

COUNT OF SANTA CLARA



PROFESSIONAL SERVICES AGREEMENT

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BETWEEN

THE COUNTY OF SANTA CLARA AND 4LEAF, INC.

FOR

**CODE COMPLIANCE PLAN CHECKING, SPECIAL INSPECTIONS,
GENERAL INSPECTIONS AND MATERIALS TESTING FOR
VARIOUS COUNTY PROJECTS**

Approved: 09/22/2020

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GENERAL INSPECTIONS AND MATERIALS TESTING FOR VARIOUS COUNTY PROJECTS**

PART 1 - RECITAL

This is an agreement between **THE COUNTY OF SANTA CLARA**, a political subdivision of the State of California (hereinafter "Owner" or "County"), and **4LEAF, INC.**, a California corporation, with its principal place of business located at **2126 Rheem Drive, Pleasanton, CA 94588** (hereinafter "Consultant"). Consultant and County are each "Party" and collectively the "Parties" to this Agreement.

- 1.01** WHEREAS, this Professional Services Agreement (hereinafter "PSA" or "Agreement") sets forth the terms and conditions pursuant to which Consultant, as a Design Professional, will provide code compliance plan checking, special inspections, general inspections and materials testing (hereinafter "Services") for Owner's various Construction, Renovation and Alteration Projects. The Services and Deliverables described within this PSA reflect a menu of Services and Deliverables that may be ordered through individual Project Agreements ("PA" or "Project Agreement"), and are part of the scope of this PSA. The Consultant is not authorized to perform Services or Deliverables described within this PSA unless and until a Project Agreement is executed by County for the scope of such Services or Deliverables. The decision to authorize any or all of these items of Service or Deliverables in a Project Agreement is at the sole discretion of the County; and,
- 1.02** WHEREAS, Consultant acknowledges, agrees and understands that Consultant's written response to the County's competitive selection process is the basis upon which Consultant was selected, such responses are incorporated herein by this reference, and County materially relies upon such responses as a basis for entering into this PSA.
- 1.03** WHEREAS, Consultant was selected by means of the County's consultant selection process, represents itself as a Design Professional having the requisite qualifications, and agrees to perform such Services and Deliverables; and
- 1.04** WHEREAS, Consultant will perform such Services pursuant to separate Project Agreements to be negotiated by both parties and issued by Owner's Authorized Representative ("OAR") pursuant to this PSA. The OAR is the Manager, Capital Programs Division, Facilities and Fleet Department. The OAR hereby designates the Owner's Project Manager as an OAR designee.

NOW, THEREFORE, Owner and Consultant agree to the foregoing and as follows:

PART 2 - PROJECT AUTHORIZATION, DEFINITIONS, TERM AND MAXIMUM COMPENSATION

2.01 AGREEMENT FOR SERVICES

This Professional Services Agreement (hereinafter "PSA" or "Agreement") is a master agreement that sets forth the terms and conditions pursuant to which Consultant, as a Design Professional, will provide Architectural-Engineering Design services to the County. The County will authorize Consultant to perform specific services by separate Project Agreements. Each Project Agreement will set forth: (i) a PA project description; (ii) scope of Services and Deliverables; (iii) schedule for performance; (iv) maximum compensation and method of payment and invoicing; (v) authorized subconsultants and employees, if any; and (vii) OAR or OAR designee will provide coordination between Consultant and County and communicate relevant approvals and decisions. The "PA Project" will be further characterized in an individual applicable "Project Agreement" ("PA"). PA Project differs from the defined term "Project" also referenced herein below.

2.02 DEFINITIONS

Capitalized terms found in this PSA are defined within the PSA or derived from the County Project Manual, as amended by County from time to time. A copy is available upon request. Note that a "Project Manual" developed by the Consultant as that term is used herein below is different than the "County Project Manual" as referenced herein above.

