Board of Supervisors by written amendment to this agreement. Specific projects that may be assigned to the Contractor shall have individual not-to-exceed amounts as stated in the specific task orders. The sum of individual task order not-to-exceed fees for multiple projects that may be assigned to the Contractor shall not exceed the total \$500,000 not-to-exceed amount for this Agreement without prior written approval by the County Board of Supervisors.

Exhibit "C" – General Obligation of Contractor

1. **Contractor Personnel**

The Contractor shall provide the County with resumes of the key staff members to be assigned to said project in advance of commencing any professional services. Once the County approves the key staff to be assigned to the project, any substitutions or additions shall be subject to written approval by the County. The County reserves the right to reject any personnel the Contractor proposes for use on the project.

Contractor represents that it is qualified to furnish the services described under this Agreement. Contractor further declares that one or more members or employees of its firm and that of its sub-contractors, if so required by the State, if any, are licensed by the State of California to perform their services and that these services will be performed by them or under their direct supervision. Contractor shall furnish to County for approval, upon execution of this Agreement, a list of all firms or corporations to be employed as sub-contractors.

Nothing in this Agreement abrogates the professional responsibilities of the Contractor and/or sub-contractors with respect to design defects, errors, omissions, or malpractice.

2. **Corrections and/or Revisions**

Contractor shall make and provide to the County all necessary corrections and/or revisions to the project design and document when it is determined by the Director of Public Works and Parks or his designated representative, that such changes are necessary for the project and are due to oversights, omissions or errors of Contractor.

3. **General Obligations of County**

County shall be responsible for providing any available data required by the Contractor as stipulated in any approved Task Order.

County shall examine documents submitted by Contractor and shall render comments and direction pertaining thereto promptly (up to two weeks or otherwise upon written agreement by County and Contractor), as stipulated in approved Task Orders.

4. **Payment Upon Suspension, Abandonment of Project, or Termination of Agreement**

If any Task Order is suspended for more than thirty (30) calendar days, or abandoned in all or part, Contractor shall be paid for services performed prior to receipt of thirty (30) days written notice from County of such suspension or abandonment, together with reimbursable expenses then due. In the event that the County abandons any Final Task Order the County may specifically authorize additional work necessary to properly close out the project.

If this Agreement or any Task Order is suspended or terminated due to fault of Contractor, County shall be obligated to compensate Contractor only for that portion of Contractor's services that were satisfactorily performed.

5. Performance of Services if Contractor is not Diligent in Performing Work

In the event Contractor is not diligent in pursuing the designated services as specified in each Task Order, the Director of Public Works and Parks or the respective designated representative may, at his option, seven (7) days after written notice to Contractor, perform any such required engineering services or retain a different Contractor to do the same, and the cost associated with having said work completed by means other than the Contractor will be retained from any sums not yet paid to the Contractor.

6. Authorization to Proceed

Contractor shall commence work upon receipt of the Task Order.

6.1 Time of Completion of Each Task

Contractor agrees to perform the professional services for the Task Order within the time limits set forth in the project schedule required by this Agreement. Any change in the scope of services as outlined in the Task Order will require a revised time table.

County agrees to exercise due diligence in performing its tasks to implement the Contractor's time schedule.

7. County's Review and Approval

Between each phase of work and at critical progress points there shall be a review and approval period by County and other agencies. County shall reject Contractor's submittal if changes and/or comments transmitted to Contractor by County during previous review were not addressed by Contractor in current submittal.

8. Changes in Work

The Director of Public Works or the respective designated representative may order changes in scope or character of work in writing which are mutually acceptable, either decreasing or increasing the amount 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. Increased compensation for changes shall be determined in accordance with Section 6 of the Agreement. Compensation shall first have been agreed to in writing by County.

In the event that changes are ordered pursuant to this Section, the schedule for progress and completion and compensation as provided with respective Task Order shall be adjusted by negotiation between Contractor and County.

9. Interest of Contractor/Contractor Independent of County

In accepting this Agreement, Contractor covenants that it presently has no interest, and shall not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of these services hereunder. Contractor further covenants that, in the performance of this Agreement, no subcontractor or person having such an interest shall be employed throughout the term of this Agreement. Contractor certifies that no one who has or will have any financial interest under this Agreement is an officer or employee of the County.

In the performance of the engineering services necessary for compliance with this Agreement, Contractor, and any of its sub-contractors or employees, shall be, and is at all times considered, an Independent Contractor, and is not an agent or employee of the County. Contractor has, and shall retain, the right to exercise full control and supervision of the services, and full control over the employment, direction, compensation and discharge of all persons assisting him in the performance of his engineering services hereunder to include any and all sub-contractors employed for the project described herein. Contractor shall be solely responsible for all matters relating to payment of his employees, including compliance with social security, withholding, and all other regulations governing such matters, and shall be solely responsible for his own acts and those of his subordinates and employees.

10. General Provisions

- (a) The Contractor acknowledges that time is of the essence for all projects defined in approved Task Order(s) and agrees to complete all work within the time frame as stipulated within said Task Order(s). Time extensions shall only be approved with prior written approval of the County and failure to complete services according to a mutually agreed upon schedule may be grounds for contract termination.
- (b) The Contractor upon becoming aware of factors which would result in delays shall be responsible for alerting County to potential delays well in advance in order that possible mitigation measures may be evaluated. Contractor shall detail the nature and reasons for potential delays and shall provide the County with possible mitigation measures for consideration.
- (c) On matters pertaining to Task Orders to be performed and the time taken by Contractor to perform such services, the decision of the Director of Public Works and Parks or the respective designated representative will be final after discussions between County and Contractor.
- (d) The Contractor warrants that he/she has not employed or retained any company or persons, other than a bona fide employee working for the Contractor, to solicit or secure this Agreement, and that he/she has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or formation of this

Agreement. For breach or violation of this warranty, the County shall have the right to annul this Agreement without liability or at its discretion to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

11. Ownership of Documents

Consistent with Attachment IP, all tracings, sketches, plans, specifications, estimates, maps, design calculations, quantity calculations, supporting documents, studies, survey notes, and other documents prepared by Contractor or sub-Contractors under the terms of this Agreement shall be delivered to and become the property of the County without restriction or limitation on their use. However, should County re-use or utilize data or drawings not for their intended use then County shall be solely liable and indemnify Contractor against such use. Computer files used by Contractor to produce the final set of plans and specifications shall also be delivered in AutoCAD, Access, Excel and Word electronic form on compact disks or other media acceptable to the County at no additional cost and become the property of the County.

12. Jobsite Safety and Environmental Protection

Neither the professional activities of the Contractor nor the presence of the Contractor or his or her employees and sub-contractors at a construction site, shall relieve the General Contractor and any other entity of their obligations, duties and responsibilities including, but not limited to, construction means, methods, sequence, techniques or procedures necessary for performing, superintending or coordinating all portions of the Work of construction in accordance with the contract documents and any health or safety or environmental protection precautions required by any regulatory agencies. The Contractor and his or her personnel have no authority to exercise any control over any construction contractor or other entity or their employees in connection with their work or any health or safety precautions. The Contractor agrees that the General Contractor is solely responsible for jobsite safety, and environmental protection, and warrants that this intent shall be made evident in the County's Agreement with the General Contractor. The Contractor also agrees that the County, the Contractor and any other County Contractors that may be providing services at the construction site shall be indemnified and shall be made additional insured's under the General Contractor's general liability insurance policy.

Attachment I

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

The undersigned (hereinafter called the "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.

Denise Decker

Name of 504 Person - Type or Print

Cardno ENTRIX

Name of Contractor(s) - Type or Print

10 Corporate Circle

Street Address or P.O. Box

New Castle, DE 19720

City, State, Zip Code

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

Susan K. Lee

Signature

Director, Admin Services

Title of Authorized Official

10/2/12

Date

*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

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 Schedule I 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.

**County of San Mateo
Contractor's Declaration Form**

I. CONTRACTOR INFORMATION

Contractor Name:	Cardno ENTRIX	Phone:	302-395-3360
Contact Person:	Susan K. Lee	Fax:	302-395-1920
Address:	10 Corporate Circle New Castle, DE 19720		

II. EQUAL BENEFITS (check one or more boxes)

Contractors with contracts in excess of \$5,000 must treat spouses and domestic partners equally as to employee benefits.

- ☒ Contractor complies with the County's Equal Benefits Ordinance by:
- ☒ offering equal benefits to employees with spouses and employees with domestic partners.
 - ☐ offering a cash equivalent payment to eligible employees in lieu of equal benefits.
- ☐ Contractor does not comply with the County's Equal Benefits Ordinance.
- ☐ Contractor is exempt from this requirement because:
- ☐ Contractor has no employees, does not provide benefits to employees' spouses, or the contract is for \$5,000 or less.
 - ☐ Contractor is a party to a collective bargaining agreement that began on _____ (date) and expires on _____ (date), and intends to offer equal benefits when said agreement expires.

III. NON-DISCRIMINATION (check appropriate box)

- ☐ Finding(s) of discrimination have been issued against Contractor within the past year by the Equal Employment Opportunity Commission, Fair Employment and Housing Commission, or other investigative entity. Please see attached sheet of paper explaining the outcome(s) or remedy for the discrimination.
- ☒ No finding of discrimination has been issued in the past year against the Contractor by the Equal Employment Opportunity Commission, Fair Employment and Housing Commission, or any other entity.

IV. EMPLOYEE JURY SERVICE (check one or more boxes)

Contractors with original or amended contracts in excess of \$100,000 must have and adhere to a written policy that provides its employees living in San Mateo County up to five days regular pay for actual jury service in the County.

- ☒ Contractor complies with the County's Employee Jury Service Ordinance.
- ☐ Contractor does not comply with the County's Employee Jury Service Ordinance.
- ☐ Contractor is exempt from this requirement because:
- ☐ the contract is for \$100,000 or less.
 - ☐ Contractor is a party to a collective bargaining agreement that began on _____ (date) and expires on _____ (date), and intends to comply when the collective bargaining agreement expires.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that I am authorized to bind this entity contractually.

Susan K. Lee
Signature
10/2/12
Date

Susan K. Lee
Name
Director, Admin Services
Title

**AGREEMENT FOR ON-CALL ENGINEERING SERVICES
BETWEEN THE COUNTY OF SAN MATEO AND
ESA**

THIS AGREEMENT, entered into this _____ day of _____, 2012, by
and between the COUNTY OF SAN MATEO, hereinafter called "County," and ESA,
hereinafter called "Contractor";

W I T N E S S E T H:

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

WHEREAS, it is necessary and desirable that Contractor be retained for the purpose of providing engineering and other related professional and technical services required for the delivery of various types of capital improvement projects.

**NOW, THEREFORE, IT IS HEREBY AGREED BY THE PARTIES HERETO
AS FOLLOWS:**

1. Exhibits and Attachments

The following exhibits and attachments are included hereto and incorporated by reference herein:

Exhibit A – Services

Exhibit B – Payments and Rates

Exhibit C – General Obligation of Contractor

Attachment I - § 504 Compliance

Attachment IP – Intellectual Property Rights

2. Services to be performed by Contractor

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

3. Payments

In consideration of the services provided by Contractor in accordance with all terms, conditions and specifications set forth herein and in Exhibit "A" and Exhibit "C", County shall make payment to Contractor based on the rates and in the manner specified in Exhibit "B." The County reserves the right to withhold payment if the County determines that the

quantity or quality of the work performed is unacceptable. In no event shall the County's total fiscal obligation under this Agreement exceed Three Hundred Thousand Dollars and No/100s [\$300,000.00].

4. Term and Termination

Subject to compliance with all terms and conditions, the term of this Agreement shall be from October 23, 2012 to October 22, 2015.

This Agreement may be terminated by Contractor, the Director of Department of Public Works and Parks or his/her designee at any time without a requirement of good cause upon thirty (30) days' written notice to the other party.

In the event of termination, all finished or unfinished documents, data, studies, maps, photographs, reports, and materials (hereafter referred to as materials) prepared by Contractor under this Agreement shall become the property of the County and shall be promptly delivered to the County. Upon termination, the Contractor may make and retain a copy of such materials. 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 portion of the full payment, which is determined by comparing the work/services completed to the work/services required by the Agreement.

5. Availability of Funds

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

6. 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 the County and that Contractor acquires none of the rights, privileges, powers, or advantages of County employees.

7. Hold Harmless

Contractor shall indemnify and save harmless County, its officers, agents, employees, and servants from all claims, suits, or actions of every name, kind, and description, brought for, or on account of: (A) injuries to or death of any person, including Contractor, or (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 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, its officers, agents, employees, or servants, resulting from the performance of any work required of Contractor or payments made pursuant to this Agreement, provided that this 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 herein, shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

8. Assignability and Subcontracting

Contractor shall not assign this Agreement or any portion thereof 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 the County's prior written consent shall give County the right to automatically and immediately terminate this Agreement.

9. Insurance

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

- (1) **Worker's Compensation and Employer's Liability Insurance** The Contractor shall have in effect during the entire life of this Agreement Workers' Compensation and Employer's Liability Insurance providing full statutory coverage. In signing this Agreement, the Contractor certifies, as required by Section 1861 of the California Labor Code, that it is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of the Code, and will comply with such provisions before commencing the performance of

the work of this Agreement.

- (2) **Liability Insurance.** The Contractor shall take out and maintain during the life of this Agreement such Bodily Injury Liability and Property Damage Liability Insurance as shall protect him/her 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 contractors operations under this Agreement, whether such operations be by himself/herself or by any sub-contractor or by anyone directly or indirectly employed by either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall be not less than the amount specified below.

Such insurance shall include:

- | | |
|---|-------------|
| (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 the insurance afforded thereby to the County, its officers, agents, employees and servants shall be primary insurance to the full limits of liability of the policy, and that if the County or its officers and employees 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, the County of San Mateo 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 pursuant to this Agreement.

10. Compliance with laws; payment of Permits/Licenses

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, including, but not limited to, Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended, and 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 handicap 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. Further, Contractor certifies that the Contractor 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.

In the event of a conflict between the terms of this agreement and State, Federal, County, or municipal law or regulations, the requirements of the applicable law will take precedence over the requirements set forth in this Agreement.

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

11. Non-Discrimination and Other Requirements

- A. *Section 504 applies only to Contractors who are providing services to members of the public.* Contractor shall comply with § 504 of the Rehabilitation Act of 1973, which provides that no otherwise qualified handicapped individual 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 this Agreement.
- B. *General non-discrimination.* No person shall, on the grounds of race, color, religion, ancestry, gender, age (over 40), national origin, medical condition (cancer), physical or mental disability, sexual orientation, pregnancy, childbirth or related medical condition, marital status, or political affiliation be denied any benefits or subject to discrimination under this Agreement.
- C. *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 of San Mateo upon request.
- D. *Violation of Non-discrimination provisions.* 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:
 - i) termination of this Agreement;
 - ii) disqualification of the Contractor from bidding on or being awarded a County contract for a period of up to 3 years;
 - iii) liquidated damages of \$2,500 per violation;
 - 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 examine Contractor's employment records with respect to compliance with this paragraph and/or to set off all or any portion of the amount described in this paragraph against amounts due to Contractor under the Contract or any other Contract between Contractor and County.

Contractor shall report to the County Manager the filing by any person in any court of any complaint of discrimination or the filing by any person of any and all charges with the Equal Employment Opportunity Commission, the Fair Employment and Housing Commission or any other entity charged with the investigation of allegations 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 the name of the complainant, a copy of such complaint, and a description of the circumstance. Contractor shall provide County with a copy of their response to the Complaint when filed.

- E. *Compliance with Equal Benefits Ordinance.* With respect to the provision of employee benefits, Contractor shall comply with the County Ordinance, which prohibits contractors from discriminating in the provision of employee benefits between an employee with a domestic partner and an employee with a spouse.
- F. The Contractor shall comply fully with the non-discrimination requirements required by 41 CFR 60-741.5(a), which is incorporated herein as if fully set forth.

12. Compliance with Contractor Employee Jury Service Ordinance

Contractor shall comply with the County Ordinance with respect to provision of jury duty pay to employees and have and adhere to a written policy that provides that its employees shall receive from the Contractor, on an annual basis, no less than five days of regular pay for actual jury service in San Mateo County. The policy may provide that employees deposit any fees received for such jury service with the Contractor or that the Contractor deduct from the employees' regular pay the fees received for jury service.

13. Retention of Records, Right to Monitor and Audit

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

(b) Reporting and Record Keeping: Contractor shall comply with all program and fiscal reporting requirements set forth by appropriate Federal, State and local agencies, and as required by the County.

(c) Contractor agrees to provide to County, to any Federal or State department having monitoring or review authority, to County's authorized representatives, and/or their appropriate audit agencies upon reasonable notice, 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, and this Agreement, and to evaluate the quality, appropriateness and timeliness of services performed.

14. Merger Clause

This Agreement, including the Exhibits attached hereto and incorporated herein by reference, constitutes the sole Agreement of the parties hereto 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 this body of the 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 this 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 shall be in writing and signed by the parties.

15. Controlling Law and Venue

The validity of this Agreement and of its terms or provisions, as well as the rights and duties of the parties hereunder, the interpretation, and performance of this Agreement shall be governed by the laws of the State of California. Any dispute arising out of this Agreement shall be venued either in the San Mateo County Superior Court or the United States District Court for the Northern District of California.

16. Notices

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

In the case of County, to:

County of San Mateo
Department of Public Works
555 County Center, 5th Floor
Redwood City, CA 94063
Telephone: (650) 363-4100
Facsimile: (650) 361-8220

In the case of Contractor, to:

ESA
550 Kearny Street, Suite 800
San Francisco, CA 94108
Telephone: (415) 896-5900
Facsimile: (415) 896-0332

In the event that the facsimile transmission is not possible, notice shall be given both by United States mail and an overnight courier as outlined above.

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have affixed their hands.

COUNTY OF SAN MATEO

By: _____
President, Board of Supervisors, San Mateo County

Date: _____

ATTEST:

By: _____
Clerk of Said Board

ESA



Contractor's Signature

Date: 24 Sept. 2012

Long Form Agreement/Non Business Associate v 8/19/08

Exhibit "A" – Services

In consideration of the payments set forth in Exhibit "B", Contractor shall provide the following services at the request of the Director of Public Works or the Director's designee:

1. In consideration of the payments set forth in Exhibit "B", Contractor shall provide on-call engineering professional services that may include but not be limited to general surveying, topographic surveys, construction staking, hydraulic and hydrologic studies, geotechnical engineering and geotechnical studies, civil engineering design, structural engineering, project management, construction management, environmental study and document preparation, independent investigation of existing conditions, proposed solutions and schematic plans, cost analysis and preparation of independent cost estimates, feasibility studies, preparation of specifications and drawings, projected schedules, construction observation and administration, reports and coordination with applicable code enforcing and environmental agencies, site analysis, coordination with applicable local, state, and federal jurisdictions, and regulatory permit acquisition for a variety of public works type projects.
2. When County Public Works identifies a project that would benefit from Contractor's consulting services, the County will request the Contractor prepare and submit a proposal for such project. The Contractor will then propose a detailed scope of services, a not-to-exceed fee, and a timetable for completing the proposed project. If and when County Public Works approves the scope of services, not-to-exceed fee, and timetable (the "Approved Project"), the County Public Works may issue a task order authorizing the Contractor to begin work on the Approved Project. Contractor agrees to complete the Approved Project for an amount equal to or less than the Approved Project not-to-exceed fee and within the time limits set forth in the Approved Project timetable.

Exhibit "B" – Payments and Rates

In consideration of the services provided by Contractor in Exhibit "A", County shall pay Contractor based on the following fee schedule:

1. In consideration of the services provided by Contractor in Exhibit "A", County shall pay Contractor upon receipt in Accounting Section of the Department of Public Works and Parks of a written itemized invoice identifying the task order, County project number (if applicable), specific work completed, number of hours involved and breakdown of charges. The Approved Project total not-to-exceed amount will be stipulated in each task order. Costs for services deemed necessary by the County for completion of each task order shall be authorized in writing prior to proceeding with the work. Billing rates for services provided under this Agreement shall be based upon the Contractor's most recent fee schedule and by reference made a part of this Agreement. The County reserves the right to withhold payment if the County determines that the quantity or quality of the work performed is unacceptable.
2. The County shall pay Contractor reimbursable expenses. The Contractor shall be entitled to mileage, meals and lodging at the same rate granted to employees of the County whenever the Contractor is required to travel outside of San Mateo County in the performance of his duties under this Agreement. Such travel must first be approved in writing by the County. The Contractor shall also be reimbursed for expenses associated with reproduction (drawings, project manuals, reports, etc.); telephone or fax outside 650, 415, 408, 510, 707, and 925 area codes; fees paid for securing necessary permits and approvals of authorities having jurisdiction over the project; and special delivery service.
3. The County's total fiscal obligation under this Agreement shall not exceed \$300,000 unless said amount is authorized to be increased by the County Board of Supervisors by written amendment to this agreement. Specific projects that may be assigned to the Contractor shall have individual not-to-exceed amounts as stated in the specific task orders. The sum of individual task order not-to-exceed fees for multiple projects that may be assigned to the Contractor shall not exceed the total \$300,000 not-to-exceed amount for this Agreement without prior written approval by the County Board of Supervisors.

Exhibit "C" – General Obligation of Contractor

1. Contractor Personnel

The Contractor shall provide the County with resumes of the key staff members to be assigned to said project in advance of commencing any professional services. Once the County approves the key staff to be assigned to the project, any substitutions or additions shall be subject to written approval by the County. The County reserves the right to reject any personnel the Contractor proposes for use on the project.

Contractor represents that it is qualified to furnish the services described under this Agreement. Contractor further declares that one or more members or employees of its firm and that of its sub-contractors, if so required by the State, if any, are licensed by the State of California to perform their services and that these services will be performed by them or under their direct supervision. Contractor shall furnish to County for approval, upon execution of this Agreement, a list of all firms or corporations to be employed as sub-contractors.

Nothing in this Agreement abrogates the professional responsibilities of the Contractor and/or sub-contractors with respect to design defects, errors, omissions, or malpractice.

2. Corrections and/or Revisions

Contractor shall make and provide to the County all necessary corrections and/or revisions to the project design and document when it is determined by the Director of Public Works and Parks or his designated representative, that such changes are necessary for the project and are due to oversights, omissions or errors of Contractor.

3. General Obligations of County

County shall be responsible for providing any available data required by the Contractor as stipulated in any approved Task Order.

