

**AGREEMENT BETWEEN THE COUNTY OF SAN MATEO AND MACKS CRAIC, INC.  
dba MACK5**

This Agreement is entered into this 17<sup>th</sup> day of October, 2017, by and between the County of San Mateo, a political subdivision of the state of California, hereinafter called "County," and Macks Craic, Inc. dba mack5, hereinafter called "Contractor."

\* \* \*

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

Whereas, it is necessary and desirable that Contractor be retained for the purpose of Cost Management and Construction Estimation services.

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

**1. Exhibits and Attachments**

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

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

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

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

**3. Payments**

In consideration of the services provided by Contractor in accordance with all terms, conditions, and specifications set forth in this Agreement and in Exhibit A, County shall make payment to Contractor based on the rates and in the manner specified in Exhibit B. County reserves the right to withhold payment if County determines that the quantity or quality of the work performed is unacceptable. In no event shall County's total fiscal obligation under this Agreement exceed SIX HUNDRED THOUSAND DOLLARS (\$600,000). In the event that the County makes any advance payments, Contractor agrees to refund any amounts in excess of the amount owed by the County at the time of contract termination or expiration. Contractor is not entitled to payment for work not performed as required by this agreement.

**4. Term**

Subject to compliance with all terms and conditions, the term of this Agreement shall be from October 17, 2017, through October 16, 2020.

**5. Termination**

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

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

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

**6. Contract Materials**

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

**7. Relationship of Parties**

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

**8. Hold Harmless**

**a. General Hold Harmless**

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

- (A) injuries to or death of any person, including Contractor or its employees/officers/agents;
- (B) damage to any property of any kind whatsoever and to whomsoever belonging;

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

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

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

**b. Intellectual Property Indemnification**

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

Contractor warrants that the services it provides under this Agreement do not infringe, violate, trespass, or constitute the unauthorized use or misappropriation of any IP Rights of any third party. Contractor shall defend, indemnify, and hold harmless County from and against all liabilities, costs, damages, losses, and expenses (including reasonable attorney fees) arising out of or related to any claim by a third party that the services provided under this Agreement infringe or violate any third-party's IP Rights provided any such right is enforceable in the United States. Contractor's duty to defend, indemnify, and hold harmless under this Section applies only provided that: (a) County notifies Contractor promptly in writing of any notice of any such third-party claim; (b) County cooperates with Contractor, at Contractor's expense, in all reasonable respects in connection with the investigation and defense of any such third-party claim; (c) Contractor retains sole control of the defense of any action on any such claim and all negotiations for its settlement or compromise (provided Contractor shall not have the right to settle any criminal action, suit, or proceeding without County's prior written consent, not to be unreasonably withheld, and provided further that any settlement permitted under this Section shall not impose any financial or other obligation on County, impair any right of County, or contain any stipulation, admission, or acknowledgement of wrongdoing on the part of County without County's prior written consent, not to be unreasonably withheld); and (d) should services under this Agreement become, or in Contractor's opinion be likely to become, the subject of such a claim, or in the event such a third party claim or threatened claim causes County's reasonable use of the services under this Agreement to be seriously endangered or disrupted, Contractor shall, at Contractor's option and expense, either: (i) procure for County the right to continue using the services without infringement or (ii) replace or modify the services so that they become non-infringing but remain functionally equivalent.

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

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

**9. Assignability and Subcontracting**

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

**10. Insurance**

**a. General Requirements**

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

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

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

**c. Liability Insurance**

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

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

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

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

#### **11. Compliance With Laws**

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

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

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

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

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

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

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

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

Contractor shall comply with Section 504 of the Rehabilitation Act of 1973, as amended, which provides that no otherwise qualified individual with a disability shall, solely by reason of a disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination in the performance of

any services this Agreement. This Section applies only to contractors who are providing services to members of the public under this Agreement.

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

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

**e. Discrimination Against Individuals with Disabilities**

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

**f. History of Discrimination**

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

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

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

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

- i. termination of this Agreement;
- ii. disqualification of the Contractor from being considered for or being awarded a County contract for a period of up to 3 years;
- iii. liquidated damages of \$2,500 per violation; and/or

- iv. imposition of other appropriate contractual and civil remedies and sanctions, as determined by the County Manager.