Contract Documents: The Bid Documents (Plans and Specifications along with the Project Manual) including all Addenda and approved Change Orders. This is synonymous with Issued for Construction Documents or Conformed Documents.

Contractor's Submittals: Items submitted by the construction contractor (the "Contractor") for Owner's review and acceptance including, but not limited to shop drawings, layouts, schedules, substitution requests, samples, mockups, catalogs, product data and literature, equipment data sheets, maintenance and operating data, warranties and guarantees.

Deliverables: The Instruments of Service, documents, information, data, Submittals and other products or things of Consultant to be delivered to Owner pursuant to this PSA or any Project Agreement. Deliverables include but are not limited to Construction Documents.

General Inspections: Those inspections as required by any and all codes with jurisdiction over the project except for the special inspections defined elsewhere.

Milestones: Significant Deliverables, deadlines or turn-around times.

Plans: Project drawings prepared by a Consultant for approval by the County Board of Supervisors, including any Addenda approved by OAR, which specify the location, character, dimensions, and details of the construction Work to be performed. This is synonymous with "Drawings" and "Contract Drawings".

Plans: Project drawings prepared by a Consultant for approval by the County Board of Supervisors, including any Addenda approved by Owner's Authorized Representative, which specify the location, character, dimensions, and details of the construction Work to be performed. This is synonymous with "Drawings" and "Contract Drawings".

Project: An entire public improvement proposed by Owner to be constructed in whole or in part pursuant to Plans and Specifications including the Construction Contract and any phasing and milestone requirements.

Project Schedule: The time-phased schedule for construction, completion and acceptance of an entire the Project.

Record Drawings: Contract Plans updated using As-Built information provided by the Construction Contractor showing conditions encountered and the final configuration of a Project as it was built.

Special Inspection and Testing: Those Special Inspections and Tests as required by the California Building Code (CBC), Chapter 17 – Structural Tests and Inspections, which are required to be performed by the Consultant according to this PSA for specified Projects.

2.03 MAXIMUM COMPENSATION

The sum of all Project Agreements issued pursuant to this PSA shall not exceed FIVE MILLION DOLLARS AND NO CENTS (\$5,000,000.00) ("Maximum Compensation Limit"). If Consultant performs Services or incurs expenses beyond the amount authorized in the PA or which exceeds the Maximum Compensation Limit, Consultant does so at Consultant's sole risk and expense, and is solely responsible and liable for any such expenses incurred, amounts owed or expended.

2.04 TERM

This Agreement is effective upon the date of full execution by both Parties, and shall remain in effect for a period of 60 months ("Term"), unless earlier terminated under Part 12 of this Agreement.

2.05 SCOPE

- A. The Services and Deliverables identified in Part 5, "Consultant's Responsibilities, Services, And Deliverables", of this PSA, establish:
 - 1. The full range of Services and Deliverables the County may authorize for PA Projects within the scope of this PSA and any PA.
 - 2. The extent of the Services and/or Deliverables that may be authorized by the OAR within the scope of this PSA and any PA.
- B. Any act or event affecting any particular Project Agreement, such as its completion, termination, acceptance, non-acceptance, continuation or modification, shall not affect any other Project Agreement or this PSA except as mutually agreed in writing by both Parties or otherwise provided for in this PSA.

PART 3 - OWNER'S RESPONSIBILITIES

3.01 OWNER PROVIDED INFORMATION

- A. If required for a Project as specified herein or in a PA, Owner may provide, or direct Consultant to provide, any of the following for Consultant's use in connection with the Services and Deliverables:
 - 1. Specialized studies of existing site conditions, including the presence of hazardous materials, integrity and functionality of structural, HVAC, and electrical systems, soil, air, water, pollution, traffic, noise, archaeology, environmental impacts, etc.
 - 2. A certified survey of the Project site prepared by a California licensed Land Surveyor or Civil Engineer. The survey may include, as appropriate, site boundaries, contours, drainage, grades and lines of streets, pavements, and adjoining properties, rights-of-way, easements, encroachments, zoning and other restrictions; the locations, dimensions, floor elevations, and other pertinent data on existing facilities, trees and other improvements; information on available public and private utilities services, above and below grade, including inverts and depths.
- B. In accordance with best industry practices, Consultant must make a written recommendation to the Owner regarding the completeness or sufficiency of any survey or specialized study provided to Consultant, or the need for any study or survey that the Consultant believes is required for the Project that is not included within Consultant's Services or Deliverables.