County shall examine documents submitted by Contractor and shall render comments and direction pertaining thereto promptly (up to two weeks or otherwise upon written agreement by County and Contractor), as stipulated in approved Task Orders.

4. Payment Upon Suspension, Abandonment of Project, or Termination of Agreement

If any Task Order is suspended for more than thirty (30) calendar days, or abandoned in all or part, Contractor shall be paid for services performed prior to receipt of thirty (30) days written notice from County of such suspension or abandonment, together with reimbursable expenses then due. In the event that the County abandons any Final Task Order the County may specifically authorize additional work necessary to properly close out the project.

If this Agreement or any Task Order is suspended or terminated due to fault of Contractor, County shall be obligated to compensate Contractor only for that portion of Contractor's services that were satisfactorily performed.

5. Performance of Services if Contractor is not Diligent in Performing Work

In the event Contractor is not diligent in pursuing the designated services as specified in each Task Order, the Director of Public Works and Parks or the respective designated representative may, at his option, seven (7) days after written notice to Contractor, perform any such required engineering services or retain a different Contractor to do the same, and the cost associated with having said work completed by means other than the Contractor will be retained from any sums not yet paid to the Contractor.

6. Authorization to Proceed

Contractor shall commence work upon receipt of the Task Order.

6.1 Time of Completion of Each Task

Contractor agrees to perform the professional services for the Task Order within the time limits set forth in the project schedule required by this Agreement. Any change in the scope of services as outlined in the Task Order will require a revised time table.

County agrees to exercise due diligence in performing its tasks to implement the Contractor's time schedule.

7. County's Review and Approval

Between each phase of work and at critical progress points there shall be a review and approval period by County and other agencies. County shall reject Contractor's submittal if changes and/or comments transmitted to Contractor by County during previous review were not addressed by Contractor in current submittal.

8. Changes in Work

The Director of Public Works or the respective designated representative may order changes in scope or character of work in writing which are mutually acceptable, either decreasing or increasing the amount 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. Increased compensation for changes shall be determined in accordance with Section 6 of the Agreement. Compensation shall first have been agreed to in writing by County.

In the event that changes are ordered pursuant to this Section, the schedule for progress and completion and compensation as provided with respective Task Order shall be adjusted by negotiation between Contractor and County.

9. Interest of Contractor/Contractor Independent of County

In accepting this Agreement, Contractor covenants that it presently has no interest, and shall not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of these services hereunder. Contractor further covenants that, in the performance of this Agreement, no subcontractor or person having such an interest shall be employed throughout the term of this Agreement. Contractor certifies that no one who has or will have any financial interest under this Agreement is an officer or employee of the County.

In the performance of the engineering services necessary for compliance with this Agreement, Contractor, and any of its sub-contractors or employees, shall be, and is at all times considered, an Independent Contractor, and is not an agent or employee of the County. Contractor has, and shall retain, the right to exercise full control and supervision of the services, and full control over the employment, direction, compensation and discharge of all persons assisting him in the performance of his engineering services hereunder to include any and all sub-contractors employed for the project described herein. Contractor shall be solely responsible for all matters relating to payment of his employees, including compliance with social security, withholding, and all other regulations governing such matters, and shall be solely responsible for his own acts and those of his subordinates and employees.

10. General Provisions

- (a) The Contractor acknowledges that time is of the essence for all projects defined in approved Task Order(s) and agrees to complete all work within the time frame as stipulated within said Task Order(s). Time extensions shall only be approved with prior written approval of the County and failure to complete services according to a mutually agreed upon schedule may be grounds for contract termination.
- (b) The Contractor upon becoming aware of factors which would result in delays shall be responsible for alerting County to potential delays well in advance in order that possible mitigation measures may be evaluated. Contractor shall detail the nature and reasons for potential delays and shall provide the County with possible mitigation measures for consideration.
- (c) On matters pertaining to Task Orders to be performed and the time taken by Contractor to perform such services, the decision of the Director of Public Works and Parks or the respective designated representative will be final after discussions between County and Contractor.
- (d) The Contractor warrants that he/she has not employed or retained any company or persons, other than a bona fide employee working for the Contractor, to solicit or secure this Agreement, and that he/she has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or formation of this

Agreement. For breach or violation of this warranty, the County shall have the right to annul this Agreement without liability or at its discretion to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

11. Ownership of Documents

Consistent with Attachment IP, all tracings, sketches, plans, specifications, estimates, maps, design calculations, quantity calculations, supporting documents, studies, survey notes, and other documents prepared by Contractor or sub-Contractors under the terms of this Agreement shall be delivered to and become the property of the County without restriction or limitation on their use. However, should County re-use or utilize data or drawings not for their intended use then County shall be solely liable and indemnify Contractor against such use. Computer files used by Contractor to produce the final set of plans and specifications shall also be delivered in AutoCAD, Access, Excel and Word electronic form on compact disks or other media acceptable to the County at no additional cost and become the property of the County.

12. Jobsite Safety and Environmental Protection

Neither the professional activities of the Contractor nor the presence of the Contractor or his or her employees and sub-contractors at a construction site, shall relieve the General Contractor and any other entity of their obligations, duties and responsibilities including, but not limited to, construction means, methods, sequence, techniques or procedures necessary for performing, superintending or coordinating all portions of the Work of construction in accordance with the contract documents and any health or safety or environmental protection precautions required by any regulatory agencies. The Contractor and his or her personnel have no authority to exercise any control over any construction contractor or other entity or their employees in connection with their work or any health or safety precautions. The Contractor agrees that the General Contractor is solely responsible for jobsite safety, and environmental protection, and warrants that this intent shall be made evident in the County's Agreement with the General Contractor. The Contractor also agrees that the County, the Contractor and any other County Contractors that may be providing services at the construction site shall be indemnified and shall be made additional insured's under the General Contractor's general liability insurance policy.

Attachment I

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

The undersigned (hereinafter called the "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.

Annette Bonilla

Name of 504 Person - Type or Print

Environmental Science Associates (ESA)

Name of Contractor(s) - Type or Print

550 Kearny St., Suite 800

Street Address or P.O. Box

San Francisco, CA 94108

City, State, Zip Code

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


Signature

Vice-President/Human Resources Director

Title of Authorized Official

September 20, 2012

Date

*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

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 Schedule I 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.

**County of San Mateo
Contractor's Declaration Form**

I. CONTRACTOR INFORMATION

Contractor Name:	Environmental Science Associates (ESA)	Phone:	(415) 896-5900
Contact Person:	Patricia Berryhill, Bay Area Regional Director	Fax:	(415) 896-0332
Address:	550 Kearny St., Suite 800 San Francisco, CA 94108		

II. EQUAL BENEFITS (check one or more boxes)

Contractors with contracts in excess of \$5,000 must treat spouses and domestic partners equally as to employee benefits.

- ☒ Contractor complies with the County's Equal Benefits Ordinance by:
- ☒ offering equal benefits to employees with spouses and employees with domestic partners.
 - ☐ offering a cash equivalent payment to eligible employees in lieu of equal benefits.
- ☐ Contractor does not comply with the County's Equal Benefits Ordinance.
- ☐ Contractor is exempt from this requirement because:
- ☐ Contractor has no employees, does not provide benefits to employees' spouses, or the contract is for \$5,000 or less.
 - ☐ Contractor is a party to a collective bargaining agreement that began on _____ (date) and expires on _____ (date), and intends to offer equal benefits when said agreement expires.

III. NON-DISCRIMINATION (check appropriate box)



- ☐ Finding(s) of discrimination have been issued against Contractor within the past year by the Equal Employment Opportunity Commission, Fair Employment and Housing Commission, or other investigative entity. Please see attached sheet of paper explaining the outcome(s) or remedy for the discrimination.
- ☒ No finding of discrimination has been issued in the past year against the Contractor by the Equal Employment Opportunity Commission, Fair Employment and Housing Commission, or any other entity.

IV. EMPLOYEE JURY SERVICE (check one or more boxes)

Contractors with original or amended contracts in excess of \$100,000 must have and adhere to a written policy that provides its employees living in San Mateo County up to five days regular pay for actual jury service in the County.

- ☒ Contractor complies with the County's Employee Jury Service Ordinance.
- ☐ Contractor does not comply with the County's Employee Jury Service Ordinance.
- ☐ Contractor is exempt from this requirement because:
- ☐ the contract is for \$100,000 or less.
 - ☐ Contractor is a party to a collective bargaining agreement that began on _____ (date) and expires on _____ (date), and intends to comply when the collective bargaining agreement expires.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that I am authorized to bind this entity contractually.


Signature

Date

Annette Bonilla
Name
Vice-President/Human Resources Director
Title

**AGREEMENT FOR ON-CALL ENGINEERING SERVICES
BETWEEN THE COUNTY OF SAN MATEO AND
MOFFATT & NICHOL**

THIS AGREEMENT, entered into this _____ day of _____, 2012, by and between the COUNTY OF SAN MATEO, hereinafter called "County," and Moffatt & Nichol, hereinafter called "Contractor";

W I T N E S S E T H:

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

WHEREAS, it is necessary and desirable that Contractor be retained for the purpose of providing engineering and other related professional and technical services required for the delivery of various types of capital improvement projects.

NOW, THEREFORE, IT IS HEREBY AGREED BY THE PARTIES HERETO AS FOLLOWS:

1. Exhibits and Attachments

The following exhibits and attachments are included hereto and incorporated by reference herein:

Exhibit A – Services

Exhibit B – Payments and Rates

Exhibit C – General Obligation of Contractor

Attachment I - § 504 Compliance

Attachment IP – Intellectual Property Rights

2. Services to be performed by Contractor

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

3. Payments

In consideration of the services provided by Contractor in accordance with all terms, conditions and specifications set forth herein and in Exhibit "A" and Exhibit "C", County shall make payment to Contractor based on the rates and in the manner specified in Exhibit "B." The County reserves the right to withhold payment if the County determines that the

quantity or quality of the work performed is unacceptable. In no event shall the County's total fiscal obligation under this Agreement exceed Three Hundred Thousand Dollars and No/100s [\$300,000.00].

4. Term and Termination

Subject to compliance with all terms and conditions, the term of this Agreement shall be from October 23, 2012 to October 22, 2015.

This Agreement may be terminated by Contractor, the Director of Department of Public Works and Parks or his/her designee at any time without a requirement of good cause upon thirty (30) days' written notice to the other party.

In the event of termination, all finished or unfinished documents, data, studies, maps, photographs, reports, and materials (hereafter referred to as materials) prepared by Contractor under this Agreement shall become the property of the County and shall be promptly delivered to the County. Upon termination, the Contractor may make and retain a copy of such materials. 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 portion of the full payment, which is determined by comparing the work/services completed to the work/services required by the Agreement.

5. Availability of Funds

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

6. 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 the County and that Contractor acquires none of the rights, privileges, powers, or advantages of County employees.

7. Hold Harmless

Contractor shall indemnify and save harmless County, its officers, agents, employees, and servants from all claims, suits, or actions of every name, kind, and description, brought for, or on account of: (A) injuries to or death of any person, including Contractor, or (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 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, its officers, agents, employees, or servants, resulting from the performance of any work required of Contractor or payments made pursuant to this Agreement, provided that this 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 herein, shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

8. Assignability and Subcontracting

Contractor shall not assign this Agreement or any portion thereof 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 the County's prior written consent shall give County the right to automatically and immediately terminate this Agreement.

9. Insurance

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

- (1) **Worker's Compensation and Employer's Liability Insurance** The Contractor shall have in effect during the entire life of this Agreement Workers' Compensation and Employer's Liability Insurance providing full statutory coverage. In signing this Agreement, the Contractor certifies, as required by Section 1861 of the California Labor Code, that it is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of the Code, and will comply with such provisions before commencing the performance of

the work of this Agreement.

- (2) **Liability Insurance.** The Contractor shall take out and maintain during the life of this Agreement such Bodily Injury Liability and Property Damage Liability Insurance as shall protect him/her 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 contractors operations under this Agreement, whether such operations be by himself/herself or by any sub-contractor or by anyone directly or indirectly employed by either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall be not less than the amount specified below.

Such insurance shall include:

- | | |
|---|-------------|
| (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 the insurance afforded thereby to the County, its officers, agents, employees and servants shall be primary insurance to the full limits of liability of the policy, and that if the County or its officers and employees 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, the County of San Mateo 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 pursuant to this Agreement.

10. Compliance with laws; payment of Permits/Licenses

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, including, but not limited to, Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended, and 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 handicap 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. Further, Contractor certifies that the Contractor 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.

In the event of a conflict between the terms of this agreement and State, Federal, County, or municipal law or regulations, the requirements of the applicable law will take precedence over the requirements set forth in this Agreement.

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

11. Non-Discrimination and Other Requirements

- A. *Section 504 applies only to Contractors who are providing services to members of the public.* Contractor shall comply with § 504 of the Rehabilitation Act of 1973, which provides that no otherwise qualified handicapped individual 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 this Agreement.
- B. *General non-discrimination.* No person shall, on the grounds of race, color, religion, ancestry, gender, age (over 40), national origin, medical condition (cancer), physical or mental disability, sexual orientation, pregnancy, childbirth or related medical condition, marital status, or political affiliation be denied any benefits or subject to discrimination under this Agreement.
- C. *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 of San Mateo upon request.
- D. *Violation of Non-discrimination provisions.* 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:
 - i) termination of this Agreement;
 - ii) disqualification of the Contractor from bidding on or being awarded a County contract for a period of up to 3 years;
 - iii) liquidated damages of \$2,500 per violation;
 - 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 examine Contractor's employment records with respect to compliance with this paragraph and/or to set off all or any portion of the amount described in this paragraph against amounts due to Contractor under the Contract or any other Contract between Contractor and County.

Contractor shall report to the County Manager the filing by any person in any court of any complaint of discrimination or the filing by any person of any and all charges with the Equal Employment Opportunity Commission, the Fair Employment and Housing Commission or any other entity charged with the investigation of allegations 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 the name of the complainant, a copy of such complaint, and a description of the circumstance. Contractor shall provide County with a copy of their response to the Complaint when filed.

- E. *Compliance with Equal Benefits Ordinance.* With respect to the provision of employee benefits, Contractor shall comply with the County Ordinance, which prohibits contractors from discriminating in the provision of employee benefits between an employee with a domestic partner and an employee with a spouse.
- F. The Contractor shall comply fully with the non-discrimination requirements required by 41 CFR 60-741.5(a), which is incorporated herein as if fully set forth.

12. Compliance with Contractor Employee Jury Service Ordinance

Contractor shall comply with the County Ordinance with respect to provision of jury duty pay to employees and have and adhere to a written policy that provides that its employees shall receive from the Contractor, on an annual basis, no less than five days of regular pay for actual jury service in San Mateo County. The policy may provide that employees deposit any fees received for such jury service with the Contractor or that the Contractor deduct from the employees' regular pay the fees received for jury service.

13. Retention of Records, Right to Monitor and Audit

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

(b) Reporting and Record Keeping: Contractor shall comply with all program and fiscal reporting requirements set forth by appropriate Federal, State and local agencies, and as required by the County.

(c) Contractor agrees to provide to County, to any Federal or State department having monitoring or review authority, to County's authorized representatives, and/or their appropriate audit agencies upon reasonable notice, 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, and this Agreement, and to evaluate the quality, appropriateness and timeliness of services performed.

14. Merger Clause

This Agreement, including the Exhibits attached hereto and incorporated herein by reference, constitutes the sole Agreement of the parties hereto 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 this body of the 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 this 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 shall be in writing and signed by the parties.

15. Controlling Law and Venue

The validity of this Agreement and of its terms or provisions, as well as the rights and duties of the parties hereunder, the interpretation, and performance of this Agreement shall be governed by the laws of the State of California. Any dispute arising out of this Agreement shall be venued either in the San Mateo County Superior Court or the United States District Court for the Northern District of California.

16. Notices

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

In the case of County, to:

County of San Mateo
Department of Public Works
555 County Center, 5th Floor
Redwood City, CA 94063
Telephone: (650) 363-4100
Facsimile: (650) 361-8220

In the case of Contractor, to:

Moffatt & Nichol
2185 North California Blvd,
Suite 500
Walnut Creek, CA 94596
Telephone: (925) 944-5411
Facsimile: (925) 944-4732

In the event that the facsimile transmission is not possible, notice shall be given both by United States mail and an overnight courier as outlined above.

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have affixed their hands.

COUNTY OF SAN MATEO

By: _____
President, Board of Supervisors, San Mateo County

Date: _____

ATTEST:

By: _____
Clerk of Said Board

Moffatt & Nichol



Contractor's Signature

Date: 10/1/2012

Long Form Agreement/Non Business Associate v 8/19/08

Exhibit "A" – Services

In consideration of the payments set forth in Exhibit "B", Contractor shall provide the following services at the request of the Director of Public Works or the Director's designee:

1. In consideration of the payments set forth in Exhibit "B", Contractor shall provide on-call engineering professional services that may include but not be limited to general surveying, topographic surveys, construction staking, hydraulic and hydrologic studies, geotechnical engineering and geotechnical studies, civil engineering design, structural engineering, project management, construction management, environmental study and document preparation, independent investigation of existing conditions, proposed solutions and schematic plans, cost analysis and preparation of independent cost estimates, feasibility studies, preparation of specifications and drawings, projected schedules, construction observation and administration, reports and coordination with applicable code enforcing and environmental agencies, site analysis, coordination with applicable local, state, and federal jurisdictions, and regulatory permit acquisition for a variety of public works type projects.
2. When County Public Works identifies a project that would benefit from Contractor's consulting services, the County will request the Contractor prepare and submit a proposal for such project. The Contractor will then propose a detailed scope of services, a not-to-exceed fee, and a timetable for completing the proposed project. If and when County Public Works approves the scope of services, not-to-exceed fee, and timetable (the "Approved Project"), the County Public Works may issue a task order authorizing the Contractor to begin work on the Approved Project. Contractor agrees to complete the Approved Project for an amount equal to or less than the Approved Project not-to-exceed fee and within the time limits set forth in the Approved Project timetable.

Exhibit "B" – Payments and Rates

In consideration of the services provided by Contractor in Exhibit "A", County shall pay Contractor based on the following fee schedule:

1. In consideration of the services provided by Contractor in Exhibit "A", County shall pay Contractor upon receipt in Accounting Section of the Department of Public Works and Parks of a written itemized invoice identifying the task order, County project number (if applicable), specific work completed, number of hours involved and breakdown of charges. The Approved Project total not-to-exceed amount will be stipulated in each task order. Costs for services deemed necessary by the County for completion of each task order shall be authorized in writing prior to proceeding with the work. Billing rates for services provided under this Agreement shall be based upon the Contractor's most recent fee schedule and by reference made a part of this Agreement. The County reserves the right to withhold payment if the County determines that the quantity or quality of the work performed is unacceptable.
2. The County shall pay Contractor reimbursable expenses. The Contractor shall be entitled to mileage, meals and lodging at the same rate granted to employees of the County whenever the Contractor is required to travel outside of San Mateo County in the performance of his duties under this Agreement. Such travel must first be approved in writing by the County. The Contractor shall also be reimbursed for expenses associated with reproduction (drawings, project manuals, reports, etc.); telephone or fax outside 650, 415, 408, 510, 707, and 925 area codes; fees paid for securing necessary permits and approvals of authorities having jurisdiction over the project; and special delivery service.
3. The County's total fiscal obligation under this Agreement shall not exceed \$300,000 unless said amount is authorized to be increased by the County Board of Supervisors by written amendment to this agreement. Specific projects that may be assigned to the Contractor shall have individual not-to-exceed amounts as stated in the specific task orders. The sum of individual task order not-to-exceed fees for multiple projects that may be assigned to the Contractor shall not exceed the total \$300,000 not-to-exceed amount for this Agreement without prior written approval by the County Board of Supervisors.

Exhibit "C" – General Obligation of Contractor

1. **Contractor Personnel**

The Contractor shall provide the County with resumes of the key staff members to be assigned to said project in advance of commencing any professional services. Once the County approves the key staff to be assigned to the project, any substitutions or additions shall be subject to written approval by the County. The County reserves the right to reject any personnel the Contractor proposes for use on the project.

Contractor represents that it is qualified to furnish the services described under this Agreement. Contractor further declares that one or more members or employees of its firm and that of its sub-contractors, if so required by the State, if any, are licensed by the State of California to perform their services and that these services will be performed by them or under their direct supervision. Contractor shall furnish to County for approval, upon execution of this Agreement, a list of all firms or corporations to be employed as sub-contractors.

Nothing in this Agreement abrogates the professional responsibilities of the Contractor and/or sub-contractors with respect to design defects, errors, omissions, or malpractice.

2. **Corrections and/or Revisions**

Contractor shall make and provide to the County all necessary corrections and/or revisions to the project design and document when it is determined by the Director of Public Works and Parks or his designated representative, that such changes are necessary for the project and are due to oversights, omissions or errors of Contractor.

3. **General Obligations of County**

County shall be responsible for providing any available data required by the Contractor as stipulated in any approved Task Order.

County shall examine documents submitted by Contractor and shall render comments and direction pertaining thereto promptly (up to two weeks or otherwise upon written agreement by County and Contractor), as stipulated in approved Task Orders.

4. **Payment Upon Suspension, Abandonment of Project, or Termination of Agreement**

If any Task Order is suspended for more than thirty (30) calendar days, or abandoned in all or part, Contractor shall be paid for services performed prior to receipt of thirty (30) days written notice from County of such suspension or abandonment, together with reimbursable expenses then due. In the event that the County abandons any Final Task Order the County may specifically authorize additional work necessary to properly close out the project.

If this Agreement or any Task Order is suspended or terminated due to fault of Contractor, County shall be obligated to compensate Contractor only for that portion of Contractor's services that were satisfactorily performed.

5. Performance of Services if Contractor is not Diligent in Performing Work

In the event Contractor is not diligent in pursuing the designated services as specified in each Task Order, the Director of Public Works and Parks or the respective designated representative may, at his option, seven (7) days after written notice to Contractor, perform any such required engineering services or retain a different Contractor to do the same, and the cost associated with having said work completed by means other than the Contractor will be retained from any sums not yet paid to the Contractor.

6. Authorization to Proceed

Contractor shall commence work upon receipt of the Task Order.

6.1 Time of Completion of Each Task

Contractor agrees to perform the professional services for the Task Order within the time limits set forth in the project schedule required by this Agreement. Any change in the scope of services as outlined in the Task Order will require a revised time table.

County agrees to exercise due diligence in performing its tasks to implement the Contractor's time schedule.