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

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

Contractor shall comply with Chapter 2.85 of the County's Ordinance Code, which states that Contractor shall have and adhere to a written policy providing that its employees, to the extent they are full-time employees and live in San Mateo County, shall receive from the Contractor, on an annual basis, no fewer than five days of regular pay for jury service in San Mateo County, with jury pay being provided only for each day of actual jury service. The policy may provide that such employees deposit any fees received for such jury service with Contractor or that the Contractor may deduct from an employee's regular pay the fees received for jury service in San Mateo County. By signing this Agreement, Contractor certifies that it has and adheres to a policy consistent with Chapter 2.85. For purposes of this Section, if Contractor has no employees in San Mateo County, it is sufficient for Contractor to provide the following written statement to County: "For purposes of San Mateo County's jury service ordinance, Contractor certifies that it has no full-time employees who live in San Mateo County. To the extent that it hires any such employees during the term of its Agreement with San Mateo County, Contractor shall adopt a policy that complies with Chapter 2.85 of the County's Ordinance Code." The requirements of Chapter 2.85 do not apply if this Agreement's total value listed in the Section titled "Payments", is less than one-hundred thousand dollars (\$100,000), but Contractor acknowledges that Chapter 2.85's requirements will apply if this Agreement is amended such that its total value meets or exceeds that threshold amount.

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

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

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

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

**15. Merger Clause; Amendments**

This Agreement, including the Exhibits and Attachments attached to this Agreement and incorporated by reference, constitutes the sole Agreement of the parties to this Agreement and correctly states the rights, duties, and obligations of each party as of this document's date. In the event that any term, condition, provision, requirement, or specification set forth in the body of this Agreement conflicts with or is

inconsistent with any term, condition, provision, requirement, or specification in any Exhibit and/or Attachment to this Agreement, the provisions of the body of the Agreement shall prevail. Any prior agreement, promises, negotiations, or representations between the parties not expressly stated in this document are not binding. All subsequent modifications or amendments shall be in writing and signed by the parties.

**16. Controlling Law; Venue**

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

**17. Notices**

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

In the case of County, to:

Name/Title: Sam Lin, Senior Capital Project Manager  
Address: 1402 Maple Street Redwood City, CA 94063  
Telephone: (650) 369-4715  
Email: slin@smcgov.org

In the case of Contractor, to:

Name/Title: Manil Bajracharya  
Address: 1900 Powell Street Ste. 470, Emeryville, CA 94608  
Telephone: (510) 595-3020  
Facsimile: (510) 595-1755  
Email: manilb@mack5.com

**18. Electronic Signature**

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

\* \* \*

THIS CONTRACT IS NOT VALID UNTIL SIGNED BY ALL PARTIES. NO WORK WILL COMMENCE UNTIL THIS DOCUMENT HAS BEEN SIGNED BY THE COUNTY PURCHASING AGENT OR AUTHORIZED DESIGNEE.

**For Contractor:**



\_\_\_\_\_  
Contractor Signature

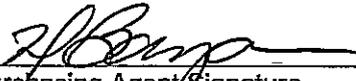
10/17/2017  
\_\_\_\_\_  
Date

*Eve Nelson*

\_\_\_\_\_  
Contractor Name (please print)

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**For County:**



\_\_\_\_\_  
Purchasing Agent Signature  
(Department Head or  
**Authorized** Designee)  
County of San Mateo

10/17/2017  
\_\_\_\_\_  
Date

Debbie Bazan

\_\_\_\_\_  
Purchasing Agent Name (please print)  
(Department Head or **Authorized** Designee)  
County of San Mateo

Director of the Project Development Unit

\_\_\_\_\_  
Purchasing Agent or **Authorized** Designee  
Job Title (please print)  
County of San Mateo

## Exhibit A

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

Firms(s) shall provide professional cost management and cost estimating services that reflect current market conditions and that are applicable with code enforcement and environmental agencies, site analysis, coordination with applicable local, state, and federal jurisdictions, and regulatory permit acquisition.