3.02 APPROVAL & PERMIT FEES

Owner will pay all fees required by any jurisdiction having authority over a Project for filing and checking of any item of Service prepared by Consultant, and such fees necessary to secure approvals and permits for the Project from any state, local or federal department, agency, municipality, county, special district, executive office or public utility (collectively and each a "Governmental Agency").

PART 4 - PROJECT AGREEMENTS (PA)

4.01 PREPARATION AND APPROVAL

- A. Owner will prepare each Project Agreement, generally in accordance with the sample which is attached hereto as Exhibit C, "Sample Project Agreement," and its attachments, Exhibit D.
- B. Each Project Agreement will be executed by the Owner's Authorized Representative ("OAR"), and incorporate the terms of this PSA. The OAR is the Manager, Capital Programs Division, Facilities and Fleet Department.
- C. Owner hereby approves all Project Agreements executed by OAR within the limits of this PSA. OAR does not have the authority to negotiate or authorize payments or scope beyond the Maximum Compensation Limit or scope stated in this PSA.

- D. Commencement of each Project Agreement is contingent on receipt by Consultant of an Authorization to Proceed issued by the OAR or designee. Consultant must not commence work until Consultant receives the written Authorization to Proceed from the OAR or designee.

4.02 CHANGES IN SCOPE

- A. If Owner requests a change in the requirements of a Project Agreement, or circumstances not in the control of Consultant cause a material change in the duration or scope of Services that Consultant contends is material and justifies an increase in compensation, Consultant must advise Owner in writing before proceeding with such change. If Consultant fails to provide prior written notice to Owner prior to commencing Services, such change will be deemed not material and Consultant will not be entitled to additional compensation for the Services rendered in support of such change.
- B. If the change results in a material decrease in the scope of Services required to perform a Project Agreement, Consultant will immediately notify OAR and Consultant's compensation will be subject to a commensurate reduction in compensation.

PART 5 - CONSULTANT'S RESPONSIBILITIES, SERVICES, AND DELIVERABLES

5.01 CONSULTANT AS INDEPENDENT CONTRACTOR

Consultant is performing all Services and providing all Deliverables as an independent contractor and not an agent or employee of County. The expertise and experience of Consultant are material considerations for County's execution of this Agreement. Consultant shall not assign or transfer any interest in this Agreement nor the performance of any of Consultant's obligations hereunder, without the prior written consent of County, and any attempt to so assign this Agreement, or any rights, duties or obligations arising hereunder, shall be void and of no effect.

5.02 CONSULTANT'S USE OF SUBCONSULTANTS

Notwithstanding the foregoing, Consultant may use subconsultants in performing the Services under this Agreement, when authorized in a Project Agreement or this PSA. Consultant shall be responsible for directing the work of authorized subconsultants, and for any compensation due to sub consultants. County assumes no responsibility whatsoever concerning such compensation. Without amendment to this Agreement, Consultant may add subconsultants to those identified in Exhibit B only with the prior written approval of the OAR.