7. County's Review and Approval

Between each phase of work and at critical progress points there shall be a review and approval period by County and other agencies. County shall reject Contractor's submittal if changes and/or comments transmitted to Contractor by County during previous review were not addressed by Contractor in current submittal.

8. Changes in Work

The Director of Public Works or the respective designated representative may order changes in scope or character of work in writing which are mutually acceptable, either decreasing or increasing the amount 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. Increased compensation for changes shall be determined in accordance with Section 6 of the Agreement. Compensation shall first have been agreed to in writing by County.

In the event that changes are ordered pursuant to this Section, the schedule for progress and completion and compensation as provided with respective Task Order shall be adjusted by negotiation between Contractor and County.

9. Interest of Contractor/Contractor Independent of County

In accepting this Agreement, Contractor covenants that it presently has no interest, and shall not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of these services hereunder. Contractor further covenants that, in the performance of this Agreement, no subcontractor or person having such an interest shall be employed throughout the term of this Agreement. Contractor certifies that no one who has or will have any financial interest under this Agreement is an officer or employee of the County.

In the performance of the engineering services necessary for compliance with this Agreement, Contractor, and any of its sub-contractors or employees, shall be, and is at all times considered, an Independent Contractor, and is not an agent or employee of the County. Contractor has, and shall retain, the right to exercise full control and supervision of the services, and full control over the employment, direction, compensation and discharge of all persons assisting him in the performance of his engineering services hereunder to include any and all sub-contractors employed for the project described herein. Contractor shall be solely responsible for all matters relating to payment of his employees, including compliance with social security, withholding, and all other regulations governing such matters, and shall be solely responsible for his own acts and those of his subordinates and employees.

10. General Provisions

- (a) The Contractor acknowledges that time is of the essence for all projects defined in approved Task Order(s) and agrees to complete all work within the time frame as stipulated within said Task Order(s). Time extensions shall only be approved with prior written approval of the County and failure to complete services according to a mutually agreed upon schedule may be grounds for contract termination.
- (b) The Contractor upon becoming aware of factors which would result in delays shall be responsible for alerting County to potential delays well in advance in order that possible mitigation measures may be evaluated. Contractor shall detail the nature and reasons for potential delays and shall provide the County with possible mitigation measures for consideration.
- (c) On matters pertaining to Task Orders to be performed and the time taken by Contractor to perform such services, the decision of the Director of Public Works and Parks or the respective designated representative will be final after discussions between County and Contractor.
- (d) The Contractor warrants that he/she has not employed or retained any company or persons, other than a bona fide employee working for the Contractor, to solicit or secure this Agreement, and that he/she has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or formation of this

Agreement. For breach or violation of this warranty, the County shall have the right to annul this Agreement without liability or at its discretion to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

11. Ownership of Documents

Consistent with Attachment IP, all tracings, sketches, plans, specifications, estimates, maps, design calculations, quantity calculations, supporting documents, studies, survey notes, and other documents prepared by Contractor or sub-Contractors under the terms of this Agreement shall be delivered to and become the property of the County without restriction or limitation on their use. However, should County re-use or utilize data or drawings not for their intended use then County shall be solely liable and indemnify Contractor against such use. Computer files used by Contractor to produce the final set of plans and specifications shall also be delivered in AutoCAD, Access, Excel and Word electronic form on compact disks or other media acceptable to the County at no additional cost and become the property of the County.

12. Jobsite Safety and Environmental Protection

Neither the professional activities of the Contractor nor the presence of the Contractor or his or her employees and sub-contractors at a construction site, shall relieve the General Contractor and any other entity of their obligations, duties and responsibilities including, but not limited to, construction means, methods, sequence, techniques or procedures necessary for performing, superintending or coordinating all portions of the Work of construction in accordance with the contract documents and any health or safety or environmental protection precautions required by any regulatory agencies. The Contractor and his or her personnel have no authority to exercise any control over any construction contractor or other entity or their employees in connection with their work or any health or safety precautions. The Contractor agrees that the General Contractor is solely responsible for jobsite safety, and environmental protection, and warrants that this intent shall be made evident in the County's Agreement with the General Contractor. The Contractor also agrees that the County, the Contractor and any other County Contractors that may be providing services at the construction site shall be indemnified and shall be made additional insured's under the General Contractor's general liability insurance policy.

Attachment I

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

The undersigned (hereinafter called the "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.

Sherry Hennes

Name of 504 Person - Type or Print

Moffatt & Nichol

Name of Contractor(s) - Type or Print

3780 Kilroy Airport Way, Suite 750

Street Address or P.O. Box

Long Beach, California 90806

City, State, Zip Code

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



Signature

Vice President/Director of Human Resources

Title of Authorized Official

October 3, 2012

Date

*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

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 Schedule I 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.

**County of San Mateo
Contractor's Declaration Form**

I. CONTRACTOR INFORMATION

Contractor Name:	Moffatt & Nichol	Phone:	925-944-5411
Contact Person:	Dilip R. Trivedi	Fax:	925-944-4732
Address:	2185 N. California Blvd, Suite 500 Walnut Creek, CA 94596-3500		

II. EQUAL BENEFITS (check one or more boxes)

Contractors with contracts in excess of \$5,000 must treat spouses and domestic partners equally as to employee benefits.

- ☒ Contractor complies with the County's Equal Benefits Ordinance by:
- ☒ offering equal benefits to employees with spouses and employees with domestic partners.
 - ☐ offering a cash equivalent payment to eligible employees in lieu of equal benefits.
- ☐ Contractor does not comply with the County's Equal Benefits Ordinance.
- ☐ Contractor is exempt from this requirement because:
- ☐ Contractor has no employees, does not provide benefits to employees' spouses, or the contract is for \$5,000 or less.
 - ☐ Contractor is a party to a collective bargaining agreement that began on _____ (date) and expires on _____ (date), and intends to offer equal benefits when said agreement expires.

III. NON-DISCRIMINATION (check appropriate box)


- ☐ Finding(s) of discrimination have been issued against Contractor within the past year by the Equal Employment Opportunity Commission, Fair Employment and Housing Commission, or other investigative entity. Please see attached sheet of paper explaining the outcome(s) or remedy for the discrimination.
- ☒ No finding of discrimination has been issued in the past year against the Contractor by the Equal Employment Opportunity Commission, Fair Employment and Housing Commission, or any other entity.

IV. EMPLOYEE JURY SERVICE (check one or more boxes)

Contractors with original or amended contracts in excess of \$100,000 must have and adhere to a written policy that provides its employees living in San Mateo County up to five days regular pay for actual jury service in the County.

- ☒ Contractor complies with the County's Employee Jury Service Ordinance.
- ☐ Contractor does not comply with the County's Employee Jury Service Ordinance.
- ☐ Contractor is exempt from this requirement because:
- ☐ the contract is for \$100,000 or less.
 - ☐ Contractor is a party to a collective bargaining agreement that began on _____ (date) and expires on _____ (date), and intends to comply when the collective bargaining agreement expires.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that I am authorized to bind this entity contractually.



Signature

October 3, 2012

Date

Dilip R. Trivedi

Name

Vice President

Title

**AGREEMENT FOR ON-CALL ENGINEERING SERVICES
BETWEEN THE COUNTY OF SAN MATEO AND
PARSONS BRINCKERHOFF**

THIS AGREEMENT, entered into this ____ day of _____, 2012, by and between the COUNTY OF SAN MATEO, hereinafter called "County," and Parsons Brinckerhoff, hereinafter called "Contractor";

W I T N E S S E T H:

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

WHEREAS, it is necessary and desirable that Contractor be retained for the purpose of providing engineering and other related professional and technical services required for the delivery of various types of capital improvement projects.

NOW, THEREFORE, IT IS HEREBY AGREED BY THE PARTIES HERETO AS FOLLOWS:

1. Exhibits and Attachments

The following exhibits and attachments are included hereto and incorporated by reference herein:

Exhibit A – Services
Exhibit B – Payments and Rates
Exhibit C – General Obligation of Contractor
Attachment I - § 504 Compliance
Attachment IP – Intellectual Property Rights

2. Services to be performed by Contractor

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

3. Payments

In consideration of the services provided by Contractor in accordance with all terms, conditions and specifications set forth herein and in Exhibit "A" and Exhibit "C", County shall make payment to Contractor based on the rates and in the manner specified in Exhibit "B." The County reserves the right to withhold payment if the County determines that the

quantity or quality of the work performed is unacceptable. In no event shall the County's total fiscal obligation under this Agreement exceed Five Hundred Thousand Dollars and No/100s [\$500,000.00].

4. Term and Termination

Subject to compliance with all terms and conditions, the term of this Agreement shall be from October 23, 2012 to October 22, 2015.

This Agreement may be terminated by Contractor, the Director of Department of Public Works and Parks or his/her designee at any time without a requirement of good cause upon thirty (30) days' written notice to the other party.

In the event of termination, all finished or unfinished documents, data, studies, maps, photographs, reports, and materials (hereafter referred to as materials) prepared by Contractor under this Agreement shall become the property of the County and shall be promptly delivered to the County. Upon termination, the Contractor may make and retain a copy of such materials. 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 portion of the full payment, which is determined by comparing the work/services completed to the work/services required by the Agreement.

5. Availability of Funds

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

6. 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 the County and that Contractor acquires none of the rights, privileges, powers, or advantages of County employees.

7. Hold Harmless

Contractor shall indemnify and save harmless County, its officers, agents, employees, and servants from all claims, suits, or actions of every name, kind, and description, brought for, or on account of, injuries to or death of any person, including Contractor, or damage to any property of any kind whatsoever and to whomsoever belonging to the extent caused by the negligence, recklessness or willful misconduct of Contractor, its employees or subs, and any sanctions, penalties, or claims of damages resulting from Contractor's failure to comply with the requirements set forth in the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended, provided that this 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 herein, shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

8. Assignability and Subcontracting

Contractor shall not assign this Agreement or any portion thereof 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 the County's prior written consent shall give County the right to automatically and immediately terminate this Agreement.

9. Insurance

The Contractor shall not commence work or be required to commence work under this Agreement unless and until all insurance required under this paragraph has been obtained and such insurance has been approved by Risk Management, and Contractor shall use diligence to obtain such insurance and to obtain such approval. The Contractor shall furnish the County with certificates of insurance evidencing the required coverage, and there shall be a blanket contractual liability endorsement. These certificates shall specify or be endorsed to provide that thirty (30) days' notice must be given, in writing, to the County of any cancellation of the policy.

- (1) **Worker's Compensation and Employer's Liability Insurance** The Contractor shall have in effect during the entire life of this Agreement Workers' Compensation and Employer's Liability Insurance providing full statutory coverage. In signing this Agreement, the Contractor certifies, as required by Section 1861 of the California Labor Code, that it is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of the Code, and will comply with such provisions before commencing the performance of the work of this Agreement.
- (2) **Liability Insurance.** The Contractor shall take out and maintain during the life of this Agreement such Bodily Injury Liability and Property Damage Liability Insurance as shall protect him/her 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 contractors operations under this Agreement, whether such operations be by himself/herself or by any subcontractor or by anyone directly or indirectly employed by either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall be not less than the amount specified below.

Such insurance shall include:

- | | |
|---|-------------|
| (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 the General Liability and Motor Vehicle Liability policies. Such policies of insurance shall also contain a provision that the insurance afforded thereby to the County, its officers, agents, employees and servants shall be primary insurance to the full limits of liability of the policy, and that if the County or its officers and employees 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, the County of San Mateo 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 pursuant to this Agreement.

10. Compliance with laws; payment of Permits/Licenses

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, including, but not limited to, Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended, and 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 handicap 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. Further, Contractor certifies that the Contractor 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.

In the event of a conflict between the terms of this agreement and State, Federal, County, or municipal law or regulations, the requirements of the applicable law will take precedence over the requirements set forth in this Agreement.

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

11. Non-Discrimination and Other Requirements

- A. *Section 504 applies only to Contractors who are providing services to members of the public.* Contractor shall comply with § 504 of the Rehabilitation Act of 1973, which provides that no otherwise qualified handicapped individual 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 this Agreement.
- B. *General non-discrimination.* No person shall, on the grounds of race, color, religion, ancestry, gender, age (over 40), national origin, medical condition (cancer), physical or mental disability, sexual orientation, pregnancy, childbirth or related medical condition, marital status, or political affiliation be denied any benefits or subject to discrimination

under this Agreement.

- C. *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 of San Mateo upon request.
- D. *Violation of Non-discrimination provisions.* 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:
 - i) termination of this Agreement;
 - ii) disqualification of the Contractor from bidding on or being awarded a County contract for a period of up to 3 years;
 - iii) liquidated damages of \$2,500 per violation;
 - 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 examine Contractor's employment records with respect to compliance with this paragraph and/or to set off all or any portion of the amount described in this paragraph against amounts due to Contractor under the Contract or any other Contract between Contractor and County.

Contractor shall report to the County Manager the filing by any person in any court of any complaint of discrimination or the filing by any person of any and all charges with the Equal Employment Opportunity Commission, the Fair Employment and Housing Commission or any other entity charged with the investigation of allegations 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 the name of the complainant, a copy of such complaint, and a description of the circumstance. Contractor shall provide County with a copy of their response to the Complaint when filed.

- E. *Compliance with Equal Benefits Ordinance.* With respect to the provision of employee benefits, Contractor shall comply with the County Ordinance, which prohibits contractors from discriminating in the provision of employee benefits between an employee with a domestic partner and an employee with a spouse.
- F. The Contractor shall comply fully with the non-discrimination requirements required by 41 CFR 60-741.5(a), which is incorporated herein as if fully set forth.

12. Compliance with Contractor Employee Jury Service Ordinance

Contractor shall comply with the County Ordinance with respect to provision of jury duty pay to employees and have and adhere to a written policy that provides that its employees shall receive from the Contractor, on an annual basis, no less than five days of regular pay for actual jury service in San Mateo County. The policy may provide that employees deposit any fees received for such jury service with the Contractor or that the Contractor deduct from the employees' regular pay the fees received for jury service.

13. Retention of Records, Right to Monitor and Audit

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

(b) Reporting and Record Keeping: Contractor shall comply with all program and fiscal reporting requirements set forth by appropriate Federal, State and local agencies, and as required by the County.

(c) Contractor agrees to provide to County, to any Federal or State department having monitoring or review authority, to County's authorized representatives, and/or their appropriate audit agencies upon reasonable notice, 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, and this Agreement, and to evaluate the quality, appropriateness and timeliness of services performed.

14. Merger Clause

This Agreement, including the Exhibits attached hereto and incorporated herein by reference, constitutes the sole Agreement of the parties hereto 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 this body of the 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 this 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 shall be in writing and signed by the parties.

15. Controlling Law and Venue

The validity of this Agreement and of its terms or provisions, as well as the rights and duties of the parties hereunder, the interpretation, and performance of this Agreement shall be governed by the laws of the State of California. Any dispute arising out of this Agreement shall be venued either in the San Mateo County Superior Court or the United States District Court for the Northern District of California.

16. Notices

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

In the case of County, to:

County of San Mateo
Department of Public Works
555 County Center, 5th Floor
Redwood City, CA 94063
Telephone: (650) 363-4100
Facsimile: (650) 361-8220

In the case of Contractor, to:

Parsons Brinckerhoff
303 Second Street, Suite 700 North
San Francisco, CA 94107
Telephone: (415) 243-4600
Facsimile: (415) 243-9501

In the event that the facsimile transmission is not possible, notice shall be given both by United States mail and an overnight courier as outlined above.

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have affixed their hands.

COUNTY OF SAN MATEO


By: _____
President, Board of Supervisors, San Mateo County

Date: _____

ATTEST:

By: _____
Clerk of Said Board

Parsons Brinckerhoff



Contractor's Signature

Date: 9/27/12

Long Form Agreement/Non Business Associate v 8/19/08

Exhibit "A" – Services

In consideration of the payments set forth in Exhibit "B", Contractor shall provide the following services at the request of the Director of Public Works or the Director's designee:

1. In consideration of the payments set forth in Exhibit "B", Contractor shall provide on-call engineering professional services that may include but not be limited to general surveying, topographic surveys, construction staking, hydraulic and hydrologic studies, geotechnical engineering and geotechnical studies, civil engineering design, structural engineering, project management, construction management, environmental study and document preparation, independent investigation of existing conditions, proposed solutions and schematic plans, cost analysis and preparation of independent cost estimates, feasibility studies, preparation of specifications and drawings, projected schedules, construction observation and administration, reports and coordination with applicable code enforcing and environmental agencies, site analysis, coordination with applicable local, state, and federal jurisdictions, and regulatory permit acquisition for a variety of public works type projects.
2. When County Public Works identifies a project that would benefit from Contractor's consulting services, the County will request the Contractor prepare and submit a proposal for such project. The Contractor will then propose a detailed scope of services, a not-to-exceed fee, and a timetable for completing the proposed project. If and when County Public Works approves the scope of services, not-to-exceed fee, and timetable (the "Approved Project"), the County Public Works may issue a task order authorizing the Contractor to begin work on the Approved Project. Contractor agrees to complete the Approved Project for an amount equal to or less than the Approved Project not-to-exceed fee and within the time limits set forth in the Approved Project timetable.

Exhibit "B" – Payments and Rates

In consideration of the services provided by Contractor in Exhibit "A", County shall pay Contractor based on the following fee schedule:

1. In consideration of the services provided by Contractor in Exhibit "A", County shall pay Contractor upon receipt in Accounting Section of the Department of Public Works and Parks of a written itemized invoice identifying the task order, County project number (if applicable), specific work completed, number of hours involved and breakdown of charges. The Approved Project total not-to-exceed amount will be stipulated in each task order. Costs for services deemed necessary by the County for completion of each task order shall be authorized in writing prior to proceeding with the work. Billing rates for services provided under this Agreement shall be based upon the Contractor's most recent fee schedule and by reference made a part of this Agreement. The County reserves the right to withhold payment if the County determines that the quantity or quality of the work performed is unacceptable.
2. The County shall pay Contractor reimbursable expenses. The Contractor shall be entitled to mileage, meals and lodging at the same rate granted to employees of the County whenever the Contractor is required to travel outside of San Mateo County in the performance of his duties under this Agreement. Such travel must first be approved in writing by the County. The Contractor shall also be reimbursed for expenses associated with reproduction (drawings, project manuals, reports, etc.); telephone or fax outside 650, 415, 408, 510, 707, and 925 area codes; fees paid for securing necessary permits and approvals of authorities having jurisdiction over the project; and special delivery service.
3. The County's total fiscal obligation under this Agreement shall not exceed \$500,000 unless said amount is authorized to be increased by the County Board of Supervisors by written amendment to this agreement. Specific projects that may be assigned to the Contractor shall have individual not-to-exceed amounts as stated in the specific task orders. The sum of individual task order not-to-exceed fees for multiple projects that may be assigned to the Contractor shall not exceed the total \$500,000 not-to-exceed amount for this Agreement without prior written approval by the County Board of Supervisors.

Exhibit "C" – General Obligation of Contractor

1. **Contractor Personnel**

The Contractor shall provide the County with resumes of the key staff members to be assigned to said project in advance of commencing any professional services. Once the County approves the key staff to be assigned to the project, any substitutions or additions shall be subject to written approval by the County. The County reserves the right to reject any personnel the Contractor proposes for use on the project.

Contractor represents that it is qualified to furnish the services described under this Agreement. Contractor further declares that one or more members or employees of its firm and that of its sub-contractors, if so required by the State, if any, are licensed by the State of California to perform their services and that these services will be performed by them or under their direct supervision. Contractor shall furnish to County for approval, upon execution of this Agreement, a list of all firms or corporations to be employed as sub-contractors.

Nothing in this Agreement abrogates the professional responsibilities of the Contractor and/or sub-contractors with respect to design defects, errors, omissions, or malpractice.

2. **Corrections and/or Revisions**

Contractor shall make and provide to the County all necessary corrections and/or revisions to the project design and document when it is determined by the Director of Public Works and Parks or his designated representative, that such changes are necessary for the project and are due to oversights, omissions or errors of Contractor.

3. **General Obligations of County**

County shall be responsible for providing any available data required by the Contractor as stipulated in any approved Task Order.

County shall examine documents submitted by Contractor and shall render comments and direction pertaining thereto promptly (up to two weeks or otherwise upon written agreement by County and Contractor), as stipulated in approved Task Orders.

4. **Payment Upon Suspension, Abandonment of Project, or Termination of Agreement**

If any Task Order is suspended for more than thirty (30) calendar days, or abandoned in all or part, Contractor shall be paid for services performed prior to receipt of thirty (30) days written notice from County of such suspension or abandonment, together with reimbursable expenses then due. In the event that the County abandons any Final Task Order the County may specifically authorize additional work necessary to properly close out the project.

If this Agreement or any Task Order is suspended or terminated due to fault of Contractor, County shall be obligated to compensate Contractor only for that portion of Contractor's services that were satisfactorily performed.

5. Performance of Services if Contractor is not Diligent in Performing Work

In the event Contractor is not diligent in pursuing the designated services as specified in each Task Order, the Director of Public Works and Parks or the respective designated representative may, at his option, seven (7) days after written notice to Contractor, perform any such required engineering services or retain a different Contractor to do the same, and the cost associated with having said work completed by means other than the Contractor will be retained from any sums not yet paid to the Contractor.

6. Authorization to Proceed

Contractor shall commence work upon receipt of the Task Order.

6.1 Time of Completion of Each Task

Contractor agrees to perform the professional services for the Task Order within the time limits set forth in the project schedule required by this Agreement. Any change in the scope of services as outlined in the Task Order will require a revised time table.

County agrees to exercise due diligence in performing its tasks to implement the Contractor's time schedule.

7. County's Review and Approval

Between each phase of work and at critical progress points there shall be a review and approval period by County and other agencies. County shall reject Contractor's submittal if changes and/or comments transmitted to Contractor by County during previous review were not addressed by Contractor in current submittal.

8. Changes in Work

The Director of Public Works or the respective designated representative may order changes in scope or character of work in writing which are mutually acceptable, either decreasing or increasing the amount 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. Increased compensation for changes shall be determined in accordance with Section 6 of the Agreement. Compensation shall first have been agreed to in writing by County.

In the event that changes are ordered pursuant to this Section, the schedule for progress and completion and compensation as provided with respective Task Order shall be adjusted by negotiation between Contractor and County.

9. Interest of Contractor/Contractor Independent of County

In accepting this Agreement, Contractor covenants that it presently has no interest, and shall not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of these services hereunder. Contractor further covenants that, in the performance of this Agreement, no subcontractor or person having such an interest shall be employed throughout the term of this Agreement. Contractor certifies that no one who has or will have any financial interest under this Agreement is an officer or employee of the County.