The initial scope of work for each project will be established prior to the issuing of a task order; dependent upon the Project's needs, firms may be requested to perform various estimation tasks at different phases of design and construction. Qualifications and Proposals (RFP) are for Cost Management and Construction Estimating Services. These services include but are not limited to;

1. Providing a wide range of cost estimates and reconciliation exercises, including pre-construction, concept, budgetary, design, construction, and engineer's estimates.
2. Construction cost analysis.
3. Value Engineering estimating and analyzing financial consequences of design alternatives, alternatives resulting from value engineering reviews of design and construction techniques, and costs due to site and schedule constraints.
4. Providing project level cost and trend management services.
5. Establishing, review, and support management in making appropriate budgetary contingencies and reviewing project risks.
6. Developing and maintaining procedures to forecast project costs and advise the County on corrective actions if forecasted budgets are to be exceeded.
7. Preparing and reviewing cost benefit analysis.
8. Change order analysis and claim assistance.
9. Preparing and reviewing project hard and soft cost budget estimates, resulting in the establishment of a project baseline budget.
10. Provide financial reports and at the end of each project defining any differences from the project's original budget cost versus all final projects costs that support the success or failure on meeting the project budget.

Task Orders will be modified as scope needs increase or decrease.

**Exhibit B**

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

The total contract amount shall not exceed SIX HUNDRED THOUSAND DOLLARS (\$600,000).

The Professional Schedule of Fees is attached on the following page:

## 2017 schedule of fees

### Hourly Rates

Project Executive	\$195.00
Senior Project Manager	\$175.00
Senior Cost Planner/Estimator	\$175.00
MEP Cost Estimator	\$170.00
Cost Estimator	\$145.00
Cost Engineer	\$ 90.00
Financial Procedures Advisor	\$165.00

Billing rate increases are approximately 3% annually on January 1.

# ATTACHMENT I

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

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

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

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

a. Employs fewer than 15 persons.

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

Name of 504 Person:

Name of Contractor(s):

Street Address or P.O. Box:

City, State, Zip Code:

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

Signature:

Title of Authorized Official:

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**

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



**COUNTY OF SAN MATEO**  
Inter-Departmental Correspondence  
County Manager



**Date:** September 7, 2017  
**Board Meeting Date:** October 17, 2017  
**Special Notice / Hearing:** None  
**Vote Required:** Majority

**To:** Honorary Board of Supervisors  
**From:** Debbie Bazan, Director of Project Development Unit  
**Subject:** On-Call Cost Management and Construction Estimating Services

**RECOMMENDATION:**

Adopt a resolution authorizing the County Manager or Manager's designee to execute on-call agreements with the following 4 firms: Faithful & Gould, Mack 5, O'Connor Construction Management Inc., and TBD Consultants to provide on-call Cost Management and Construction Estimating services for the Project Development Unit for the term October 17, 2017 through October 16, 2020 in an amount not to exceed \$600,000 per agreement for an aggregate not to exceed amount of \$2,400,000.

**BACKGROUND:**

In January 2017, the County Manager's Project Development Unit (PDU) was formed to oversee and manage all ground up construction performed by the County of San Mateo. The PDU's core group includes a Director, a Manager, two Management Analysts, a Senior Accountant, and two Project Managers. It was determined that the best method to supplement this core group is to add experienced cost management and construction estimating services. It is anticipated that the Project Development Unit will be ramping up for a period of four to five years managing these projects, however it must remain scalable while additional studies and plans are made to determine the next phase of projects to be managed by this unit.

In March of 2017, your Board held a Study Session to consider the recommendations made in the Feasibility Studies and Master Plans that reviewed the County's use of lease space, aging facilities, OSHPD compliance work, public accessibility and navigation, parking, environmental standards, and efficiency of employee work spaces. Direction was given to the County Manager and the PDU to move forward with these recommendations. These new, approved, and on-going Capital Projects total approximately \$500 million and are being managed by the PDU.

**DISCUSSION:**

Multiple large County capital projects are underway which will require intensified PDU operations for approximately five years. The PDU does not have sufficient in-house personnel to appropriately manage this size and number of projects without additional support from specialized construction consultants.

To secure these consultants, the PDU conducted a Request for Proposals. A selection committee comprised primarily of departmental staff reviewed and ranked the submissions received from qualified firms, conducted background and reference checks, and made recommendations.