5.03 CONSULTANT'S GENERAL RESPONSIBILITIES.

- A. The specific Services Consultant shall provide for each Project, and Consultant's Schedule for providing those Services, shall be set forth in the applicable Project Agreement. Consultant's responsibilities when providing such Services shall be as set forth herein, unless specified otherwise in the Project Agreement.
- B. Consultant shall provide Services by State of California certified staff in accordance with the standard of care generally recognized in the following disciplines:
 - 1. Plan check services for different Types of Building Occupancy (A/B/E/F/H/I/M/R/S/U) and different Construction Types (I/II/III/IV/V). Building systems and site design which include but not limited to structural, civil, electrical, plumbing, mechanical, fire protection, Title-24 energy, accessibility code compliance, green building design standards, LEED certification, California Historic Building Code, floodplain, wild land urban interface fire severity zones, hazardous materials and state housing law Title-25 factory built structures etc. (No Public Building Inspection/Permit Counter services required for this RFSOQ).
 - 2. Field Construction inspection and testing services including reports of construction code findings and determinations.

3. Code enforcement activities including inspection and reviews.
 4. Compliance with California Building Code (CBC), including Chapter 17 – Structural Test and Inspections.
- C. Standard of Care
1. Consultant must perform Services in accordance with those standards of care that are generally recognized as being used by competent persons in Consultant's area of specialty in the State of California.
 2. Consultant must perform Services in compliance with all applicable federal, state and local codes, statutes, laws, regulations and ordinances, including environmental, energy conservation, and disabled access requirements.
 3. All Deliverables (including Construction Documents) must comply with all regulations and standards of the Fire Marshal having jurisdiction over the Project and in effect during Construction and performance of Consultant's Services.
 4. Consultant must use its best efforts to verify interpretations of applicable law, codes, regulations, and ordinances, from the appropriate Government Agency(s) and authorities having jurisdiction over the Project. Such efforts will be undertaken in accordance with the acceptable standard of care for this type of Project in the industry within Santa Clara County,
 5. Consultant must perform Services in compliance with all mitigation measures identified in the Project's Environmental Impact Report or Mitigated Negative Declaration, which ever has been prepared for the applicable Project(s).
- D. Construction Quality Control Systems
1. The Consultant shall prepare Drawings and Specifications that clearly identify and describe all necessary quality levels and quality control procedures such as inspections, tests, Contractor's Submittals or other measures that the Contractor is required to perform.
 2. Each Specification Section prepared by the Consultant must include the requirements for the tests, controls, performances and certifications needed to verify the specified quality level of that Section.
 3. Each Specification Section must also include a subsection to identify and list required Contractor Submittals including but not limited to Shop Drawings, certificates of compliance, Product Data Sheets, Samples, tests and test results, mix designs, required worker qualifications, off-site inspections, or all other necessary Contractor Submittals.
- E. Testing and Inspection Requirements
1. Consultant shall include testing and inspection requirements in each Specification Section and identify the specific inspection, sampling, and testing to be performed by the Contractor, including:
 - a. Items to be tested;
 - b. The number of tests per unit;
 - c. The test method;
 - d. The required tolerances; and
 - e. The actions to be taken in the event of failure.
 2. Unless otherwise directed by the OAR, the Construction Documents must require the Contractor to hire a Certified Testing Lab to perform all required tests and to submit certified test results to Owner.
- F. Funding by Governmental Agencies
1. If Owner desires to obtain funding from federal, state, or other outside funding sources, Consultant must prepare and furnish information required by such federal, state, or outside funding sources.
 2. When a Project is to be constructed in part or wholly with funds from federal, state, or other outside funding sources, Consultant must comply with and incorporate the