In the performance of the engineering services necessary for compliance with this Agreement, Contractor, and any of its sub-contractors or employees, shall be, and is at all times considered, an Independent Contractor, and is not an agent or employee of the County. Contractor has, and shall retain, the right to exercise full control and supervision of the services, and full control over the employment, direction, compensation and discharge of all persons assisting him in the performance of his engineering services hereunder to include any and all sub-contractors employed for the project described herein. Contractor shall be solely responsible for all matters relating to payment of his employees, including compliance with social security, withholding, and all other regulations governing such matters, and shall be solely responsible for his own acts and those of his subordinates and employees.

10. General Provisions

- (a) The Contractor acknowledges that time is of the essence for all projects defined in approved Task Order(s) and agrees to complete all work within the time frame as stipulated within said Task Order(s). Time extensions shall only be approved with prior written approval of the County and failure to complete services according to a mutually agreed upon schedule may be grounds for contract termination.
- (b) The Contractor upon becoming aware of factors which would result in delays shall be responsible for alerting County to potential delays well in advance in order that possible mitigation measures may be evaluated. Contractor shall detail the nature and reasons for potential delays and shall provide the County with possible mitigation measures for consideration.
- (c) On matters pertaining to Task Orders to be performed and the time taken by Contractor to perform such services, the decision of the Director of Public Works and Parks or the respective designated representative will be final after discussions between County and Contractor.
- (d) The Contractor warrants that he/she has not employed or retained any company or persons, other than a bona fide employee working for the Contractor, to solicit or secure this Agreement, and that he/she has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or formation of this

Agreement. For breach or violation of this warranty, the County shall have the right to annul this Agreement without liability or at its discretion to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

11. Ownership of Documents

Consistent with Attachment IP, all tracings, sketches, plans, specifications, estimates, maps, design calculations, quantity calculations, supporting documents, studies, survey notes, and other documents prepared by Contractor or sub-Contractors under the terms of this Agreement shall be delivered to and become the property of the County without restriction or limitation on their use. However, should County re-use or utilize data or drawings not for their intended use then County shall be solely liable and indemnify Contractor against such use. Computer files used by Contractor to produce the final set of plans and specifications shall also be delivered in AutoCAD, Access, Excel and Word electronic form on compact disks or other media acceptable to the County at no additional cost and become the property of the County.

12. Jobsite Safety and Environmental Protection

Neither the professional activities of the Contractor nor the presence of the Contractor or his or her employees and sub-contractors at a construction site, shall relieve the General Contractor and any other entity of their obligations, duties and responsibilities including, but not limited to, construction means, methods, sequence, techniques or procedures necessary for performing, superintending or coordinating all portions of the Work of construction in accordance with the contract documents and any health or safety or environmental protection precautions required by any regulatory agencies. The Contractor and his or her personnel have no authority to exercise any control over any construction contractor or other entity or their employees in connection with their work or any health or safety precautions. The Contractor agrees that the General Contractor is solely responsible for jobsite safety, and environmental protection, and warrants that this intent shall be made evident in the County's Agreement with the General Contractor. The Contractor also agrees that the County, the Contractor and any other County Contractors that may be providing services at the construction site shall be indemnified and shall be made additional insured's under the General Contractor's general liability insurance policy.

Attachment I

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

The undersigned (hereinafter called the "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.

Martha Alongi

Name of 504 Person - Type or Print

Parsons Brinckerhoff, Inc.

Name of Contractor(s) - Type or Print

2202 N. West Shore Blvd, Ste 300

Street Address or P.O. Box

Tampa, FL 33607

City, State, Zip Code

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

S. M. F.

Signature

Vice President

Title of Authorized Official

10/1/12

Date

*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

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 Schedule I 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.

**County of San Mateo
Contractor's Declaration Form**

I. CONTRACTOR INFORMATION

Contractor Name:	Parsons Brinckerhoff	Phone:	
Contact Person:		Fax:	
Address:			

II. EQUAL BENEFITS (check one or more boxes)

Contractors with contracts in excess of \$5,000 must treat spouses and domestic partners equally as to employee benefits.

- ☒ Contractor complies with the County's Equal Benefits Ordinance by:
- ☒ offering equal benefits to employees with spouses and employees with domestic partners.
 - ☐ offering a cash equivalent payment to eligible employees in lieu of equal benefits.
- ☐ Contractor does not comply with the County's Equal Benefits Ordinance.
- ☐ Contractor is exempt from this requirement because:
- ☐ Contractor has no employees, does not provide benefits to employees' spouses, or the contract is for \$5,000 or less.
 - ☐ Contractor is a party to a collective bargaining agreement that began on _____ (date) and expires on _____ (date), and intends to offer equal benefits when said agreement expires.

III. NON-DISCRIMINATION (check appropriate box)

- ☐ Finding(s) of discrimination have been issued against Contractor within the past year by the Equal Employment Opportunity Commission, Fair Employment and Housing Commission, or other investigative entity. Please see attached sheet of paper explaining the outcome(s) or remedy for the discrimination.
- ☒ No finding of discrimination has been issued in the past year against the Contractor by the Equal Employment Opportunity Commission, Fair Employment and Housing Commission, or any other entity.

IV. EMPLOYEE JURY SERVICE (check one or more boxes)

Contractors with original or amended contracts in excess of \$100,000 must have and adhere to a written policy that provides its employees living in San Mateo County up to five days regular pay for actual jury service in the County.

- ☒ Contractor complies with the County's Employee Jury Service Ordinance.
- ☐ Contractor does not comply with the County's Employee Jury Service Ordinance.
- ☐ Contractor is exempt from this requirement because:
- ☐ the contract is for \$100,000 or less.
 - ☐ Contractor is a party to a collective bargaining agreement that began on _____ (date) and expires on _____ (date), and intends to comply when the collective bargaining agreement expires.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that I am authorized to bind this entity contractually.

Martha Alongi
Signature
9/27/12
Date

Martha Alongi
Name
EEO Officer
Title

**AGREEMENT FOR ON-CALL ENGINEERING SERVICES
BETWEEN THE COUNTY OF SAN MATEO AND
RAJAPPAN & MEYER CONSULTING ENGINEERS**

THIS AGREEMENT, entered into this ____ day of _____, 2012, by
and between the COUNTY OF SAN MATEO, hereinafter called "County," and Rajappan &
Meyer Consulting Engineers, hereinafter called "Contractor";

W I T N E S S E T H:

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

WHEREAS, it is necessary and desirable that Contractor be retained for the purpose
of providing engineering and other related professional and technical services required for
the delivery of various types of capital improvement projects.

**NOW, THEREFORE, IT IS HEREBY AGREED BY THE PARTIES HERETO
AS FOLLOWS:**

1. Exhibits and Attachments

The following exhibits and attachments are included hereto and incorporated by reference
herein:

Exhibit A – Services
Exhibit B – Payments and Rates
Exhibit C – General Obligation of Contractor
Attachment I - § 504 Compliance
Attachment IP – Intellectual Property Rights

2. Services to be performed by Contractor

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

3. Payments

In consideration of the services provided by Contractor in accordance with all terms,
conditions and specifications set forth herein and in Exhibit “A” and Exhibit “C”, County
shall make payment to Contractor based on the rates and in the manner specified in Exhibit
“B.” The County reserves the right to withhold payment if the County determines that the

quantity or quality of the work performed is unacceptable. In no event shall the County's total fiscal obligation under this Agreement exceed Three Hundred Thousand Dollars and No/100s [\$300,000.00].

4. Term and Termination

Subject to compliance with all terms and conditions, the term of this Agreement shall be from October 23, 2012 to October 22, 2015.

This Agreement may be terminated by Contractor, the Director of Department of Public Works and Parks or his/her designee at any time without a requirement of good cause upon thirty (30) days' written notice to the other party.

In the event of termination, all finished or unfinished documents, data, studies, maps, photographs, reports, and materials (hereafter referred to as materials) prepared by Contractor under this Agreement shall become the property of the County and shall be promptly delivered to the County. Upon termination, the Contractor may make and retain a copy of such materials. 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 portion of the full payment, which is determined by comparing the work/services completed to the work/services required by the Agreement.

5. Availability of Funds

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

6. 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 the County and that Contractor acquires none of the rights, privileges, powers, or advantages of County employees.

7. Hold Harmless

Contractor shall indemnify and save harmless County, its officers, agents, employees, and servants from all claims, suits, or actions of every name, kind, and description, brought for, or on account of: (A) injuries to or death of any person, including Contractor, or (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 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, its officers, agents, employees, or servants, resulting from the performance of any work required of Contractor or payments made pursuant to this Agreement, provided that this 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 herein, shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

8. Assignability and Subcontracting

Contractor shall not assign this Agreement or any portion thereof 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 the County's prior written consent shall give County the right to automatically and immediately terminate this Agreement.

9. Insurance

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

- (1) **Worker's Compensation and Employer's Liability Insurance** The Contractor shall have in effect during the entire life of this Agreement Workers' Compensation and Employer's Liability Insurance providing full statutory coverage. In signing this Agreement, the Contractor certifies, as required by Section 1861 of the California Labor Code, that it is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of the Code, and will comply with such provisions before commencing the performance of

the work of this Agreement.

- (2) **Liability Insurance.** The Contractor shall take out and maintain during the life of this Agreement such Bodily Injury Liability and Property Damage Liability Insurance as shall protect him/her 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 contractors operations under this Agreement, whether such operations be by himself/herself or by any sub-contractor or by anyone directly or indirectly employed by either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall be not less than the amount specified below.

Such insurance shall include:

- | | |
|---|-------------|
| (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 the insurance afforded thereby to the County, its officers, agents, employees and servants shall be primary insurance to the full limits of liability of the policy, and that if the County or its officers and employees 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, the County of San Mateo 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 pursuant to this Agreement.

10. Compliance with laws; payment of Permits/Licenses

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, including, but not limited to, Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended, and 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 handicap 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. Further, Contractor certifies that the Contractor 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.

In the event of a conflict between the terms of this agreement and State, Federal, County, or municipal law or regulations, the requirements of the applicable law will take precedence over the requirements set forth in this Agreement.

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

11. Non-Discrimination and Other Requirements

- A. *Section 504 applies only to Contractors who are providing services to members of the public.* Contractor shall comply with § 504 of the Rehabilitation Act of 1973, which provides that no otherwise qualified handicapped individual 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 this Agreement.
- B. *General non-discrimination.* No person shall, on the grounds of race, color, religion, ancestry, gender, age (over 40), national origin, medical condition (cancer), physical or mental disability, sexual orientation, pregnancy, childbirth or related medical condition, marital status, or political affiliation be denied any benefits or subject to discrimination under this Agreement.
- C. *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 of San Mateo upon request.
- D. *Violation of Non-discrimination provisions.* 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:
 - i) termination of this Agreement;
 - ii) disqualification of the Contractor from bidding on or being awarded a County contract for a period of up to 3 years;
 - iii) liquidated damages of \$2,500 per violation;
 - 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 examine Contractor's employment records with respect to compliance with this paragraph and/or to set off all or any portion of the amount described in this paragraph against amounts due to Contractor under the Contract or any other Contract between Contractor and County.

Contractor shall report to the County Manager the filing by any person in any court of any complaint of discrimination or the filing by any person of any and all charges with the Equal Employment Opportunity Commission, the Fair Employment and Housing Commission or any other entity charged with the investigation of allegations 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 the name of the complainant, a copy of such complaint, and a description of the circumstance. Contractor shall provide County with a copy of their response to the Complaint when filed.

- E. *Compliance with Equal Benefits Ordinance.* With respect to the provision of employee benefits, Contractor shall comply with the County Ordinance, which prohibits contractors from discriminating in the provision of employee benefits between an employee with a domestic partner and an employee with a spouse.
- F. The Contractor shall comply fully with the non-discrimination requirements required by 41 CFR 60-741.5(a), which is incorporated herein as if fully set forth.

12. Compliance with Contractor Employee Jury Service Ordinance

Contractor shall comply with the County Ordinance with respect to provision of jury duty pay to employees and have and adhere to a written policy that provides that its employees shall receive from the Contractor, on an annual basis, no less than five days of regular pay for actual jury service in San Mateo County. The policy may provide that employees deposit any fees received for such jury service with the Contractor or that the Contractor deduct from the employees' regular pay the fees received for jury service.

13. Retention of Records, Right to Monitor and Audit

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

(b) Reporting and Record Keeping: Contractor shall comply with all program and fiscal reporting requirements set forth by appropriate Federal, State and local agencies, and as required by the County.

(c) Contractor agrees to provide to County, to any Federal or State department having monitoring or review authority, to County's authorized representatives, and/or their appropriate audit agencies upon reasonable notice, 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, and this Agreement, and to evaluate the quality, appropriateness and timeliness of services performed.

14. Merger Clause

This Agreement, including the Exhibits attached hereto and incorporated herein by reference, constitutes the sole Agreement of the parties hereto 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 this body of the 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 this 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 shall be in writing and signed by the parties.

15. Controlling Law and Venue

The validity of this Agreement and of its terms or provisions, as well as the rights and duties of the parties hereunder, the interpretation, and performance of this Agreement shall be governed by the laws of the State of California. Any dispute arising out of this Agreement shall be venued either in the San Mateo County Superior Court or the United States District Court for the Northern District of California.

16. Notices

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

In the case of County, to:

County of San Mateo
Department of Public Works
555 County Center, 5th Floor
Redwood City, CA 94063
Telephone: (650) 363-4100
Facsimile: (650) 361-8220

In the case of Contractor, to:

Rajappan & Meyer Consulting Engineers
1038 Leigh Avenue, Suite 100
San Jose, CA 95126
Telephone: (408) 280-2772
Facsimile: (408) 280-6803

In the event that the facsimile transmission is not possible, notice shall be given both by United States mail and an overnight courier as outlined above.

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have affixed their hands.

COUNTY OF SAN MATEO

By: _____
President, Board of Supervisors, San Mateo County

Date: _____

ATTEST:

By: _____
Clerk of Said Board

Rajappan & Meyer Consulting Engineers



Contractor's Signature

Date: 9/24/12

Long Form Agreement/Non Business Associate v 8/19/08

Exhibit "A" – Services

In consideration of the payments set forth in Exhibit "B", Contractor shall provide the following services at the request of the Director of Public Works or the Director's designee:

1. In consideration of the payments set forth in Exhibit "B", Contractor shall provide on-call engineering professional services that may include but not be limited to general surveying, topographic surveys, construction staking, hydraulic and hydrologic studies, geotechnical engineering and geotechnical studies, civil engineering design, structural engineering, project management, construction management, environmental study and document preparation, independent investigation of existing conditions, proposed solutions and schematic plans, cost analysis and preparation of independent cost estimates, feasibility studies, preparation of specifications and drawings, projected schedules, construction observation and administration, reports and coordination with applicable code enforcing and environmental agencies, site analysis, coordination with applicable local, state, and federal jurisdictions, and regulatory permit acquisition for a variety of public works type projects.
2. When County Public Works identifies a project that would benefit from Contractor's consulting services, the County will request the Contractor prepare and submit a proposal for such project. The Contractor will then propose a detailed scope of services, a not-to-exceed fee, and a timetable for completing the proposed project. If and when County Public Works approves the scope of services, not-to-exceed fee, and timetable (the "Approved Project"), the County Public Works may issue a task order authorizing the Contractor to begin work on the Approved Project. Contractor agrees to complete the Approved Project for an amount equal to or less than the Approved Project not-to-exceed fee and within the time limits set forth in the Approved Project timetable.

Exhibit "B" – Payments and Rates

In consideration of the services provided by Contractor in Exhibit "A", County shall pay Contractor based on the following fee schedule:

1. In consideration of the services provided by Contractor in Exhibit "A", County shall pay Contractor upon receipt in Accounting Section of the Department of Public Works and Parks of a written itemized invoice identifying the task order, County project number (if applicable), specific work completed, number of hours involved and breakdown of charges. The Approved Project total not-to-exceed amount will be stipulated in each task order. Costs for services deemed necessary by the County for completion of each task order shall be authorized in writing prior to proceeding with the work. Billing rates for services provided under this Agreement shall be based upon the Contractor's most recent fee schedule and by reference made a part of this Agreement. The County reserves the right to withhold payment if the County determines that the quantity or quality of the work performed is unacceptable.
2. The County shall pay Contractor reimbursable expenses. The Contractor shall be entitled to mileage, meals and lodging at the same rate granted to employees of the County whenever the Contractor is required to travel outside of San Mateo County in the performance of his duties under this Agreement. Such travel must first be approved in writing by the County. The Contractor shall also be reimbursed for expenses associated with reproduction (drawings, project manuals, reports, etc.); telephone or fax outside 650, 415, 408, 510, 707, and 925 area codes; fees paid for securing necessary permits and approvals of authorities having jurisdiction over the project; and special delivery service.
3. The County's total fiscal obligation under this Agreement shall not exceed \$300,000 unless said amount is authorized to be increased by the County Board of Supervisors by written amendment to this agreement. Specific projects that may be assigned to the Contractor shall have individual not-to-exceed amounts as stated in the specific task orders. The sum of individual task order not-to-exceed fees for multiple projects that may be assigned to the Contractor shall not exceed the total \$300,000 not-to-exceed amount for this Agreement without prior written approval by the County Board of Supervisors.

Exhibit "C" – General Obligation of Contractor

1. **Contractor Personnel**

The Contractor shall provide the County with resumes of the key staff members to be assigned to said project in advance of commencing any professional services. Once the County approves the key staff to be assigned to the project, any substitutions or additions shall be subject to written approval by the County. The County reserves the right to reject any personnel the Contractor proposes for use on the project.

Contractor represents that it is qualified to furnish the services described under this Agreement. Contractor further declares that one or more members or employees of its firm and that of its sub-contractors, if so required by the State, if any, are licensed by the State of California to perform their services and that these services will be performed by them or under their direct supervision. Contractor shall furnish to County for approval, upon execution of this Agreement, a list of all firms or corporations to be employed as sub-contractors.

Nothing in this Agreement abrogates the professional responsibilities of the Contractor and/or sub-contractors with respect to design defects, errors, omissions, or malpractice.

2. **Corrections and/or Revisions**

Contractor shall make and provide to the County all necessary corrections and/or revisions to the project design and document when it is determined by the Director of Public Works and Parks or his designated representative, that such changes are necessary for the project and are due to oversights, omissions or errors of Contractor.

3. **General Obligations of County**

County shall be responsible for providing any available data required by the Contractor as stipulated in any approved Task Order.

County shall examine documents submitted by Contractor and shall render comments and direction pertaining thereto promptly (up to two weeks or otherwise upon written agreement by County and Contractor), as stipulated in approved Task Orders.

4. **Payment Upon Suspension, Abandonment of Project, or Termination of Agreement**

If any Task Order is suspended for more than thirty (30) calendar days, or abandoned in all or part, Contractor shall be paid for services performed prior to receipt of thirty (30) days written notice from County of such suspension or abandonment, together with reimbursable expenses then due. In the event that the County abandons any Final Task Order the County may specifically authorize additional work necessary to properly close out the project.

If this Agreement or any Task Order is suspended or terminated due to fault of Contractor, County shall be obligated to compensate Contractor only for that portion of Contractor's services that were satisfactorily performed.

5. Performance of Services if Contractor is not Diligent in Performing Work

In the event Contractor is not diligent in pursuing the designated services as specified in each Task Order, the Director of Public Works and Parks or the respective designated representative may, at his option, seven (7) days after written notice to Contractor, perform any such required engineering services or retain a different Contractor to do the same, and the cost associated with having said work completed by means other than the Contractor will be retained from any sums not yet paid to the Contractor.

6. Authorization to Proceed

Contractor shall commence work upon receipt of the Task Order.

6.1 Time of Completion of Each Task

Contractor agrees to perform the professional services for the Task Order within the time limits set forth in the project schedule required by this Agreement. Any change in the scope of services as outlined in the Task Order will require a revised time table.

County agrees to exercise due diligence in performing its tasks to implement the Contractor's time schedule.

7. County's Review and Approval

Between each phase of work and at critical progress points there shall be a review and approval period by County and other agencies. County shall reject Contractor's submittal if changes and/or comments transmitted to Contractor by County during previous review were not addressed by Contractor in current submittal.

8. Changes in Work

The Director of Public Works or the respective designated representative may order changes in scope or character of work in writing which are mutually acceptable, either decreasing or increasing the amount 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. Increased compensation for changes shall be determined in accordance with Section 6 of the Agreement. Compensation shall first have been agreed to in writing by County.

In the event that changes are ordered pursuant to this Section, the schedule for progress and completion and compensation as provided with respective Task Order shall be adjusted by negotiation between Contractor and County.

9. Interest of Contractor/Contractor Independent of County

In accepting this Agreement, Contractor covenants that it presently has no interest, and shall not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of these services hereunder. Contractor further covenants that, in the performance of this Agreement, no subcontractor or person having such an interest shall be employed throughout the term of this Agreement. Contractor certifies that no one who has or will have any financial interest under this Agreement is an officer or employee of the County.

In the performance of the engineering services necessary for compliance with this Agreement, Contractor, and any of its sub-contractors or employees, shall be, and is at all times considered, an Independent Contractor, and is not an agent or employee of the County. Contractor has, and shall retain, the right to exercise full control and supervision of the services, and full control over the employment, direction, compensation and discharge of all persons assisting him in the performance of his engineering services hereunder to include any and all sub-contractors employed for the project described herein. Contractor shall be solely responsible for all matters relating to payment of his employees, including compliance with social security, withholding, and all other regulations governing such matters, and shall be solely responsible for his own acts and those of his subordinates and employees.

10. General Provisions

- (a) The Contractor acknowledges that time is of the essence for all projects defined in approved Task Order(s) and agrees to complete all work within the time frame as stipulated within said Task Order(s). Time extensions shall only be approved with prior written approval of the County and failure to complete services according to a mutually agreed upon schedule may be grounds for contract termination.
- (b) The Contractor upon becoming aware of factors which would result in delays shall be responsible for alerting County to potential delays well in advance in order that possible mitigation measures may be evaluated. Contractor shall detail the nature and reasons for potential delays and shall provide the County with possible mitigation measures for consideration.
- (c) On matters pertaining to Task Orders to be performed and the time taken by Contractor to perform such services, the decision of the Director of Public Works and Parks or the respective designated representative will be final after discussions between County and Contractor.
- (d) The Contractor warrants that he/she has not employed or retained any company or persons, other than a bona fide employee working for the Contractor, to solicit or secure this Agreement, and that he/she has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or formation of this

Agreement. For breach or violation of this warranty, the County shall have the right to annul this Agreement without liability or at its discretion to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

11. Ownership of Documents

Consistent with Attachment IP, all tracings, sketches, plans, specifications, estimates, maps, design calculations, quantity calculations, supporting documents, studies, survey notes, and other documents prepared by Contractor or sub-Contractors under the terms of this Agreement shall be delivered to and become the property of the County without restriction or limitation on their use. However, should County re-use or utilize data or drawings not for their intended use then County shall be solely liable and indemnify Contractor against such use. Computer files used by Contractor to produce the final set of plans and specifications shall also be delivered in AutoCAD, Access, Excel and Word electronic form on compact disks or other media acceptable to the County at no additional cost and become the property of the County.