By executing the on-call agreements with these recommended firms, PDU will receive all manner of cost management and construction estimating services for various capital projects. These services include but are not limited to; project budget verification, design phases estimates, construction cost analysis, change order analysis and claim assistance.

The Department will issue individual Work Orders of a project scope of work and a not-to-exceed amount for the individual Work Order, the cumulative sum of Work Orders will not exceed the maximum amount of the agreement.

The consultants have agreed to comply with the County's Contractor Employee Jury Service Ordinance, as well as all other contract provisions that are required by County ordinance and administrative memorandum, including but not limited to, minimum insurance requirements, hold harmless clauses, and non-discrimination and equal benefits policies. County Counsel has reviewed and approved the accompanying Resolution as to form.

Executing the "on-call" cost management and construction estimating agreements contributes to the Shared Vision 2025 outcome of Collaborative Community by reducing the cost and time required to complete major County construction projects.

**FISCAL IMPACT:**

The not-to-exceed amount for these agreements is \$600,000 per agreement or \$2,400,000 in aggregate. The cost of these contracts will be funded by the budgets for the individual projects to which the consultant is assigned.

**RESOLUTION NO. 075495**

**BOARD OF SUPERVISORS, COUNTY OF SAN MATEO, STATE OF CALIFORNIA**

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**RESOLUTION AUTHORIZING THE COUNTY MANAGER OR HIS/HER DESIGNEE TO EXECUTE ON-CALL AGREEMENTS WITH FAITHFUL & GOULD, MACK 5, O'CONNOR CONSTRUCTION MANAGEMENT INC., AND TBD CONSULTANTS TO PROVIDE ON-CALL COST MANAGEMENT AND CONSTRUCTION ESTIMATING SERVICES FOR THE PROJECT DEVELOPMENT UNIT FOR THE TERM OF OCTOBER 17, 2017 THROUGH OCTOBER 16, 2020 IN THE AMOUNT NOT TO EXCEED \$600,000 PER AGREEMENT FOR AN AGGREGATE NOT TO EXCEED AMOUNT OF \$2,400,000**

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**RESOLVED**, by the Board of Supervisors of the County of San Mateo, State of California, that

**WHEREAS**, multiple large County capital projects are underway which will require intensified Project Development Unit (PDU) operations for approximately five years; and

**WHEREAS**, the PDU requires substantial support from specialized consultants to appropriately manage these critical capital projects; and

**WHEREAS**, the PDU conducted a Request for Proposals to select specialized consultants and a selection committee reviewed submissions received, conducted background and reference checks, and made retention recommendations; and

**WHEREAS**, by executing the consultant agreements, the PDU will receive all manner of cost management and construction estimating services for various capital projects including but not limited to the following; project budget verification, design phases estimates, construction cost analysis, change order analysis and claim assistance; and

**WHEREAS**, the consultants have agreed to comply with standard and required County contract provisions;

**WHEREAS**, executing these “on-call” cost management and construction estimating agreements contributes to the Shared Vision 2025 outcome of Collaborative Community by reducing the cost and time to complete critical County capital projects.

**NOW, THEREFORE, IT IS HEREBY DETERMINED AND ORDERED** that the Board of Supervisors authorizes the County Manager or his/her designee to execute separate on-call agreements for on-call project inspection services with Faithful & Gould, Mack 5, O’Connor Construction Management Inc., and TBD Consultants in an amount not to exceed \$600,000 per agreement for an aggregate not to exceed amount of \$2,400,000.

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RESOLUTION NUMBER: 075495

*Regularly passed and adopted this 17<sup>th</sup> day of October, 2017*

*AYES and in favor of said resolution:*

*Supervisors:*

DAVE PINE

CAROLE GROOM

DON HORSLEY

WARREN SLOCUM

DAVID J. CANEPA

*NOES and against said resolution:*

*Supervisors:*

NONE



President, Board of Supervisors  
County of San Mateo  
State of California

***Certificate of Delivery***

*I certify that a copy of the original resolution filed in the Office of the Clerk of the Board of Supervisors of San Mateo County has been delivered to the President of the Board of Supervisors.*



Deputy Clerk of the Board of Supervisors