- requirements of said federal, state, and outside funding sources in the Deliverables and Services.
- 3. Notwithstanding the source of funding, this PSA is between the Owner and Consultant and unless specified herein, all direction, instructions and decisions related to the services provided by Consultant under this PSA shall come from the Owner.
- G. OSHPD Jurisdiction (if applicable)
 - 1. When a Project is within the jurisdiction of the State of California, Office of Statewide Health Planning and Development ("OSHPD"), Consultant's Deliverables must meet all OSHPD requirements.
 - 2. When a Project is within the jurisdiction of OSHPD, Consultant's Services include all Services necessary to obtain all required OSHPD approvals and permits for construction and occupancy of the Project.
- H. Sequence of Consultant's Services
 - 1. In general, Consultant's Services will proceed sequentially by the Phases described in Part 5.4, "Basic Services & Deliverables."
 - 2. Each Project Agreement will establish the Consultant's Milestone Schedule for completion of the Consultant's Services applicable to that Project Agreement.
 - 3. Commencement of each Project Agreement is contingent on receipt by Consultant of an "Authorization to Proceed" issued by OAR or designee. Consultant must not commence work until Consultant receives the written Authorization to Proceed from the OAR or designee.
- I. Signing and Stamping Documents
 - 1. Final Deliverables and other submittal documents required by Governmental Agencies (which is also referred to herein as "Permitting Authorities") must be signed and stamped by the Design Professional(s) of Record as appropriate to the submitted documents.
- J. Design Quality Control & Coordination Checks
 - 1. Consultant is responsible for the technical quality of all Deliverables prepared by Consultant and the Consultant's subconsultants.
 - 2. Before submitting the completed Deliverables to Owner, Consultant must check all Deliverables for technical accuracy and coordination within and between disciplines.
 - 3. Consultant must ensure that systems and equipment will fit in interstitial spaces (above ceiling), chases, and equipment rooms. Consultant must verify, through means that may include preparation of isometric drawings depicting various locations, that systems and equipment, such as HVAC, plumbing, voice/data cabling, electrical bus ducts, suspended ceilings and light fixtures, sprinkler lines, security raceways/cabling, and insulation, will fit in allotted spaces, and not interfere with structural and fixed architectural elements of the building. Although the Contractor is responsible for preparing Coordination drawings indicating the final configuration of these systems, Consultant is responsible for ensuring the accuracy of their design and the adequacy of interstitial spaces, chases and equipment rooms.
 - 4. Technical accuracy and coordination checks must be performed in accordance with a procedure acceptable to the Owner. At a minimum, the coordination check procedure must document that the following items were checked for technical accuracy and coordination:
 - a. Architectural; structural; mechanical, electrical and plumbing ("MEP"); and, other drawings;
 - b. The requirements of Consultant-prepared Specifications are consistent with the requirements of the County's General Requirements;
 - c. Materials and manufactured items called for in the Specifications are currently available and suitable for their intended use;

- d. Notes on the Drawings must coordinate with the requirements of the Project Manual;
 - e. Products and materials specified on the Drawings must be identical to the products and materials required in the Specifications;
 - f. Design layout, utility sources, and other required design elements are compatible with the physical requirements and characteristics of programmed movable furniture and equipment;
 - g. The Specifications clearly state the minimum grade, quality, and type of materials and workmanship required; and
 - h. When three or more manufacturers offer on the open market materials, equipment or devices of equal quality and usability needed for the project, a minimum of three such known manufactured products must be specified for potential use on the Project.
5. The coordination checks must be shown as individual activities in the Consultant's detailed schedule. Adequate time to perform the coordination checks must be indicated on the Consultant's schedule.
 6. The marked-up coordination check prints must be submitted to Owner with each design Phase submittal and will be returned to Consultant after Owner's review.
 7. All Drawings, Technical Specifications and calculations submitted by Consultant to Owner must contain a statement that the document was reviewed for accuracy, completeness and coordination and the coordination check was performed immediately prior to submission to Owner. The respective Design Professional(s) of Record as appropriate for each discipline must sign the statement.
 8. Consultant's fee for performing the coordination checks must be identified as a separate Task in the Consultant Compensation section of each Project Agreement.
 9. If Owner's review of the documents submitted by the Consultant reveals that the coordination check was incomplete or inadequate, Owner will notify Consultant and allow Consultant to complete the review. If Consultant's review is not satisfactorily completed within ten (10) business days after such notification, the Consultant's compensation stated in the Project Agreement will be reduced by the proportional amount of the value of the coordination check Task fee for such review. Notwithstanding such fee reduction, Consultant remains fully responsible for the technical accuracy and coordination of all its Instrument of Service.
 10. Consultant must not incorporate review comments generated by the Owner's organization into subsequent design documents until the comments are first reviewed and accepted by the Owner's Project Manager.
- K. Submittal of Deliverables
1. Each submittal must include a declaration statement, signed by a principal of Consultant's firm, that the work of Consultant and its subconsultants was coordinated, the submittal is complete, and that all prior review comments have been incorporated and coordinated.
 2. Consultant must furnish to Owner, suitable for reproduction, original reproducible Drawings, Project Manual and other Instruments of Service, and computer disks containing the Drawings, Project Manual, and other Instruments of Service in the following electronic formats: IBM compatible operating system, AutoCAD 2000 or newer, Windows 2000 or newer.
- L. Printing & Reproduction
1. Consultant must pay for all printing and reproduction cost incurred in the performance of its Services.
 2. Owner will print coordination check documents to be used by the Owner at Owner's expense.
 3. Owner will print Bid Documents for distribution to Bidders at Owner's expense.
 4. At Owner's written request, Consultant must print or reproduce selected documents.