12. Jobsite Safety and Environmental Protection

Neither the professional activities of the Contractor nor the presence of the Contractor or his or her employees and sub-contractors at a construction site, shall relieve the General Contractor and any other entity of their obligations, duties and responsibilities including, but not limited to, construction means, methods, sequence, techniques or procedures necessary for performing, superintending or coordinating all portions of the Work of construction in accordance with the contract documents and any health or safety or environmental protection precautions required by any regulatory agencies. The Contractor and his or her personnel have no authority to exercise any control over any construction contractor or other entity or their employees in connection with their work or any health or safety precautions. The Contractor agrees that the General Contractor is solely responsible for jobsite safety, and environmental protection, and warrants that this intent shall be made evident in the County's Agreement with the General Contractor. The Contractor also agrees that the County, the Contractor and any other County Contractors that may be providing services at the construction site shall be indemnified and shall be made additional insured's under the General Contractor's general liability insurance policy.

Attachment I

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

The undersigned (hereinafter called the "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.

Gloria Miller

Name of 504 Person - Type or Print

Rajappan & Meyer Consulting Engineers, Inc.

Name of Contractor(s) - Type or Print

1038 Leigh Avenue, Suite 100

Street Address or P.O. Box

San Jose, CA 95126

City, State, Zip Code

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


Signature

Vice President

Title of Authorized Official

9/24/12

Date

*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

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 Schedule I 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.

**County of San Mateo
Contractor's Declaration Form**

I. CONTRACTOR INFORMATION

Contractor Name:	Rajappan & Meyer Consulting	Phone:	408-280-2772
Contact Person:	Keith Meyer	Fax:	408-280-6803
Address:	1038 Leigh Avenue Suite 100 San Jose, CA 95126		

II. EQUAL BENEFITS (check one or more boxes)

Contractors with contracts in excess of \$5,000 must treat spouses and domestic partners equally as to employee benefits.

- ☒ Contractor complies with the County's Equal Benefits Ordinance by:
- ☒ offering equal benefits to employees with spouses and employees with domestic partners.
 - ☐ offering a cash equivalent payment to eligible employees in lieu of equal benefits.
- ☐ Contractor does not comply with the County's Equal Benefits Ordinance.
- ☐ Contractor is exempt from this requirement because:
- ☐ Contractor has no employees, does not provide benefits to employees' spouses, or the contract is for \$5,000 or less.
 - ☐ Contractor is a party to a collective bargaining agreement that began on _____ (date) and expires on _____ (date), and intends to offer equal benefits when said agreement expires.

III. NON-DISCRIMINATION (check appropriate box)

- ☐ Finding(s) of discrimination have been issued against Contractor within the past year by the Equal Employment Opportunity Commission, Fair Employment and Housing Commission, or other investigative entity. Please see attached sheet of paper explaining the outcome(s) or remedy for the discrimination.
- ☒ No finding of discrimination has been issued in the past year against the Contractor by the Equal Employment Opportunity Commission, Fair Employment and Housing Commission, or any other entity.

IV. EMPLOYEE JURY SERVICE (check one or more boxes)

Contractors with original or amended contracts in excess of \$100,000 must have and adhere to a written policy that provides its employees living in San Mateo County up to five days regular pay for actual jury service in the County.

- ☒ Contractor complies with the County's Employee Jury Service Ordinance.
- ☐ Contractor does not comply with the County's Employee Jury Service Ordinance.
- ☐ Contractor is exempt from this requirement because:
- ☐ the contract is for \$100,000 or less.
 - ☐ Contractor is a party to a collective bargaining agreement that began on _____ (date) and expires on _____ (date), and intends to comply when the collective bargaining agreement expires.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that I am authorized to bind this entity contractually.

Signature

Sept. 24, 2012

Date

Keith G. Meyer

Name

Vice President

Title

**AGREEMENT FOR ON-CALL ENGINEERING SERVICES
BETWEEN THE COUNTY OF SAN MATEO AND
RBF CONSULTING**

THIS AGREEMENT, entered into this _____ day of _____, 2012, by
and between the COUNTY OF SAN MATEO, hereinafter called "County," and RBF
Consulting, hereinafter called "Contractor";

W I T N E S S E T H:

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

WHEREAS, it is necessary and desirable that Contractor be retained for the purpose
of providing engineering and other related professional and technical services required for
the delivery of various types of capital improvement projects.

**NOW, THEREFORE, IT IS HEREBY AGREED BY THE PARTIES HERETO
AS FOLLOWS:**

1. Exhibits and Attachments

The following exhibits and attachments are included hereto and incorporated by reference
herein:

Exhibit A – Services
Exhibit B – Payments and Rates
Exhibit C – General Obligation of Contractor
Attachment I - § 504 Compliance
Attachment IP – Intellectual Property Rights

2. Services to be performed by Contractor

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

3. Payments

In consideration of the services provided by Contractor in accordance with all terms,
conditions and specifications set forth herein and in Exhibit "A" and Exhibit "C", County
shall make payment to Contractor based on the rates and in the manner specified in Exhibit
"B." The County reserves the right to withhold payment if the County determines that the

quantity or quality of the work performed is unacceptable. In no event shall the County's total fiscal obligation under this Agreement exceed Three Hundred Thousand Dollars and No/100s [\$300,000.00].

4. Term and Termination

Subject to compliance with all terms and conditions, the term of this Agreement shall be from October 23, 2012 to October 22, 2015.

This Agreement may be terminated by Contractor, the Director of Department of Public Works and Parks or his/her designee at any time without a requirement of good cause upon thirty (30) days' written notice to the other party.

In the event of termination, all finished or unfinished documents, data, studies, maps, photographs, reports, and materials (hereafter referred to as materials) prepared by Contractor under this Agreement shall become the property of the County and shall be promptly delivered to the County. Upon termination, the Contractor may make and retain a copy of such materials. 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 portion of the full payment, which is determined by comparing the work/services completed to the work/services required by the Agreement.

5. Availability of Funds

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

6. 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 the County and that Contractor acquires none of the rights, privileges, powers, or advantages of County employees.

7. Hold Harmless

Contractor shall indemnify and save harmless County, its officers, agents, employees, and servants from all claims, suits, or actions of every name, kind, and description, brought for, or on account of, injuries to or death of any person, including Contractor, or damage to any property of any kind whatsoever and to whomsoever belonging to the extent caused by the negligence, recklessness or willful misconduct of Contractor, its employees or subs, and any sanctions, penalties, or claims of damages resulting from Contractor's failure to comply with the requirements set forth in the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended, provided that this 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 herein, shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

8. Assignability and Subcontracting

Contractor shall not assign this Agreement or any portion thereof 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 the County's prior written consent shall give County the right to automatically and immediately terminate this Agreement.

9. Insurance

The Contractor shall not commence work or be required to commence work under this Agreement unless and until all insurance required under this paragraph has been obtained and such insurance has been approved by Risk Management, and Contractor shall use diligence to obtain such insurance and to obtain such approval. The Contractor shall furnish the County with certificates of insurance evidencing the required coverage, and there shall be a blanket contractual liability endorsement. These certificates shall specify or be endorsed to provide that thirty (30) days' notice must be given, in writing, to the County of any cancellation of the policy.

- (1) **Worker's Compensation and Employer's Liability Insurance** The Contractor shall have in effect during the entire life of this Agreement Workers' Compensation and Employer's Liability Insurance providing full statutory coverage. In signing this Agreement, the Contractor certifies, as required by Section 1861 of the California Labor Code, that it is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of the Code, and will comply with such provisions before commencing the performance of the work of this Agreement.
- (2) **Liability Insurance.** The Contractor shall take out and maintain during the life of this Agreement such Bodily Injury Liability and Property Damage Liability Insurance as shall protect him/her 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 contractors operations under this Agreement, whether such operations be by himself/herself or by any sub-contractor or by anyone directly or indirectly employed by either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall be not less than the amount specified below.

Such insurance shall include:

- | | |
|---|-------------|
| (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 the General Liability and Motor Vehicle Liability policies. Such policies of insurance shall also contain a provision that the insurance afforded thereby to the County, its officers, agents, employees and servants shall be primary insurance to the full limits of liability of the policy, and that if the County or its officers and employees 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, the County of San Mateo 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 pursuant to this Agreement.

10. Compliance with laws; payment of Permits/Licenses

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, including, but not limited to, Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended, and 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 handicap 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. Further, Contractor certifies that the Contractor 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.

In the event of a conflict between the terms of this agreement and State, Federal, County, or municipal law or regulations, the requirements of the applicable law will take precedence over the requirements set forth in this Agreement.

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

11. Non-Discrimination and Other Requirements

- A. *Section 504 applies only to Contractors who are providing services to members of the public.* Contractor shall comply with § 504 of the Rehabilitation Act of 1973, which provides that no otherwise qualified handicapped individual 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 this Agreement.
- B. *General non-discrimination.* No person shall, on the grounds of race, color, religion, ancestry, gender, age (over 40), national origin, medical condition (cancer), physical or mental disability, sexual orientation, pregnancy, childbirth or related medical condition, marital status, or political affiliation be denied any benefits or subject to discrimination

under this Agreement.

- C. *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 of San Mateo upon request.
- D. *Violation of Non-discrimination provisions.* 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:
 - i) termination of this Agreement;
 - ii) disqualification of the Contractor from bidding on or being awarded a County contract for a period of up to 3 years;
 - iii) liquidated damages of \$2,500 per violation;
 - 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 examine Contractor's employment records with respect to compliance with this paragraph and/or to set off all or any portion of the amount described in this paragraph against amounts due to Contractor under the Contract or any other Contract between Contractor and County.

Contractor shall report to the County Manager the filing by any person in any court of any complaint of discrimination or the filing by any person of any and all charges with the Equal Employment Opportunity Commission, the Fair Employment and Housing Commission or any other entity charged with the investigation of allegations 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 the name of the complainant, a copy of such complaint, and a description of the circumstance. Contractor shall provide County with a copy of their response to the Complaint when filed.

- E. *Compliance with Equal Benefits Ordinance.* With respect to the provision of employee benefits, Contractor shall comply with the County Ordinance, which prohibits contractors from discriminating in the provision of employee benefits between an employee with a domestic partner and an employee with a spouse.
- F. The Contractor shall comply fully with the non-discrimination requirements required by 41 CFR 60-741.5(a), which is incorporated herein as if fully set forth.

12. Compliance with Contractor Employee Jury Service Ordinance

Contractor shall comply with the County Ordinance with respect to provision of jury duty pay to employees and have and adhere to a written policy that provides that its employees shall receive from the Contractor, on an annual basis, no less than five days of regular pay for actual jury service in San Mateo County. The policy may provide that employees deposit any fees received for such jury service with the Contractor or that the Contractor deduct from the employees' regular pay the fees received for jury service.

13. Retention of Records, Right to Monitor and Audit

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

(b) Reporting and Record Keeping: Contractor shall comply with all program and fiscal reporting requirements set forth by appropriate Federal, State and local agencies, and as required by the County.

(c) Contractor agrees to provide to County, to any Federal or State department having monitoring or review authority, to County's authorized representatives, and/or their appropriate audit agencies upon reasonable notice, 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, and this Agreement, and to evaluate the quality, appropriateness and timeliness of services performed.

14. Merger Clause

This Agreement, including the Exhibits attached hereto and incorporated herein by reference, constitutes the sole Agreement of the parties hereto 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 this body of the 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 this 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 shall be in writing and signed by the parties.

15. Controlling Law and Venue

The validity of this Agreement and of its terms or provisions, as well as the rights and duties of the parties hereunder, the interpretation, and performance of this Agreement shall be governed by the laws of the State of California. Any dispute arising out of this Agreement shall be venued either in the San Mateo County Superior Court or the United States District Court for the Northern District of California.

16. Notices

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

In the case of County, to:

County of San Mateo
Department of Public Works
555 County Center, 5th Floor
Redwood City, CA 94063
Telephone: (650) 363-4100
Facsimile: (650) 361-8220

In the case of Contractor, to:

RBF Consulting
500 Ygnacio Valley Road, Suite 300
Walnut Creek, CA 94596
Telephone: (925) 906-1460
Facsimile: (925) 906-1465

In the event that the facsimile transmission is not possible, notice shall be given both by United States mail and an overnight courier as outlined above.

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have affixed their hands.

COUNTY OF SAN MATEO

By: _____
President, Board of Supervisors, San Mateo County

Date: _____

ATTEST:

By: _____
Clerk of Said Board

RBF Consulting



Contractor's Signature

Date: OCTOBER 01, 2012

Long Form Agreement/Non Business Associate v 8/19/08

Exhibit "A" – Services

In consideration of the payments set forth in Exhibit "B", Contractor shall provide the following services at the request of the Director of Public Works or the Director's designee:

1. In consideration of the payments set forth in Exhibit "B", Contractor shall provide on-call engineering professional services that may include but not be limited to general surveying, topographic surveys, construction staking, hydraulic and hydrologic studies, geotechnical engineering and geotechnical studies, civil engineering design, structural engineering, project management, construction management, environmental study and document preparation, independent investigation of existing conditions, proposed solutions and schematic plans, cost analysis and preparation of independent cost estimates, feasibility studies, preparation of specifications and drawings, projected schedules, construction observation and administration, reports and coordination with applicable code enforcing and environmental agencies, site analysis, coordination with applicable local, state, and federal jurisdictions, and regulatory permit acquisition for a variety of public works type projects.
2. When County Public Works identifies a project that would benefit from Contractor's consulting services, the County will request the Contractor prepare and submit a proposal for such project. The Contractor will then propose a detailed scope of services, a not-to-exceed fee, and a timetable for completing the proposed project. If and when County Public Works approves the scope of services, not-to-exceed fee, and timetable (the "Approved Project"), the County Public Works may issue a task order authorizing the Contractor to begin work on the Approved Project. Contractor agrees to complete the Approved Project for an amount equal to or less than the Approved Project not-to-exceed fee and within the time limits set forth in the Approved Project timetable.

Exhibit "B" – Payments and Rates

In consideration of the services provided by Contractor in Exhibit "A", County shall pay Contractor based on the following fee schedule:

1. In consideration of the services provided by Contractor in Exhibit "A", County shall pay Contractor upon receipt in Accounting Section of the Department of Public Works and Parks of a written itemized invoice identifying the task order, County project number (if applicable), specific work completed, number of hours involved and breakdown of charges. The Approved Project total not-to-exceed amount will be stipulated in each task order. Costs for services deemed necessary by the County for completion of each task order shall be authorized in writing prior to proceeding with the work. Billing rates for services provided under this Agreement shall be based upon the Contractor's most recent fee schedule and by reference made a part of this Agreement. The County reserves the right to withhold payment if the County determines that the quantity or quality of the work performed is unacceptable.
2. The County shall pay Contractor reimbursable expenses. The Contractor shall be entitled to mileage, meals and lodging at the same rate granted to employees of the County whenever the Contractor is required to travel outside of San Mateo County in the performance of his duties under this Agreement. Such travel must first be approved in writing by the County. The Contractor shall also be reimbursed for expenses associated with reproduction (drawings, project manuals, reports, etc.); telephone or fax outside 650, 415, 408, 510, 707, and 925 area codes; fees paid for securing necessary permits and approvals of authorities having jurisdiction over the project; and special delivery service.
3. The County's total fiscal obligation under this Agreement shall not exceed \$300,000 unless said amount is authorized to be increased by the County Board of Supervisors by written amendment to this agreement. Specific projects that may be assigned to the Contractor shall have individual not-to-exceed amounts as stated in the specific task orders. The sum of individual task order not-to-exceed fees for multiple projects that may be assigned to the Contractor shall not exceed the total \$300,000 not-to-exceed amount for this Agreement without prior written approval by the County Board of Supervisors.

Exhibit "C" – General Obligation of Contractor

1. Contractor Personnel

The Contractor shall provide the County with resumes of the key staff members to be assigned to said project in advance of commencing any professional services. Once the County approves the key staff to be assigned to the project, any substitutions or additions shall be subject to written approval by the County. The County reserves the right to reject any personnel the Contractor proposes for use on the project.

Contractor represents that it is qualified to furnish the services described under this Agreement. Contractor further declares that one or more members or employees of its firm and that of its sub-contractors, if so required by the State, if any, are licensed by the State of California to perform their services and that these services will be performed by them or under their direct supervision. Contractor shall furnish to County for approval, upon execution of this Agreement, a list of all firms or corporations to be employed as sub-contractors.

Nothing in this Agreement abrogates the professional responsibilities of the Contractor and/or sub-contractors with respect to design defects, errors, omissions, or malpractice.

2. Corrections and/or Revisions

Contractor shall make and provide to the County all necessary corrections and/or revisions to the project design and document when it is determined by the Director of Public Works and Parks or his designated representative, that such changes are necessary for the project and are due to oversights, omissions or errors of Contractor.

3. General Obligations of County

County shall be responsible for providing any available data required by the Contractor as stipulated in any approved Task Order.

County shall examine documents submitted by Contractor and shall render comments and direction pertaining thereto promptly (up to two weeks or otherwise upon written agreement by County and Contractor), as stipulated in approved Task Orders.

4. Payment Upon Suspension, Abandonment of Project, or Termination of Agreement

If any Task Order is suspended for more than thirty (30) calendar days, or abandoned in all or part, Contractor shall be paid for services performed prior to receipt of thirty (30) days written notice from County of such suspension or abandonment, together with reimbursable expenses then due. In the event that the County abandons any Final Task Order the County may specifically authorize additional work necessary to properly close out the project.

If this Agreement or any Task Order is suspended or terminated due to fault of Contractor, County shall be obligated to compensate Contractor only for that portion of Contractor's services that were satisfactorily performed.

5. Performance of Services if Contractor is not Diligent in Performing Work

In the event Contractor is not diligent in pursuing the designated services as specified in each Task Order, the Director of Public Works and Parks or the respective designated representative may, at his option, seven (7) days after written notice to Contractor, perform any such required engineering services or retain a different Contractor to do the same, and the cost associated with having said work completed by means other than the Contractor will be retained from any sums not yet paid to the Contractor.

6. Authorization to Proceed

Contractor shall commence work upon receipt of the Task Order.

6.1 Time of Completion of Each Task

Contractor agrees to perform the professional services for the Task Order within the time limits set forth in the project schedule required by this Agreement. Any change in the scope of services as outlined in the Task Order will require a revised time table.

County agrees to exercise due diligence in performing its tasks to implement the Contractor's time schedule.

7. County's Review and Approval

Between each phase of work and at critical progress points there shall be a review and approval period by County and other agencies. County shall reject Contractor's submittal if changes and/or comments transmitted to Contractor by County during previous review were not addressed by Contractor in current submittal.

8. Changes in Work

The Director of Public Works or the respective designated representative may order changes in scope or character of work in writing which are mutually acceptable, either decreasing or increasing the amount 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. Increased compensation for changes shall be determined in accordance with Section 6 of the Agreement. Compensation shall first have been agreed to in writing by County.

In the event that changes are ordered pursuant to this Section, the schedule for progress and completion and compensation as provided with respective Task Order shall be adjusted by negotiation between Contractor and County.

9. Interest of Contractor/Contractor Independent of County

In accepting this Agreement, Contractor covenants that it presently has no interest, and shall not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of these services hereunder. Contractor further covenants that, in the performance of this Agreement, no subcontractor or person having such an interest shall be employed throughout the term of this Agreement. Contractor certifies that no one who has or will have any financial interest under this Agreement is an officer or employee of the County.

In the performance of the engineering services necessary for compliance with this Agreement, Contractor, and any of its sub-contractors or employees, shall be, and is at all times considered, an Independent Contractor, and is not an agent or employee of the County. Contractor has, and shall retain, the right to exercise full control and supervision of the services, and full control over the employment, direction, compensation and discharge of all persons assisting him in the performance of his engineering services hereunder to include any and all sub-contractors employed for the project described herein. Contractor shall be solely responsible for all matters relating to payment of his employees, including compliance with social security, withholding, and all other regulations governing such matters, and shall be solely responsible for his own acts and those of his subordinates and employees.

10. General Provisions

- (a) The Contractor acknowledges that time is of the essence for all projects defined in approved Task Order(s) and agrees to complete all work within the time frame as stipulated within said Task Order(s). Time extensions shall only be approved with prior written approval of the County and failure to complete services according to a mutually agreed upon schedule may be grounds for contract termination.
- (b) The Contractor upon becoming aware of factors which would result in delays shall be responsible for alerting County to potential delays well in advance in order that possible mitigation measures may be evaluated. Contractor shall detail the nature and reasons for potential delays and shall provide the County with possible mitigation measures for consideration.
- (c) On matters pertaining to Task Orders to be performed and the time taken by Contractor to perform such services, the decision of the Director of Public Works and Parks or the respective designated representative will be final after discussions between County and Contractor.
- (d) The Contractor warrants that he/she has not employed or retained any company or persons, other than a bona fide employee working for the Contractor, to solicit or secure this Agreement, and that he/she has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or formation of this

Agreement. For breach or violation of this warranty, the County shall have the right to annul this Agreement without liability or at its discretion to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

11. Ownership of Documents

Consistent with Attachment IP, all tracings, sketches, plans, specifications, estimates, maps, design calculations, quantity calculations, supporting documents, studies, survey notes, and other documents prepared by Contractor or sub-Contractors under the terms of this Agreement shall be delivered to and become the property of the County without restriction or limitation on their use. However, should County re-use or utilize data or drawings not for their intended use then County shall be solely liable and indemnify Contractor against such use. Computer files used by Contractor to produce the final set of plans and specifications shall also be delivered in AutoCAD, Access, Excel and Word electronic form on compact disks or other media acceptable to the County at no additional cost and become the property of the County.

12. Jobsite Safety and Environmental Protection

Neither the professional activities of the Contractor nor the presence of the Contractor or his or her employees and sub-contractors at a construction site, shall relieve the General Contractor and any other entity of their obligations, duties and responsibilities including, but not limited to, construction means, methods, sequence, techniques or procedures necessary for performing, superintending or coordinating all portions of the Work of construction in accordance with the contract documents and any health or safety or environmental protection precautions required by any regulatory agencies. The Contractor and his or her personnel have no authority to exercise any control over any construction contractor or other entity or their employees in connection with their work or any health or safety precautions. The Contractor agrees that the General Contractor is solely responsible for jobsite safety, and environmental protection, and warrants that this intent shall be made evident in the County's Agreement with the General Contractor. The Contractor also agrees that the County, the Contractor and any other County Contractors that may be providing services at the construction site shall be indemnified and shall be made additional insured's under the General Contractor's general liability insurance policy.

Attachment I

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

The undersigned (hereinafter called the "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.

Trinka Burdick

Name of 504 Person - Type or Print

RBF Consulting

Name of Contractor(s) - Type or Print

14725 Alton Parkway

Street Address or P.O. Box

Irvine, CA 92618

City, State, Zip Code

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

[Signature]

Signature

Senior Associate

Title of Authorized Official

10/10/12

Date

*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

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 Schedule I 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.

**County of San Mateo
Contractor's Declaration Form**

I. CONTRACTOR INFORMATION

Contractor Name:	RBF Consulting	Phone:	(925) 906-1460
Contact Person:	Garrett Gritz	Fax:	(925) 906-1465
Address:	500 Ygnacio Valley Rd, Suite 300 Walnut Creek, CA 94596		

II. EQUAL BENEFITS (check one or more boxes)

Contractors with contracts in excess of \$5,000 must treat spouses and domestic partners equally as to employee benefits.

- ☒ Contractor complies with the County's Equal Benefits Ordinance by:
- ☒ offering equal benefits to employees with spouses and employees with domestic partners.
 - ☐ offering a cash equivalent payment to eligible employees in lieu of equal benefits.
- ☐ Contractor does not comply with the County's Equal Benefits Ordinance.
- ☐ Contractor is exempt from this requirement because:
- ☐ Contractor has no employees, does not provide benefits to employees' spouses, or the contract is for \$5,000 or less.
 - ☐ Contractor is a party to a collective bargaining agreement that began on _____ (date) and expires on _____ (date), and intends to offer equal benefits when said agreement expires.

III. NON-DISCRIMINATION (check appropriate box)

- ☐ Finding(s) of discrimination have been issued against Contractor within the past year by the Equal Employment Opportunity Commission, Fair Employment and Housing Commission, or other investigative entity. Please see attached sheet of paper explaining the outcome(s) or remedy for the discrimination.
- ☒ No finding of discrimination has been issued in the past year against the Contractor by the Equal Employment Opportunity Commission, Fair Employment and Housing Commission, or any other entity.

IV. EMPLOYEE JURY SERVICE (check one or more boxes)

Contractors with original or amended contracts in excess of \$100,000 must have and adhere to a written policy that provides its employees living in San Mateo County up to five days regular pay for actual jury service in the County.

- ☒ Contractor complies with the County's Employee Jury Service Ordinance.
- ☐ Contractor does not comply with the County's Employee Jury Service Ordinance.
- ☐ Contractor is exempt from this requirement because:
- ☐ the contract is for \$100,000 or less.
 - ☐ Contractor is a party to a collective bargaining agreement that began on _____ (date) and expires on _____ (date), and intends to comply when the collective bargaining agreement expires.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that I am authorized to bind this entity contractually.



Signature

10-10-12

Date

Garrett Gritz

Name

Senior Vice President

Title

**AGREEMENT FOR ON-CALL ENGINEERING SERVICES
BETWEEN THE COUNTY OF SAN MATEO AND
TOWILL, INC.**

THIS AGREEMENT, entered into this ____ day of _____, 2012, by
and between the COUNTY OF SAN MATEO, hereinafter called "County," and Towill, Inc.,
hereinafter called "Contractor";

W I T N E S S E T H:

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

WHEREAS, it is necessary and desirable that Contractor be retained for the purpose
of providing engineering and other related professional and technical services required for
the delivery of various types of capital improvement projects.

**NOW, THEREFORE, IT IS HEREBY AGREED BY THE PARTIES HERETO
AS FOLLOWS:**

1. Exhibits and Attachments

The following exhibits and attachments are included hereto and incorporated by reference
herein:

Exhibit A – Services
Exhibit B – Payments and Rates
Exhibit C – General Obligation of Contractor
Attachment I - § 504 Compliance
Attachment IP – Intellectual Property Rights

2. Services to be performed by Contractor

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

3. Payments

In consideration of the services provided by Contractor in accordance with all terms,
conditions and specifications set forth herein and in Exhibit "A" and Exhibit "C", County
shall make payment to Contractor based on the rates and in the manner specified in Exhibit
"B." The County reserves the right to withhold payment if the County determines that the

quantity or quality of the work performed is unacceptable. In no event shall the County's total fiscal obligation under this Agreement exceed Three Hundred Thousand Dollars and No/100s [\$300,000.00].

4. Term and Termination

Subject to compliance with all terms and conditions, the term of this Agreement shall be from October 23, 2012 to October 22, 2015.

This Agreement may be terminated by Contractor, the Director of Department of Public Works and Parks or his/her designee at any time without a requirement of good cause upon thirty (30) days' written notice to the other party.

In the event of termination, all finished or unfinished documents, data, studies, maps, photographs, reports, and materials (hereafter referred to as materials) prepared by Contractor under this Agreement shall become the property of the County and shall be promptly delivered to the County. Upon termination, the Contractor may make and retain a copy of such materials. 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 portion of the full payment, which is determined by comparing the work/services completed to the work/services required by the Agreement.

5. Availability of Funds

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

6. 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 the County and that Contractor acquires none of the rights, privileges, powers, or advantages of County employees.

7. Hold Harmless

Contractor shall indemnify and save harmless County, its officers, agents, employees, and servants from all claims, suits, or actions of every name, kind, and description, brought for, or on account of: (A) injuries to or death of any person, including Contractor, or (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 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, its officers, agents, employees, or servants, resulting from the performance of any work required of Contractor or payments made pursuant to this Agreement, provided that this 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 herein, shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

8. Assignability and Subcontracting

Contractor shall not assign this Agreement or any portion thereof 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 the County's prior written consent shall give County the right to automatically and immediately terminate this Agreement.

9. Insurance

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

- (1) **Worker's Compensation and Employer's Liability Insurance** The Contractor shall have in effect during the entire life of this Agreement Workers' Compensation and Employer's Liability Insurance providing full statutory coverage. In signing this Agreement, the Contractor certifies, as required by Section 1861 of the California Labor Code, that it is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of the Code, and will comply with such provisions before commencing the performance of

the work of this Agreement.

- (2) **Liability Insurance.** The Contractor shall take out and maintain during the life of this Agreement such Bodily Injury Liability and Property Damage Liability Insurance as shall protect him/her 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 contractors operations under this Agreement, whether such operations be by himself/herself or by any sub-contractor or by anyone directly or indirectly employed by either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall be not less than the amount specified below.

Such insurance shall include:

- | | |
|---|-------------|
| (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 the insurance afforded thereby to the County, its officers, agents, employees and servants shall be primary insurance to the full limits of liability of the policy, and that if the County or its officers and employees 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, the County of San Mateo 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 pursuant to this Agreement.

10. Compliance with laws; payment of Permits/Licenses

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, including, but not limited to, Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended, and 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 handicap 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. Further, Contractor certifies that the Contractor 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.

In the event of a conflict between the terms of this agreement and State, Federal, County, or municipal law or regulations, the requirements of the applicable law will take precedence over the requirements set forth in this Agreement.

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

11. Non-Discrimination and Other Requirements

- A. *Section 504 applies only to Contractors who are providing services to members of the public.* Contractor shall comply with § 504 of the Rehabilitation Act of 1973, which provides that no otherwise qualified handicapped individual 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 this Agreement.
- B. *General non-discrimination.* No person shall, on the grounds of race, color, religion, ancestry, gender, age (over 40), national origin, medical condition (cancer), physical or mental disability, sexual orientation, pregnancy, childbirth or related medical condition, marital status, or political affiliation be denied any benefits or subject to discrimination under this Agreement.
- C. *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 of San Mateo upon request.
- D. *Violation of Non-discrimination provisions.* 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:
 - i) termination of this Agreement;
 - ii) disqualification of the Contractor from bidding on or being awarded a County contract for a period of up to 3 years;
 - iii) liquidated damages of \$2,500 per violation;
 - 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 examine Contractor's employment records with respect to compliance with this paragraph and/or to set off all or any portion of the amount described in this paragraph against amounts due to Contractor under the Contract or any other Contract between Contractor and County.

Contractor shall report to the County Manager the filing by any person in any court of any complaint of discrimination or the filing by any person of any and all charges with the Equal Employment Opportunity Commission, the Fair Employment and Housing Commission or any other entity charged with the investigation of allegations 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 the name of the complainant, a copy of such complaint, and a description of the circumstance. Contractor shall provide County with a copy of their response to the Complaint when filed.

- E. *Compliance with Equal Benefits Ordinance.* With respect to the provision of employee benefits, Contractor shall comply with the County Ordinance, which prohibits contractors from discriminating in the provision of employee benefits between an employee with a domestic partner and an employee with a spouse.
- F. The Contractor shall comply fully with the non-discrimination requirements required by 41 CFR 60-741.5(a), which is incorporated herein as if fully set forth.

12. Compliance with Contractor Employee Jury Service Ordinance

Contractor shall comply with the County Ordinance with respect to provision of jury duty pay to employees and have and adhere to a written policy that provides that its employees shall receive from the Contractor, on an annual basis, no less than five days of regular pay for actual jury service in San Mateo County. The policy may provide that employees deposit any fees received for such jury service with the Contractor or that the Contractor deduct from the employees' regular pay the fees received for jury service.

13. Retention of Records, Right to Monitor and Audit

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

(b) Reporting and Record Keeping: Contractor shall comply with all program and fiscal reporting requirements set forth by appropriate Federal, State and local agencies, and as required by the County.

(c) Contractor agrees to provide to County, to any Federal or State department having monitoring or review authority, to County's authorized representatives, and/or their appropriate audit agencies upon reasonable notice, 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, and this Agreement, and to evaluate the quality, appropriateness and timeliness of services performed.

14. Merger Clause

This Agreement, including the Exhibits attached hereto and incorporated herein by reference, constitutes the sole Agreement of the parties hereto 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 this body of the 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 this 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 shall be in writing and signed by the parties.

15. Controlling Law and Venue

The validity of this Agreement and of its terms or provisions, as well as the rights and duties of the parties hereunder, the interpretation, and performance of this Agreement shall be governed by the laws of the State of California. Any dispute arising out of this Agreement shall be venued either in the San Mateo County Superior Court or the United States District Court for the Northern District of California.

16. Notices

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

In the case of County, to:

County of San Mateo
Department of Public Works
555 County Center, 5th Floor
Redwood City, CA 94063
Telephone: (650) 363-4100
Facsimile: (650) 361-8220

In the case of Contractor, to:

Towill, Inc.
2300 Clayton Road, Suite 1200
Concord, CA 94520
Telephone: (925) 682-6976
Facsimile: (925) 682-6390

In the event that the facsimile transmission is not possible, notice shall be given both by United States mail and an overnight courier as outlined above.

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have affixed their hands.

COUNTY OF SAN MATEO

By: _____
President, Board of Supervisors, San Mateo County

Date: _____

ATTEST:

By: _____
Clerk of Said Board

Towill, Inc.



Contractor's Signature

Date: 09-27-12

Exhibit "A" – Services

In consideration of the payments set forth in Exhibit "B", Contractor shall provide the following services at the request of the Director of Public Works or the Director's designee:

1. In consideration of the payments set forth in Exhibit "B", Contractor shall provide on-call engineering professional services that may include but not be limited to general surveying, topographic surveys, construction staking, hydraulic and hydrologic studies, geotechnical engineering and geotechnical studies, civil engineering design, structural engineering, project management, construction management, environmental study and document preparation, independent investigation of existing conditions, proposed solutions and schematic plans, cost analysis and preparation of independent cost estimates, feasibility studies, preparation of specifications and drawings, projected schedules, construction observation and administration, reports and coordination with applicable code enforcing and environmental agencies, site analysis, coordination with applicable local, state, and federal jurisdictions, and regulatory permit acquisition for a variety of public works type projects.
2. When County Public Works identifies a project that would benefit from Contractor's consulting services, the County will request the Contractor prepare and submit a proposal for such project. The Contractor will then propose a detailed scope of services, a not-to-exceed fee, and a timetable for completing the proposed project. If and when County Public Works approves the scope of services, not-to-exceed fee, and timetable (the "Approved Project"), the County Public Works may issue a task order authorizing the Contractor to begin work on the Approved Project. Contractor agrees to complete the Approved Project for an amount equal to or less than the Approved Project not-to-exceed fee and within the time limits set forth in the Approved Project timetable.

Exhibit "B" – Payments and Rates

In consideration of the services provided by Contractor in Exhibit "A", County shall pay Contractor based on the following fee schedule:

1. In consideration of the services provided by Contractor in Exhibit "A", County shall pay Contractor upon receipt in Accounting Section of the Department of Public Works and Parks of a written itemized invoice identifying the task order, County project number (if applicable), specific work completed, number of hours involved and breakdown of charges. The Approved Project total not-to-exceed amount will be stipulated in each task order. Costs for services deemed necessary by the County for completion of each task order shall be authorized in writing prior to proceeding with the work. Billing rates for services provided under this Agreement shall be based upon the Contractor's most recent fee schedule and by reference made a part of this Agreement. The County reserves the right to withhold payment if the County determines that the quantity or quality of the work performed is unacceptable.
2. The County shall pay Contractor reimbursable expenses. The Contractor shall be entitled to mileage, meals and lodging at the same rate granted to employees of the County whenever the Contractor is required to travel outside of San Mateo County in the performance of his duties under this Agreement. Such travel must first be approved in writing by the County. The Contractor shall also be reimbursed for expenses associated with reproduction (drawings, project manuals, reports, etc.); telephone or fax outside 650, 415, 408, 510, 707, and 925 area codes; fees paid for securing necessary permits and approvals of authorities having jurisdiction over the project; and special delivery service.
3. The County's total fiscal obligation under this Agreement shall not exceed \$300,000 unless said amount is authorized to be increased by the County Board of Supervisors by written amendment to this agreement. Specific projects that may be assigned to the Contractor shall have individual not-to-exceed amounts as stated in the specific task orders. The sum of individual task order not-to-exceed fees for multiple projects that may be assigned to the Contractor shall not exceed the total \$300,000 not-to-exceed amount for this Agreement without prior written approval by the County Board of Supervisors.

Exhibit "C" – General Obligation of Contractor

1. Contractor Personnel

The Contractor shall provide the County with resumes of the key staff members to be assigned to said project in advance of commencing any professional services. Once the County approves the key staff to be assigned to the project, any substitutions or additions shall be subject to written approval by the County. The County reserves the right to reject any personnel the Contractor proposes for use on the project.

Contractor represents that it is qualified to furnish the services described under this Agreement. Contractor further declares that one or more members or employees of its firm and that of its sub-contractors, if so required by the State, if any, are licensed by the State of California to perform their services and that these services will be performed by them or under their direct supervision. Contractor shall furnish to County for approval, upon execution of this Agreement, a list of all firms or corporations to be employed as sub-contractors.

Nothing in this Agreement abrogates the professional responsibilities of the Contractor and/or sub-contractors with respect to design defects, errors, omissions, or malpractice.

2. Corrections and/or Revisions

Contractor shall make and provide to the County all necessary corrections and/or revisions to the project design and document when it is determined by the Director of Public Works and Parks or his designated representative, that such changes are necessary for the project and are due to oversights, omissions or errors of Contractor.

3. General Obligations of County

County shall be responsible for providing any available data required by the Contractor as stipulated in any approved Task Order.

County shall examine documents submitted by Contractor and shall render comments and direction pertaining thereto promptly (up to two weeks or otherwise upon written agreement by County and Contractor), as stipulated in approved Task Orders.

4. Payment Upon Suspension, Abandonment of Project, or Termination of Agreement

If any Task Order is suspended for more than thirty (30) calendar days, or abandoned in all or part, Contractor shall be paid for services performed prior to receipt of thirty (30) days written notice from County of such suspension or abandonment, together with reimbursable expenses then due. In the event that the County abandons any Final Task Order the County may specifically authorize additional work necessary to properly close out the project.

If this Agreement or any Task Order is suspended or terminated due to fault of Contractor, County shall be obligated to compensate Contractor only for that portion of Contractor's services that were satisfactorily performed.

5. Performance of Services if Contractor is not Diligent in Performing Work

In the event Contractor is not diligent in pursuing the designated services as specified in each Task Order, the Director of Public Works and Parks or the respective designated representative may, at his option, seven (7) days after written notice to Contractor, perform any such required engineering services or retain a different Contractor to do the same, and the cost associated with having said work completed by means other than the Contractor will be retained from any sums not yet paid to the Contractor.

6. Authorization to Proceed

Contractor shall commence work upon receipt of the Task Order.

6.1 Time of Completion of Each Task

Contractor agrees to perform the professional services for the Task Order within the time limits set forth in the project schedule required by this Agreement. Any change in the scope of services as outlined in the Task Order will require a revised time table.

County agrees to exercise due diligence in performing its tasks to implement the Contractor's time schedule.

7. County's Review and Approval

Between each phase of work and at critical progress points there shall be a review and approval period by County and other agencies. County shall reject Contractor's submittal if changes and/or comments transmitted to Contractor by County during previous review were not addressed by Contractor in current submittal.

8. Changes in Work

The Director of Public Works or the respective designated representative may order changes in scope or character of work in writing which are mutually acceptable, either decreasing or increasing the amount 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. Increased compensation for changes shall be determined in accordance with Section 6 of the Agreement. Compensation shall first have been agreed to in writing by County.

In the event that changes are ordered pursuant to this Section, the schedule for progress and completion and compensation as provided with respective Task Order shall be adjusted by negotiation between Contractor and County.

9. Interest of Contractor/Contractor Independent of County

In accepting this Agreement, Contractor covenants that it presently has no interest, and shall not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of these services hereunder. Contractor further covenants that, in the performance of this Agreement, no subcontractor or person having such an interest shall be employed throughout the term of this Agreement. Contractor certifies that no one who has or will have any financial interest under this Agreement is an officer or employee of the County.

In the performance of the engineering services necessary for compliance with this Agreement, Contractor, and any of its sub-contractors or employees, shall be, and is at all times considered, an Independent Contractor, and is not an agent or employee of the County. Contractor has, and shall retain, the right to exercise full control and supervision of the services, and full control over the employment, direction, compensation and discharge of all persons assisting him in the performance of his engineering services hereunder to include any and all sub-contractors employed for the project described herein. Contractor shall be solely responsible for all matters relating to payment of his employees, including compliance with social security, withholding, and all other regulations governing such matters, and shall be solely responsible for his own acts and those of his subordinates and employees.

10. General Provisions

- (a) The Contractor acknowledges that time is of the essence for all projects defined in approved Task Order(s) and agrees to complete all work within the time frame as stipulated within said Task Order(s). Time extensions shall only be approved with prior written approval of the County and failure to complete services according to a mutually agreed upon schedule may be grounds for contract termination.
- (b) The Contractor upon becoming aware of factors which would result in delays shall be responsible for alerting County to potential delays well in advance in order that possible mitigation measures may be evaluated. Contractor shall detail the nature and reasons for potential delays and shall provide the County with possible mitigation measures for consideration.
- (c) On matters pertaining to Task Orders to be performed and the time taken by Contractor to perform such services, the decision of the Director of Public Works and Parks or the respective designated representative will be final after discussions between County and Contractor.
- (d) The Contractor warrants that he/she has not employed or retained any company or persons, other than a bona fide employee working for the Contractor, to solicit or secure this Agreement, and that he/she has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or formation of this

Agreement. For breach or violation of this warranty, the County shall have the right to annul this Agreement without liability or at its discretion to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

11. Ownership of Documents

Consistent with Attachment IP, all tracings, sketches, plans, specifications, estimates, maps, design calculations, quantity calculations, supporting documents, studies, survey notes, and other documents prepared by Contractor or sub-Contractors under the terms of this Agreement shall be delivered to and become the property of the County without restriction or limitation on their use. However, should County re-use or utilize data or drawings not for their intended use then County shall be solely liable and indemnify Contractor against such use. Computer files used by Contractor to produce the final set of plans and specifications shall also be delivered in AutoCAD, Access, Excel and Word electronic form on compact disks or other media acceptable to the County at no additional cost and become the property of the County.

12. Jobsite Safety and Environmental Protection

Neither the professional activities of the Contractor nor the presence of the Contractor or his or her employees and sub-contractors at a construction site, shall relieve the General Contractor and any other entity of their obligations, duties and responsibilities including, but not limited to, construction means, methods, sequence, techniques or procedures necessary for performing, superintending or coordinating all portions of the Work of construction in accordance with the contract documents and any health or safety or environmental protection precautions required by any regulatory agencies. The Contractor and his or her personnel have no authority to exercise any control over any construction contractor or other entity or their employees in connection with their work or any health or safety precautions. The Contractor agrees that the General Contractor is solely responsible for jobsite safety, and environmental protection, and warrants that this intent shall be made evident in the County's Agreement with the General Contractor. The Contractor also agrees that the County, the Contractor and any other County Contractors that may be providing services at the construction site shall be indemnified and shall be made additional insured's under the General Contractor's general liability insurance policy.

Attachment I

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

The undersigned (hereinafter called the "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.

Alicia Gonzalez

Name of 504 Person - Type or Print

Towill, Inc.

Name of Contractor(s) - Type or Print

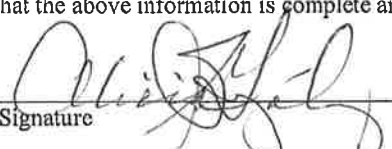
2300 Clayton Road Suite 1200

Street Address or P.O. Box

Concord, CA 94520-2176

City, State, Zip Code

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


Signature

Human Resource Manager

Title of Authorized Official

9-27-12

Date

*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

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 Schedule I 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.