The Consultant may invoice the Owner for Owner-requested printing as a Reimbursable direct expense.

M. Meetings

1. In addition to meetings specifically identified in Part 5.4, "Basic Services & Deliverables", Consultant must attend meetings as needed or required with:
 - a. Owner's officials, staff, commissions and user groups as required for the performance of Consultant's Services pursuant to this PSA and all Project Agreements. This requirement includes meetings with Owner and user groups to develop, explain and refine Architectural Program and design criteria and for Consultant to present design solutions for acceptance. This also includes a pre-design kickoff meeting with the Owner's organization.
 - b. Owner-sponsored advisory groups and local officials to present the Project to the public.
 - c. Governmental Agencies having jurisdiction related to the Project or any part of the Project. The Consultant must schedule and participate in preliminary meetings with all Governmental Agencies with Permitting Authority for the Project prior to the start of the Schematic Design (SD) Phase and as needed or required thereafter.
2. If requested by the Owner, Consultant must prepare agendas for and take minutes of all meetings conducted/attended by Consultant. This includes meetings that are chaired by the Owner's Project Manager. In meetings with facility personnel, all discussions that involve scope, a significant design element, or project cost must be documented by the Design Consultant in the meeting minutes.
3. The Consultant's fee for attendance at and preparation of minutes for all meetings specifically identified in Part 5.4, "Basic Services & Deliverables," will be considered included in the overall fee identified in each Project Agreement.
4. OAR or OAR designee will coordinate all meetings between Consultant, Owner's user groups, and the public.

N. Consultant's Staff and subconsultants

1. Consultant's staff and subconsultants are identified in Exhibit B, "Consultant's Staff and Subconsultants" or are otherwise identified in attachments to the applicable PA, and are subject to the requirements set forth therein.
2. Adequate and Competent Labor Force. At all times during the performance of the Service and provision of Deliverables, Consultant shall keep, and cause to be kept, a sufficient number of skilled designers, architects, engineers, draftsmen and other personnel necessary to perform and complete each part and portion of the Services and Deliverables. County shall have the right to direct Consultant to remove any individual whether an employee of Consultant or of a subcontractor performing the Services or Deliverables. Consultant shall take reasonable precautions in the selection of its personnel and subcontractors and in the performance of the Services and provision of Deliverables to safeguard, if applicable, equipment, materials, supplies, plans and specifications and all aspects of the Services and Deliverables from theft or unauthorized use or disclosure thereof or damage thereto.
3. Wages and Benefits. Consultant shall be responsible for payment of all wages, fringe benefits, pension or retirement obligations, housing obligations, social security, unemployment, workers compensation and all other social taxes or charges for its employees and those of its subcontractors and ensure that its subcontractors are so responsible for their employees.
4. Key Personnel. Consultant shall identify in writing to County a Project Manager, and a lead engineer, architect and design professional for each discipline (including a job description and related past experience of each) reasonably acceptable to County. Consultant shall require its subcontractors to identify such key personnel as well. The Consultant's Project Manager shall have full responsibility for the Services and

Deliverables and shall act as County's primary point of contact with Consultant with respect to prosecution of the Services and Deliverables. Consultant shall not change the Project Manager, or the lead discipline engineers, architects or other design professionals without the prior written consent of County, which will not be unreasonably withheld.

- O. Energy Efficiency
 - 1. Except with written approval of the Owner, Consultant must utilize state-of-the-art energy saving technology in the design of the Project in order to minimize overall energy consumption of the completed Project.
 - 2. Consultant must identify alternate features that can be incorporated into the Project's design that will attempt to increase the buildings energy efficiency at least fifteen percent more (15%) than required by Title 24.

5.04 BASIC SERVICES & DELIVERABLES

- A. Consultant will perform Code Compliance Plan Checking, Inspections, General Inspections, and Materials Testing services, as required by a particular Project Agreement using staff with appropriate California certifications. Consultant's services will be provided under the general direction of a Registered Professional Engineer employed by Consultant. These codes and/or regulations include, but are not limited to: California Code of Regulation, Title 24; California Building Standard, Administrative Code, Title 24, Part 1; California Building Code; California Fire Code; California Mechanical Code; California Plumbing Code; California Electric Code; California Green Buildings Standard Code, California Code of Regulations, Title 24, Part 11; ADA Code of Federal Regulations; Title 19, Public Safety, California Code of Regulation; Santa Clara County Building Code; and all other codes and regulations that govern construction in Santa Clara County.
- B. Owner may order general code and Special inspections and testing to be performed on both a continuous and periodic basis, as required by the Construction Schedule for each project.
- C. Consultant shall provide and employ all required testing and inspection equipment necessary to perform the specified services; employ testing machines which have been calibrated per code and the National Bureau of Standards of the United States Department of Commerce. Consultant shall, upon request, submit to the County or the County's authorized representative documentation of such calibration.
- D. Consultant shall have the capability of providing qualified personnel at the project site, as well as any off-site fabrication yards, as necessary to undertake the specified services.
- E. Consultants will perform multi-disciplinary plan review services including, but not limited to the following:
 - 1. Conduct initial plan review and all subsequent reviews by a Certified Plans Examiner for design integrity and code compliance with the adopted edition of the applicable California Building Codes, Part 1 through 12, Standards, State Housing Laws Title-25, local ordinances and appendices adopted by the County within time frames specified by the County. Review plans for all types of fire protection systems, fire and life safety, and compliance with state and local hazardous materials regulations.
 - 2. Review structural calculations, soils reports, geotechnical, grading, onsite improvements, Title-24 energy reports, disabled access requirements, green building standards, County adopted ordinances and policies, and other project related information provided by the applicant or the County.