**County of San Mateo
Contractor's Declaration Form**

I. CONTRACTOR INFORMATION

Contractor Name:	Towill, Inc.	Phone:	(925) 682-6976
Contact Person:	Alicia Gonzalez	Fax:	(925) 627-2300
Address:	2300 Clayton Rd. Ste. 1200 Concord, CA 94520-2176		

II. EQUAL BENEFITS (check one or more boxes)

Contractors with contracts in excess of \$5,000 must treat spouses and domestic partners equally as to employee benefits.

- ☒ Contractor complies with the County's Equal Benefits Ordinance by:
- ☒ offering equal benefits to employees with spouses and employees with domestic partners.
 - ☐ offering a cash equivalent payment to eligible employees in lieu of equal benefits.
- ☐ Contractor does not comply with the County's Equal Benefits Ordinance.
- ☐ Contractor is exempt from this requirement because:
- ☐ Contractor has no employees, does not provide benefits to employees' spouses, or the contract is for \$5,000 or less.
 - ☐ Contractor is a party to a collective bargaining agreement that began on _____ (date) and expires on _____ (date), and intends to offer equal benefits when said agreement expires.

III. NON-DISCRIMINATION (check appropriate box)

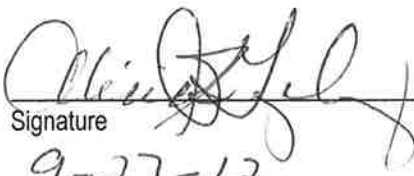
- ☐ Finding(s) of discrimination have been issued against Contractor within the past year by the Equal Employment Opportunity Commission, Fair Employment and Housing Commission, or other investigative entity. Please see attached sheet of paper explaining the outcome(s) or remedy for the discrimination.
- ☒ No finding of discrimination has been issued in the past year against the Contractor by the Equal Employment Opportunity Commission, Fair Employment and Housing Commission, or any other entity.

IV. EMPLOYEE JURY SERVICE (check one or more boxes)

Contractors with original or amended contracts in excess of \$100,000 must have and adhere to a written policy that provides its employees living in San Mateo County up to five days regular pay for actual jury service in the County.

- ☒ Contractor complies with the County's Employee Jury Service Ordinance. (non-union employees)
- ☐ Contractor does not comply with the County's Employee Jury Service Ordinance.
- ☐ Contractor is exempt from this requirement because:
- ☐ the contract is for \$100,000 or less.
 - ☒ Contractor is a party to a collective bargaining agreement that began on 3/1/12 (date) and expires on 3/1/15 (date), and intends to comply when the collective bargaining agreement expires.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that I am authorized to bind this entity contractually.


Signature
9-27-12
Date

Alicia S. Gonzalez
Name
HR Manager
Title

**AGREEMENT FOR ON-CALL ENGINEERING SERVICES
BETWEEN THE COUNTY OF SAN MATEO AND
URS CORPORATION**

THIS AGREEMENT, entered into this _____ day of _____, 2012, by
and between the COUNTY OF SAN MATEO, hereinafter called "County," and URS
Corporation, hereinafter called "Contractor";

W I T N E S S E T H:

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

WHEREAS, it is necessary and desirable that Contractor be retained for the purpose
of providing engineering and other related professional and technical services required for
the delivery of various types of capital improvement projects.

**NOW, THEREFORE, IT IS HEREBY AGREED BY THE PARTIES HERETO
AS FOLLOWS:**

1. Exhibits and Attachments

The following exhibits and attachments are included hereto and incorporated by reference
herein:

Exhibit A – Services
Exhibit B – Payments and Rates
Exhibit C – General Obligation of Contractor
Attachment I - § 504 Compliance
Attachment IP – Intellectual Property Rights

2. Services to be performed by Contractor

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

3. Payments

In consideration of the services provided by Contractor in accordance with all terms,
conditions and specifications set forth herein and in Exhibit "A" and Exhibit "C", County
shall make payment to Contractor based on the rates and in the manner specified in Exhibit
"B." The County reserves the right to withhold payment if the County determines that the

quantity or quality of the work performed is unacceptable. In no event shall the County's total fiscal obligation under this Agreement exceed Five Hundred Thousand Dollars and No/100s [\$500,000.00].

4. Term and Termination

Subject to compliance with all terms and conditions, the term of this Agreement shall be from October 23, 2012 to October 22, 2015.

This Agreement may be terminated by Contractor, the Director of Department of Public Works and Parks or his/her designee at any time without a requirement of good cause upon thirty (30) days' written notice to the other party.

In the event of termination, all finished or unfinished documents, data, studies, maps, photographs, reports, and materials (hereafter referred to as materials) prepared by Contractor under this Agreement shall become the property of the County and shall be promptly delivered to the County. Upon termination, the Contractor may make and retain a copy of such materials. 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 portion of the full payment, which is determined by comparing the work/services completed to the work/services required by the Agreement.

5. Availability of Funds

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

6. 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 the County and that Contractor acquires none of the rights, privileges, powers, or advantages of County employees.

7. Hold Harmless

Contractor shall indemnify and save harmless County, its officers, agents, employees, and servants from all claims, suits, or actions of every name, kind, and description, brought for, or on account of, injuries to or death of any person, including Contractor, or damage to any property of any kind whatsoever and to whomsoever belonging to the extent caused by the negligence, recklessness or willful misconduct of Contractor, its employees or subs, and any sanctions, penalties, or claims of damages resulting from Contractor's failure to comply with the requirements set forth in the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended, provided that this 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 herein, shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

8. Assignability and Subcontracting

Contractor shall not assign this Agreement or any portion thereof 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 the County's prior written consent shall give County the right to automatically and immediately terminate this Agreement.

9. Insurance

The Contractor shall not commence work or be required to commence work under this Agreement unless and until all insurance required under this paragraph has been obtained and such insurance has been approved by Risk Management, and Contractor shall use diligence to obtain such insurance and to obtain such approval. The Contractor shall furnish the County with certificates of insurance evidencing the required coverage, and there shall be a blanket contractual liability endorsement. These certificates shall specify or be endorsed to provide that thirty (30) days' notice must be given, in writing, to the County of any cancellation of the policy.

- (1) **Worker's Compensation and Employer's Liability Insurance** The Contractor shall have in effect during the entire life of this Agreement Workers' Compensation and Employer's Liability Insurance providing full statutory coverage. In signing this Agreement, the Contractor certifies, as required by Section 1861 of the California Labor Code, that it is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of the Code, and will comply with such provisions before commencing the performance of the work of this Agreement.
- (2) **Liability Insurance.** The Contractor shall take out and maintain during the life of this Agreement such Bodily Injury Liability and Property Damage Liability Insurance as shall protect him/her 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 contractors operations under this Agreement, whether such operations be by himself/herself or by any subcontractor or by anyone directly or indirectly employed by either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall be not less than the amount specified below.

Such insurance shall include:

- | | |
|---|-------------|
| (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 the General Liability and Motor Vehicle Liability policies. Such policies of insurance shall also contain a provision that the insurance afforded thereby to the County, its officers, agents, employees and servants shall be primary insurance to the full limits of liability of the policy, and that if the County or its officers and employees 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, the County of San Mateo 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 pursuant to this Agreement.

10. Compliance with laws; payment of Permits/Licenses

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, including, but not limited to, Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended, and 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 handicap 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. Further, Contractor certifies that the Contractor 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.

In the event of a conflict between the terms of this agreement and State, Federal, County, or municipal law or regulations, the requirements of the applicable law will take precedence over the requirements set forth in this Agreement.

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

11. Non-Discrimination and Other Requirements

- A. *Section 504 applies only to Contractors who are providing services to members of the public.* Contractor shall comply with § 504 of the Rehabilitation Act of 1973, which provides that no otherwise qualified handicapped individual 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 this Agreement.
- B. *General non-discrimination.* No person shall, on the grounds of race, color, religion, ancestry, gender, age (over 40), national origin, medical condition (cancer), physical or mental disability, sexual orientation, pregnancy, childbirth or related medical condition, marital status, or political affiliation be denied any benefits or subject to discrimination under this Agreement.

- C. *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 of San Mateo upon request.
- D. *Violation of Non-discrimination provisions.* 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:
 - i) termination of this Agreement;
 - ii) disqualification of the Contractor from bidding on or being awarded a County contract for a period of up to 3 years;
 - iii) liquidated damages of \$2,500 per violation;
 - 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 examine Contractor's employment records with respect to compliance with this paragraph and/or to set off all or any portion of the amount described in this paragraph against amounts due to Contractor under the Contract or any other Contract between Contractor and County.

Contractor shall report to the County Manager the filing by any person in any court of any complaint of discrimination or the filing by any person of any and all charges with the Equal Employment Opportunity Commission, the Fair Employment and Housing Commission or any other entity charged with the investigation of allegations 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 the name of the complainant, a copy of such complaint, and a description of the circumstance. Contractor shall provide County with a copy of their response to the Complaint when filed.

- E. *Compliance with Equal Benefits Ordinance.* With respect to the provision of employee benefits, Contractor shall comply with the County Ordinance, which prohibits contractors from discriminating in the provision of employee benefits between an employee with a domestic partner and an employee with a spouse.
- F. The Contractor shall comply fully with the non-discrimination requirements required by 41 CFR 60-741.5(a), which is incorporated herein as if fully set forth.

12. Compliance with Contractor Employee Jury Service Ordinance

Contractor shall comply with the County Ordinance with respect to provision of jury duty pay to employees and have and adhere to a written policy that provides that its employees shall receive from the Contractor, on an annual basis, no less than five days of regular pay for actual jury service in San Mateo County. The policy may provide that employees deposit any fees received for such jury service with the Contractor or that the Contractor deduct from the employees' regular pay the fees received for jury service.

13. Retention of Records, Right to Monitor and Audit

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

(b) Reporting and Record Keeping: Contractor shall comply with all program and fiscal reporting requirements set forth by appropriate Federal, State and local agencies, and as required by the County.

(c) Contractor agrees to provide to County, to any Federal or State department having monitoring or review authority, to County's authorized representatives, and/or their appropriate audit agencies upon reasonable notice, 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, and this Agreement, and to evaluate the quality, appropriateness and timeliness of services performed.

14. Merger Clause

This Agreement, including the Exhibits attached hereto and incorporated herein by reference, constitutes the sole Agreement of the parties hereto 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 this body of the 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 this 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 shall be in writing and signed by the parties.

15. Controlling Law and Venue

The validity of this Agreement and of its terms or provisions, as well as the rights and duties of the parties hereunder, the interpretation, and performance of this Agreement shall be governed by the laws of the State of California. Any dispute arising out of this Agreement shall be venued either in the San Mateo County Superior Court or the United States District Court for the Northern District of California.

16. Notices

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

In the case of County, to:

County of San Mateo
Department of Public Works
555 County Center, 5th Floor
Redwood City, CA 94063
Telephone: (650) 363-4100
Facsimile: (650) 361-8220

In the case of Contractor, to:

URS Corporation
100 W. San Fernando Street, Suite 200
San Jose, CA 95113-2254
Telephone: (408) 297-9585
Facsimile: (408) 297-6962

In the event that the facsimile transmission is not possible, notice shall be given both by United States mail and an overnight courier as outlined above.

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have affixed their hands.

COUNTY OF SAN MATEO


By: _____
President, Board of Supervisors, San Mateo County

Date: _____

ATTEST:

By: _____
Clerk of Said Board

URS Corporation



Contractor's Signature
MICHAEL K. COOPER, VICE PRESIDENT

Date: 10/4/2012

Long Form Agreement/Non Business Associate v 8/19/08

Exhibit "A" – Services

In consideration of the payments set forth in Exhibit "B", Contractor shall provide the following services at the request of the Director of Public Works or the Director's designee:

1. In consideration of the payments set forth in Exhibit "B", Contractor shall provide on-call engineering professional services that may include but not be limited to general surveying, topographic surveys, construction staking, hydraulic and hydrologic studies, geotechnical engineering and geotechnical studies, civil engineering design, structural engineering, project management, construction management, environmental study and document preparation, independent investigation of existing conditions, proposed solutions and schematic plans, cost analysis and preparation of independent cost estimates, feasibility studies, preparation of specifications and drawings, projected schedules, construction observation and administration, reports and coordination with applicable code enforcing and environmental agencies, site analysis, coordination with applicable local, state, and federal jurisdictions, and regulatory permit acquisition for a variety of public works type projects.
2. When County Public Works identifies a project that would benefit from Contractor's consulting services, the County will request the Contractor prepare and submit a proposal for such project. The Contractor will then propose a detailed scope of services, a not-to-exceed fee, and a timetable for completing the proposed project. If and when County Public Works approves the scope of services, not-to-exceed fee, and timetable (the "Approved Project"), the County Public Works may issue a task order authorizing the Contractor to begin work on the Approved Project. Contractor agrees to complete the Approved Project for an amount equal to or less than the Approved Project not-to-exceed fee and within the time limits set forth in the Approved Project timetable.

Exhibit "B" – Payments and Rates

In consideration of the services provided by Contractor in Exhibit "A", County shall pay Contractor based on the following fee schedule:

1. In consideration of the services provided by Contractor in Exhibit "A", County shall pay Contractor upon receipt in Accounting Section of the Department of Public Works and Parks of a written itemized invoice identifying the task order, County project number (if applicable), specific work completed, number of hours involved and breakdown of charges. The Approved Project total not-to-exceed amount will be stipulated in each task order. Costs for services deemed necessary by the County for completion of each task order shall be authorized in writing prior to proceeding with the work. Billing rates for services provided under this Agreement shall be based upon the Contractor's most recent fee schedule and by reference made a part of this Agreement. The County reserves the right to withhold payment if the County determines that the quantity or quality of the work performed is unacceptable.
2. The County shall pay Contractor reimbursable expenses. The Contractor shall be entitled to mileage, meals and lodging at the same rate granted to employees of the County whenever the Contractor is required to travel outside of San Mateo County in the performance of his duties under this Agreement. Such travel must first be approved in writing by the County. The Contractor shall also be reimbursed for expenses associated with reproduction (drawings, project manuals, reports, etc.); telephone or fax outside 650, 415, 408, 510, 707, and 925 area codes; fees paid for securing necessary permits and approvals of authorities having jurisdiction over the project; and special delivery service.
3. The County's total fiscal obligation under this Agreement shall not exceed \$500,000 unless said amount is authorized to be increased by the County Board of Supervisors by written amendment to this agreement. Specific projects that may be assigned to the Contractor shall have individual not-to-exceed amounts as stated in the specific task orders. The sum of individual task order not-to-exceed fees for multiple projects that may be assigned to the Contractor shall not exceed the total \$500,000 not-to-exceed amount for this Agreement without prior written approval by the County Board of Supervisors.

Exhibit "C" – General Obligation of Contractor

1. **Contractor Personnel**

The Contractor shall provide the County with resumes of the key staff members to be assigned to said project in advance of commencing any professional services. Once the County approves the key staff to be assigned to the project, any substitutions or additions shall be subject to written approval by the County. The County reserves the right to reject any personnel the Contractor proposes for use on the project.

Contractor represents that it is qualified to furnish the services described under this Agreement. Contractor further declares that one or more members or employees of its firm and that of its sub-contractors, if so required by the State, if any, are licensed by the State of California to perform their services and that these services will be performed by them or under their direct supervision. Contractor shall furnish to County for approval, upon execution of this Agreement, a list of all firms or corporations to be employed as sub-contractors.

Nothing in this Agreement abrogates the professional responsibilities of the Contractor and/or sub-contractors with respect to design defects, errors, omissions, or malpractice.

2. **Corrections and/or Revisions**

Contractor shall make and provide to the County all necessary corrections and/or revisions to the project design and document when it is determined by the Director of Public Works and Parks or his designated representative, that such changes are necessary for the project and are due to oversights, omissions or errors of Contractor.

3. **General Obligations of County**

County shall be responsible for providing any available data required by the Contractor as stipulated in any approved Task Order.

County shall examine documents submitted by Contractor and shall render comments and direction pertaining thereto promptly (up to two weeks or otherwise upon written agreement by County and Contractor), as stipulated in approved Task Orders.

4. **Payment Upon Suspension, Abandonment of Project, or Termination of Agreement**

If any Task Order is suspended for more than thirty (30) calendar days, or abandoned in all or part, Contractor shall be paid for services performed prior to receipt of thirty (30) days written notice from County of such suspension or abandonment, together with reimbursable expenses then due. In the event that the County abandons any Final Task Order the County may specifically authorize additional work necessary to properly close out the project.

If this Agreement or any Task Order is suspended or terminated due to fault of Contractor, County shall be obligated to compensate Contractor only for that portion of Contractor's services that were satisfactorily performed.

5. Performance of Services if Contractor is not Diligent in Performing Work

In the event Contractor is not diligent in pursuing the designated services as specified in each Task Order, the Director of Public Works and Parks or the respective designated representative may, at his option, seven (7) days after written notice to Contractor, perform any such required engineering services or retain a different Contractor to do the same, and the cost associated with having said work completed by means other than the Contractor will be retained from any sums not yet paid to the Contractor.

6. Authorization to Proceed

Contractor shall commence work upon receipt of the Task Order.

6.1 Time of Completion of Each Task

Contractor agrees to perform the professional services for the Task Order within the time limits set forth in the project schedule required by this Agreement. Any change in the scope of services as outlined in the Task Order will require a revised time table.

County agrees to exercise due diligence in performing its tasks to implement the Contractor's time schedule.

7. County's Review and Approval

Between each phase of work and at critical progress points there shall be a review and approval period by County and other agencies. County shall reject Contractor's submittal if changes and/or comments transmitted to Contractor by County during previous review were not addressed by Contractor in current submittal.

8. Changes in Work

The Director of Public Works or the respective designated representative may order changes in scope or character of work in writing which are mutually acceptable, either decreasing or increasing the amount 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. Increased compensation for changes shall be determined in accordance with Section 6 of the Agreement. Compensation shall first have been agreed to in writing by County.

In the event that changes are ordered pursuant to this Section, the schedule for progress and completion and compensation as provided with respective Task Order shall be adjusted by negotiation between Contractor and County.

9. Interest of Contractor/Contractor Independent of County

In accepting this Agreement, Contractor covenants that it presently has no interest, and shall not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of these services hereunder. Contractor further covenants that, in the performance of this Agreement, no subcontractor or person having such an interest shall be employed throughout the term of this Agreement. Contractor certifies that no one who has or will have any financial interest under this Agreement is an officer or employee of the County.

In the performance of the engineering services necessary for compliance with this Agreement, Contractor, and any of its sub-contractors or employees, shall be, and is at all times considered, an Independent Contractor, and is not an agent or employee of the County. Contractor has, and shall retain, the right to exercise full control and supervision of the services, and full control over the employment, direction, compensation and discharge of all persons assisting him in the performance of his engineering services hereunder to include any and all sub-contractors employed for the project described herein. Contractor shall be solely responsible for all matters relating to payment of his employees, including compliance with social security, withholding, and all other regulations governing such matters, and shall be solely responsible for his own acts and those of his subordinates and employees.

10. General Provisions

- (a) The Contractor acknowledges that time is of the essence for all projects defined in approved Task Order(s) and agrees to complete all work within the time frame as stipulated within said Task Order(s). Time extensions shall only be approved with prior written approval of the County and failure to complete services according to a mutually agreed upon schedule may be grounds for contract termination.
- (b) The Contractor upon becoming aware of factors which would result in delays shall be responsible for alerting County to potential delays well in advance in order that possible mitigation measures may be evaluated. Contractor shall detail the nature and reasons for potential delays and shall provide the County with possible mitigation measures for consideration.
- (c) On matters pertaining to Task Orders to be performed and the time taken by Contractor to perform such services, the decision of the Director of Public Works and Parks or the respective designated representative will be final after discussions between County and Contractor.
- (d) The Contractor warrants that he/she has not employed or retained any company or persons, other than a bona fide employee working for the Contractor, to solicit or secure this Agreement, and that he/she has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or formation of this

Agreement. For breach or violation of this warranty, the County shall have the right to annul this Agreement without liability or at its discretion to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

11. Ownership of Documents

Consistent with Attachment IP, all tracings, sketches, plans, specifications, estimates, maps, design calculations, quantity calculations, supporting documents, studies, survey notes, and other documents prepared by Contractor or sub-Contractors under the terms of this Agreement shall be delivered to and become the property of the County without restriction or limitation on their use. However, should County re-use or utilize data or drawings not for their intended use then County shall be solely liable and indemnify Contractor against such use. Computer files used by Contractor to produce the final set of plans and specifications shall also be delivered in AutoCAD, Access, Excel and Word electronic form on compact disks or other media acceptable to the County at no additional cost and become the property of the County.

12. Jobsite Safety and Environmental Protection

Neither the professional activities of the Contractor nor the presence of the Contractor or his or her employees and sub-contractors at a construction site, shall relieve the General Contractor and any other entity of their obligations, duties and responsibilities including, but not limited to, construction means, methods, sequence, techniques or procedures necessary for performing, superintending or coordinating all portions of the Work of construction in accordance with the contract documents and any health or safety or environmental protection precautions required by any regulatory agencies. The Contractor and his or her personnel have no authority to exercise any control over any construction contractor or other entity or their employees in connection with their work or any health or safety precautions. The Contractor agrees that the General Contractor is solely responsible for jobsite safety, and environmental protection, and warrants that this intent shall be made evident in the County's Agreement with the General Contractor. The Contractor also agrees that the County, the Contractor and any other County Contractors that may be providing services at the construction site shall be indemnified and shall be made additional insured's under the General Contractor's general liability insurance policy.

Attachment I

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

The undersigned (hereinafter called the "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.

MICHAEL K. COOPER

Name of 504 Person - Type or Print

URS CORPORATION

Name of Contractor(s) - Type or Print

100 W. SAN FERNANDO, SUITE 200

Street Address or P.O. Box

SAN JOSE, CA 95113

City, State, Zip Code

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

Michael K Cooper
Signature MICHAEL K. COOPER
VICE PRESIDENT

Title of Authorized Official

10/4/2012
Date

*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

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 Schedule I 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.

**County of San Mateo
Contractor's Declaration Form**

I. CONTRACTOR INFORMATION

Contractor Name:	URS CORPORATION	Phone:	(408) 297-9585
Contact Person:		Fax:	(408) 297-6962
Address:	100 W. SAN FERNANDO ST., SUITE 200 SAN JOSE, CA 95113-2254		

II. EQUAL BENEFITS (check one or more boxes)

Contractors with contracts in excess of \$5,000 must treat spouses and domestic partners equally as to employee benefits.

- ☒ Contractor complies with the County's Equal Benefits Ordinance by:
- ☒ offering equal benefits to employees with spouses and employees with domestic partners.
 - ☐ offering a cash equivalent payment to eligible employees in lieu of equal benefits.
- ☐ Contractor does not comply with the County's Equal Benefits Ordinance.
- ☐ Contractor is exempt from this requirement because:
- ☐ Contractor has no employees, does not provide benefits to employees' spouses, or the contract is for \$5,000 or less.
 - ☐ Contractor is a party to a collective bargaining agreement that began on _____ (date) and expires on _____ (date), and intends to offer equal benefits when said agreement expires.

III. NON-DISCRIMINATION (check appropriate box)

- ☐ Finding(s) of discrimination have been issued against Contractor within the past year by the Equal Employment Opportunity Commission, Fair Employment and Housing Commission, or other investigative entity. Please see attached sheet of paper explaining the outcome(s) or remedy for the discrimination.
- ☒ No finding of discrimination has been issued in the past year against the Contractor by the Equal Employment Opportunity Commission, Fair Employment and Housing Commission, or any other entity.

IV. EMPLOYEE JURY SERVICE (check one or more boxes)

Contractors with original or amended contracts in excess of \$100,000 must have and adhere to a written policy that provides its employees living in San Mateo County up to five days regular pay for actual jury service in the County.

- ☒ Contractor complies with the County's Employee Jury Service Ordinance.
- ☐ Contractor does not comply with the County's Employee Jury Service Ordinance.
- ☐ Contractor is exempt from this requirement because:
- ☐ the contract is for \$100,000 or less.
 - ☐ Contractor is a party to a collective bargaining agreement that began on _____ (date) and expires on _____ (date), and intends to comply when the collective bargaining agreement expires.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that I am authorized to bind this entity contractually.

Michael K Cooper
Signature
10/4/2012
Date

MICHAEL K. COOPER
Name
VICE PRESIDENT
Title

**AGREEMENT FOR ON-CALL ENGINEERING SERVICES
BETWEEN THE COUNTY OF SAN MATEO AND
WRECO**

THIS AGREEMENT, entered into this ____ day of _____, 2012, by
and between the COUNTY OF SAN MATEO, hereinafter called "County," and Wreco,
hereinafter called "Contractor";

W I T N E S S E T H:

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

WHEREAS, it is necessary and desirable that Contractor be retained for the purpose
of providing engineering and other related professional and technical services required for
the delivery of various types of capital improvement projects.

**NOW, THEREFORE, IT IS HEREBY AGREED BY THE PARTIES HERETO
AS FOLLOWS:**

1. Exhibits and Attachments

The following exhibits and attachments are included hereto and incorporated by reference
herein:

Exhibit A – Services
Exhibit B – Payments and Rates
Exhibit C – General Obligation of Contractor
Attachment I - § 504 Compliance
Attachment IP – Intellectual Property Rights

2. Services to be performed by Contractor

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

3. Payments

In consideration of the services provided by Contractor in accordance with all terms,
conditions and specifications set forth herein and in Exhibit "A" and Exhibit "C", County
shall make payment to Contractor based on the rates and in the manner specified in Exhibit
"B." The County reserves the right to withhold payment if the County determines that the

quantity or quality of the work performed is unacceptable. In no event shall the County's total fiscal obligation under this Agreement exceed Three Hundred Thousand Dollars and No/100s [\$300,000.00].

4. Term and Termination

Subject to compliance with all terms and conditions, the term of this Agreement shall be from October 23, 2012 to October 22, 2015.

This Agreement may be terminated by Contractor, the Director of Department of Public Works and Parks or his/her designee at any time without a requirement of good cause upon thirty (30) days' written notice to the other party.

In the event of termination, all finished or unfinished documents, data, studies, maps, photographs, reports, and materials (hereafter referred to as materials) prepared by Contractor under this Agreement shall become the property of the County and shall be promptly delivered to the County. Upon termination, the Contractor may make and retain a copy of such materials. 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 portion of the full payment, which is determined by comparing the work/services completed to the work/services required by the Agreement.

5. Availability of Funds

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

6. 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 the County and that Contractor acquires none of the rights, privileges, powers, or advantages of County employees.

7. Hold Harmless

Contractor shall indemnify and save harmless County, its officers, agents, employees, and servants from all claims, suits, or actions of every name, kind, and description, brought for, or on account of: (A) injuries to or death of any person, including Contractor, or (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 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, its officers, agents, employees, or servants, resulting from the performance of any work required of Contractor or payments made pursuant to this Agreement, provided that this 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 herein, shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

8. Assignability and Subcontracting

Contractor shall not assign this Agreement or any portion thereof 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 the County's prior written consent shall give County the right to automatically and immediately terminate this Agreement.

9. Insurance

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

- (1) **Worker's Compensation and Employer's Liability Insurance** The Contractor shall have in effect during the entire life of this Agreement Workers' Compensation and Employer's Liability Insurance providing full statutory coverage. In signing this Agreement, the Contractor certifies, as required by Section 1861 of the California Labor Code, that it is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of the Code, and will comply with such provisions before commencing the performance of

the work of this Agreement.

- (2) **Liability Insurance.** The Contractor shall take out and maintain during the life of this Agreement such Bodily Injury Liability and Property Damage Liability Insurance as shall protect him/her 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 contractors operations under this Agreement, whether such operations be by himself/herself or by any sub-contractor or by anyone directly or indirectly employed by either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall be not less than the amount specified below.

Such insurance shall include:

- (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 the insurance afforded thereby to the County, its officers, agents, employees and servants shall be primary insurance to the full limits of liability of the policy, and that if the County or its officers and employees 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, the County of San Mateo 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 pursuant to this Agreement.

10. Compliance with laws; payment of Permits/Licenses

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, including, but not limited to, Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended, and 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 handicap 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. Further, Contractor certifies that the Contractor 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.

In the event of a conflict between the terms of this agreement and State, Federal, County, or municipal law or regulations, the requirements of the applicable law will take precedence over the requirements set forth in this Agreement.

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

11. Non-Discrimination and Other Requirements

- A. *Section 504 applies only to Contractors who are providing services to members of the public.* Contractor shall comply with § 504 of the Rehabilitation Act of 1973, which provides that no otherwise qualified handicapped individual 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 this Agreement.
- B. *General non-discrimination.* No person shall, on the grounds of race, color, religion, ancestry, gender, age (over 40), national origin, medical condition (cancer), physical or mental disability, sexual orientation, pregnancy, childbirth or related medical condition, marital status, or political affiliation be denied any benefits or subject to discrimination under this Agreement.
- C. *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 of San Mateo upon request.
- D. *Violation of Non-discrimination provisions.* 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:
 - i) termination of this Agreement;
 - ii) disqualification of the Contractor from bidding on or being awarded a County contract for a period of up to 3 years;
 - iii) liquidated damages of \$2,500 per violation;
 - 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 examine Contractor's employment records with respect to compliance with this paragraph and/or to set off all or any portion of the amount described in this paragraph against amounts due to Contractor under the Contract or any other Contract between Contractor and County.

Contractor shall report to the County Manager the filing by any person in any court of any complaint of discrimination or the filing by any person of any and all charges with the Equal Employment Opportunity Commission, the Fair Employment and Housing Commission or any other entity charged with the investigation of allegations 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 the name of the complainant, a copy of such complaint, and a description of the circumstance. Contractor shall provide County with a copy of their response to the Complaint when filed.

- E. *Compliance with Equal Benefits Ordinance.* With respect to the provision of employee benefits, Contractor shall comply with the County Ordinance, which prohibits contractors from discriminating in the provision of employee benefits between an employee with a domestic partner and an employee with a spouse.
- F. The Contractor shall comply fully with the non-discrimination requirements required by 41 CFR 60-741.5(a), which is incorporated herein as if fully set forth.

12. Compliance with Contractor Employee Jury Service Ordinance

Contractor shall comply with the County Ordinance with respect to provision of jury duty pay to employees and have and adhere to a written policy that provides that its employees shall receive from the Contractor, on an annual basis, no less than five days of regular pay for actual jury service in San Mateo County. The policy may provide that employees deposit any fees received for such jury service with the Contractor or that the Contractor deduct from the employees' regular pay the fees received for jury service.

13. Retention of Records, Right to Monitor and Audit

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

(b) Reporting and Record Keeping: Contractor shall comply with all program and fiscal reporting requirements set forth by appropriate Federal, State and local agencies, and as required by the County.

(c) Contractor agrees to provide to County, to any Federal or State department having monitoring or review authority, to County's authorized representatives, and/or their appropriate audit agencies upon reasonable notice, 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, and this Agreement, and to evaluate the quality, appropriateness and timeliness of services performed.

14. Merger Clause

This Agreement, including the Exhibits attached hereto and incorporated herein by reference, constitutes the sole Agreement of the parties hereto 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 this body of the 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 this 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 shall be in writing and signed by the parties.

15. Controlling Law and Venue

The validity of this Agreement and of its terms or provisions, as well as the rights and duties of the parties hereunder, the interpretation, and performance of this Agreement shall be governed by the laws of the State of California. Any dispute arising out of this Agreement shall be venued either in the San Mateo County Superior Court or the United States District Court for the Northern District of California.

16. Notices

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

In the case of County, to:

County of San Mateo
Department of Public Works
555 County Center, 5th Floor
Redwood City, CA 94063
Telephone: (650) 363-4100
Facsimile: (650) 361-8220

In the case of Contractor, to:

Wreco
1243 Alpine Road, Suite 108
Walnut Creek, CA 94596
Telephone: (925) 941-0017
Facsimile: (925) 941-0018

In the event that the facsimile transmission is not possible, notice shall be given both by United States mail and an overnight courier as outlined above.

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have affixed their hands.

COUNTY OF SAN MATEO

By: _____
President, Board of Supervisors, San Mateo County

Date: _____

ATTEST:

By: _____
Clerk of Said Board

Wreco



Contractor's Signature

Date: 9/27/2012

Long Form Agreement/Non Business Associate v 8/19/08

Exhibit "A" – Services

In consideration of the payments set forth in Exhibit "B", Contractor shall provide the following services at the request of the Director of Public Works or the Director's designee:

1. In consideration of the payments set forth in Exhibit "B", Contractor shall provide on-call engineering professional services that may include but not be limited to general surveying, topographic surveys, construction staking, hydraulic and hydrologic studies, geotechnical engineering and geotechnical studies, civil engineering design, structural engineering, project management, construction management, environmental study and document preparation, independent investigation of existing conditions, proposed solutions and schematic plans, cost analysis and preparation of independent cost estimates, feasibility studies, preparation of specifications and drawings, projected schedules, construction observation and administration, reports and coordination with applicable code enforcing and environmental agencies, site analysis, coordination with applicable local, state, and federal jurisdictions, and regulatory permit acquisition for a variety of public works type projects.
2. When County Public Works identifies a project that would benefit from Contractor's consulting services, the County will request the Contractor prepare and submit a proposal for such project. The Contractor will then propose a detailed scope of services, a not-to-exceed fee, and a timetable for completing the proposed project. If and when County Public Works approves the scope of services, not-to-exceed fee, and timetable (the "Approved Project"), the County Public Works may issue a task order authorizing the Contractor to begin work on the Approved Project. Contractor agrees to complete the Approved Project for an amount equal to or less than the Approved Project not-to-exceed fee and within the time limits set forth in the Approved Project timetable.

Exhibit “B” – Payments and Rates

In consideration of the services provided by Contractor in Exhibit “A”, County shall pay Contractor based on the following fee schedule:

1. In consideration of the services provided by Contractor in Exhibit "A", County shall pay Contractor upon receipt in Accounting Section of the Department of Public Works and Parks of a written itemized invoice identifying the task order, County project number (if applicable), specific work completed, number of hours involved and breakdown of charges. The Approved Project total not-to-exceed amount will be stipulated in each task order. Costs for services deemed necessary by the County for completion of each task order shall be authorized in writing prior to proceeding with the work. Billing rates for services provided under this Agreement shall be based upon the Contractor's most recent fee schedule and by reference made a part of this Agreement. The County reserves the right to withhold payment if the County determines that the quantity or quality of the work performed is unacceptable.
2. The County shall pay Contractor reimbursable expenses. The Contractor shall be entitled to mileage, meals and lodging at the same rate granted to employees of the County whenever the Contractor is required to travel outside of San Mateo County in the performance of his duties under this Agreement. Such travel must first be approved in writing by the County. The Contractor shall also be reimbursed for expenses associated with reproduction (drawings, project manuals, reports, etc.); telephone or fax outside 650, 415, 408, 510, 707, and 925 area codes; fees paid for securing necessary permits and approvals of authorities having jurisdiction over the project; and special delivery service.
3. The County's total fiscal obligation under this Agreement shall not exceed \$300,000 unless said amount is authorized to be increased by the County Board of Supervisors by written amendment to this agreement. Specific projects that may be assigned to the Contractor shall have individual not-to-exceed amounts as stated in the specific task orders. The sum of individual task order not-to-exceed fees for multiple projects that may be assigned to the Contractor shall not exceed the total \$300,000 not-to-exceed amount for this Agreement without prior written approval by the County Board of Supervisors.

Exhibit “C” – General Obligation of Contractor

1. Contractor Personnel

The Contractor shall provide the County with resumes of the key staff members to be assigned to said project in advance of commencing any professional services. Once the County approves the key staff to be assigned to the project, any substitutions or additions shall be subject to written approval by the County. The County reserves the right to reject any personnel the Contractor proposes for use on the project.

Contractor represents that it is qualified to furnish the services described under this Agreement. Contractor further declares that one or more members or employees of its firm and that of its sub-contractors, if so required by the State, if any, are licensed by the State of California to perform their services and that these services will be performed by them or under their direct supervision. Contractor shall furnish to County for approval, upon execution of this Agreement, a list of all firms or corporations to be employed as sub-contractors.

Nothing in this Agreement abrogates the professional responsibilities of the Contractor and/or sub-contractors with respect to design defects, errors, omissions, or malpractice.

2. Corrections and/or Revisions

Contractor shall make and provide to the County all necessary corrections and/or revisions to the project design and document when it is determined by the Director of Public Works and Parks or his designated representative, that such changes are necessary for the project and are due to oversights, omissions or errors of Contractor.

3. General Obligations of County

County shall be responsible for providing any available data required by the Contractor as stipulated in any approved Task Order.

County shall examine documents submitted by Contractor and shall render comments and direction pertaining thereto promptly (up to two weeks or otherwise upon written agreement by County and Contractor), as stipulated in approved Task Orders.

4. Payment Upon Suspension, Abandonment of Project, or Termination of Agreement

If any Task Order is suspended for more than thirty (30) calendar days, or abandoned in all or part, Contractor shall be paid for services performed prior to receipt of thirty (30) days written notice from County of such suspension or abandonment, together with reimbursable expenses then due. In the event that the County abandons any Final Task Order the County may specifically authorize additional work necessary to properly close out the project.

If this Agreement or any Task Order is suspended or terminated due to fault of Contractor, County shall be obligated to compensate Contractor only for that portion of Contractor's services that were satisfactorily performed.

5. Performance of Services if Contractor is not Diligent in Performing Work

In the event Contractor is not diligent in pursuing the designated services as specified in each Task Order, the Director of Public Works and Parks or the respective designated representative may, at his option, seven (7) days after written notice to Contractor, perform any such required engineering services or retain a different Contractor to do the same, and the cost associated with having said work completed by means other than the Contractor will be retained from any sums not yet paid to the Contractor.

6. Authorization to Proceed

Contractor shall commence work upon receipt of the Task Order.

6.1 Time of Completion of Each Task

Contractor agrees to perform the professional services for the Task Order within the time limits set forth in the project schedule required by this Agreement. Any change in the scope of services as outlined in the Task Order will require a revised time table.

County agrees to exercise due diligence in performing its tasks to implement the Contractor's time schedule.

7. County's Review and Approval

Between each phase of work and at critical progress points there shall be a review and approval period by County and other agencies. County shall reject Contractor's submittal if changes and/or comments transmitted to Contractor by County during previous review were not addressed by Contractor in current submittal.

8. Changes in Work

The Director of Public Works or the respective designated representative may order changes in scope or character of work in writing which are mutually acceptable, either decreasing or increasing the amount 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. Increased compensation for changes shall be determined in accordance with Section 6 of the Agreement. Compensation shall first have been agreed to in writing by County.

In the event that changes are ordered pursuant to this Section, the schedule for progress and completion and compensation as provided with respective Task Order shall be adjusted by negotiation between Contractor and County.

9. Interest of Contractor/Contractor Independent of County

In accepting this Agreement, Contractor covenants that it presently has no interest, and shall not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of these services hereunder. Contractor further covenants that, in the performance of this Agreement, no subcontractor or person having such an interest shall be employed throughout the term of this Agreement. Contractor certifies that no one who has or will have any financial interest under this Agreement is an officer or employee of the County.

In the performance of the engineering services necessary for compliance with this Agreement, Contractor, and any of its sub-contractors or employees, shall be, and is at all times considered, an Independent Contractor, and is not an agent or employee of the County. Contractor has, and shall retain, the right to exercise full control and supervision of the services, and full control over the employment, direction, compensation and discharge of all persons assisting him in the performance of his engineering services hereunder to include any and all sub-contractors employed for the project described herein. Contractor shall be solely responsible for all matters relating to payment of his employees, including compliance with social security, withholding, and all other regulations governing such matters, and shall be solely responsible for his own acts and those of his subordinates and employees.

10. General Provisions

- (a) The Contractor acknowledges that time is of the essence for all projects defined in approved Task Order(s) and agrees to complete all work within the time frame as stipulated within said Task Order(s). Time extensions shall only be approved with prior written approval of the County and failure to complete services according to a mutually agreed upon schedule may be grounds for contract termination.
- (b) The Contractor upon becoming aware of factors which would result in delays shall be responsible for alerting County to potential delays well in advance in order that possible mitigation measures may be evaluated. Contractor shall detail the nature and reasons for potential delays and shall provide the County with possible mitigation measures for consideration.
- (c) On matters pertaining to Task Orders to be performed and the time taken by Contractor to perform such services, the decision of the Director of Public Works and Parks or the respective designated representative will be final after discussions between County and Contractor.
- (d) The Contractor warrants that he/she has not employed or retained any company or persons, other than a bona fide employee working for the Contractor, to solicit or secure this Agreement, and that he/she has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or formation of this

Agreement. For breach or violation of this warranty, the County shall have the right to annul this Agreement without liability or at its discretion to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

11. Ownership of Documents

Consistent with Attachment IP, all tracings, sketches, plans, specifications, estimates, maps, design calculations, quantity calculations, supporting documents, studies, survey notes, and other documents prepared by Contractor or sub-Contractors under the terms of this Agreement shall be delivered to and become the property of the County without restriction or limitation on their use. However, should County re-use or utilize data or drawings not for their intended use then County shall be solely liable and indemnify Contractor against such use. Computer files used by Contractor to produce the final set of plans and specifications shall also be delivered in AutoCAD, Access, Excel and Word electronic form on compact disks or other media acceptable to the County at no additional cost and become the property of the County.

12. Jobsite Safety and Environmental Protection

Neither the professional activities of the Contractor nor the presence of the Contractor or his or her employees and sub-contractors at a construction site, shall relieve the General Contractor and any other entity of their obligations, duties and responsibilities including, but not limited to, construction means, methods, sequence, techniques or procedures necessary for performing, superintending or coordinating all portions of the Work of construction in accordance with the contract documents and any health or safety or environmental protection precautions required by any regulatory agencies. The Contractor and his or her personnel have no authority to exercise any control over any construction contractor or other entity or their employees in connection with their work or any health or safety precautions. The Contractor agrees that the General Contractor is solely responsible for jobsite safety, and environmental protection, and warrants that this intent shall be made evident in the County's Agreement with the General Contractor. The Contractor also agrees that the County, the Contractor and any other County Contractors that may be providing services at the construction site shall be indemnified and shall be made additional insured's under the General Contractor's general liability insurance policy.

Attachment I

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

The undersigned (hereinafter called the "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.

Han-Bin Liang
Name of 504 Person - Type or Print

WRECO
Name of Contractor(s) - Type or Print

1243 Alpine Road, suite 108
Street Address or P.O. Box

Walnut Creek, CA 94596
City, State, Zip Code

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


Signature

President
Title of Authorized Official

9/27/2012
Date

*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

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 Schedule I 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.

**County of San Mateo
Contractor's Declaration Form**

I. CONTRACTOR INFORMATION

Contractor Name:	WRECO	Phone:	925-941-0017
Contact Person:	Han-Bin Liang	Fax:	925-941-0018
Address:	1243 Alpine Road, Suite 108 Walnut Creek, CA 94596		

II. EQUAL BENEFITS (check one or more boxes)

Contractors with contracts in excess of \$5,000 must treat spouses and domestic partners equally as to employee benefits.

- ☒ Contractor complies with the County's Equal Benefits Ordinance by:
- ☒ offering equal benefits to employees with spouses and employees with domestic partners.
 - ☐ offering a cash equivalent payment to eligible employees in lieu of equal benefits.
- ☐ Contractor does not comply with the County's Equal Benefits Ordinance.
- ☐ Contractor is exempt from this requirement because:
- ☐ Contractor has no employees, does not provide benefits to employees' spouses, or the contract is for \$5,000 or less.
 - ☐ Contractor is a party to a collective bargaining agreement that began on _____ (date) and expires on _____ (date), and intends to offer equal benefits when said agreement expires.

III. NON-DISCRIMINATION (check appropriate box)


- ☐ Finding(s) of discrimination have been issued against Contractor within the past year by the Equal Employment Opportunity Commission, Fair Employment and Housing Commission, or other investigative entity. Please see attached sheet of paper explaining the outcome(s) or remedy for the discrimination.
- ☒ No finding of discrimination has been issued in the past year against the Contractor by the Equal Employment Opportunity Commission, Fair Employment and Housing Commission, or any other entity.

IV. EMPLOYEE JURY SERVICE (check one or more boxes)

Contractors with original or amended contracts in excess of \$100,000 must have and adhere to a written policy that provides its employees living in San Mateo County up to five days regular pay for actual jury service in the County.

- ☒ Contractor complies with the County's Employee Jury Service Ordinance.
- ☐ Contractor does not comply with the County's Employee Jury Service Ordinance.
- ☐ Contractor is exempt from this requirement because:
- ☐ the contract is for \$100,000 or less.
 - ☐ Contractor is a party to a collective bargaining agreement that began on _____ (date) and expires on _____ (date), and intends to comply when the collective bargaining agreement expires.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that I am authorized to bind this entity contractually.



Signature

9/27/2012

Date

Han-Bin Liang

Name

President

Title