3. Identify items needing clarification or correction to achieve compliance with applicable regulations, codes and standards, and provide a written report of these items, including referenced code sections.
4. Coordinate the resolution of identified deficiencies with the applicant. Upon request by the County, shall attend any required meetings connected with the plan review or field inspection of the projects.
5. The standard turnaround time for assigned plan reviews shall be ten (10) business days for the initial review, and five (5) business days for rechecks. Consultants shall pick up and deliver plans to the department Project Manager.
6. Consultant shall utilize employees to perform the plan reviews who are certified as Plans Examiners through the International Code Council and who are provided with a reasonable degree of annual training in accordance with the requirements of AB 717 (Health and Safety Code 18965 et seq.). A California Registered Engineer or Licensed Architect employed by the Consultant shall review the portion of plans that involve engineering design and calculations.
7. Projects shall be assigned at the sole discretion of the Facilities and Fleet Deputy Director of Operations and their designated representative. The County may use its own employees and/or other independent consultants to perform plan reviews in addition to any such work assigned to a Consultant. The volume of plan review is dependent upon economic conditions that are outside the control of the County. Consequently, there is no guarantee provided as to the minimum or maximum volume of work that may be assigned to a Consultant within any given time period.
8. For building inspections, Consultants shall provide experienced and trained staff to supplement the County's existing staff on an on-call as-needed basis. The Consultant's building inspection staff shall be certified by the International Code Council or other appropriate recognized organization in accordance with AB717 and possess a minimum of three years of building code enforcement experience with a municipality or a private municipal consultant. The County shall have the right of refusal of any staff member assigned by the consultant.
9. Plan Checking
 - a. Provide plan check services for governing codes and/or regulations, as specified in the Project Agreement. Plan checking services may be provided during schematic design, design development, and/or the construction documents phase of a project, as defined in the Project Agreements.
 - 1) Plan Checking may include:
 - i. A review of the design/contract documents for conformance to the applicable codes and regulations.
 - ii. Peer reviews of the structural design and calculations, the mechanical design and calculations, the plumbing design and calculations, and the electrical (including low-voltage systems) design and calculations.
 - iii. Peer reviews of other building systems.
 - iv. Any other applicable code related reviews.
 - 2) Provide a report listing the code deficiencies found during the plan checking and/or peer reviews.

10. Inspections

- a. Provide code inspections for some or all governing codes and/or regulations, as specified in the Project Agreement.
- b. Provide special inspection and testing, complying with the California Building Code (CBC), Chapter 17. Owner reviewed and approved shop drawings may be used as an aid to inspection. Work to be inspected and tested to comply with CBC Chapter 17, Section 1701.5 include, but are not limited to:
 - 1) Cast in place concrete, including off-site pre-cast concrete panel and GFRC panel fabrication;
 - 2) Bolts installed in concrete;
 - 3) Special moment-resisting concrete frame;
 - 4) Reinforcing steel and pre-stressing steel tendons;
 - 5) Structural welding, including special moment-resisting steel frames, reinforcing steel, and off-site shop fabrication;
 - 6) High-strength bolting;
 - 7) Structural masonry;
 - 8) Reinforced gypsum concrete;
 - 9) Insulating concrete fill;
 - 10) Spray-applied fire-resistive materials;
 - 11) Piling, drilled piers, and caissons;
 - 12) Shotcrete;
 - 13) Special grading, excavation, and filling;
 - 14) Smoke-control, special testing as required by the Project specifications, by the Chief Building Official of the County of Santa Clara or by other Regulatory Authorities; and
 - 15) Special cases as required by the County Project Manager, the Building Official of the County, or other Regulatory Authorities.
- c. When included in the scope of a Project Agreement, provide a lead Special Inspector at each project site to observe the work for conformance with the plans and specifications stamped and permitted by the County Building Department or the County Fire Marshal, and the applicable workmanship provisions of the governing codes. County reviewed shop drawings may be used as an aid to inspection. In addition to performing special inspections, the lead Special Inspector will supervise other Special Inspectors when the work requires multiple concurrent Special Inspections.
- d. Consultant's inspector(s) shall provide a signed copy of an inspection record and a daily report for each day's inspections at the job site to the Contractor and the Owner's Project Manager. The inspection record and daily report shall be provided not later than the start of business on the first normal work day following the inspection work. A copy of these records shall remain at the jobsite with the Contractor and the Owner's Project Manager for review by the Building Inspector. Daily report shall include:
 - 1) Description and location of daily inspections and tests.
 - 2) List of all non-conforming items.
 - 3) Status of resolution of non-conforming items.

11. Material Testing

- a. Provide materials testing as required by the governing codes and/or regulations, as specified in the Project Agreement. The testing may take place at the

construction site or at off-site locations, including out of state locations, as stipulated in the Project Agreement.

- b. Provide to the Owner's Project Manager and others as designated by the Owner a weekly report of all inspections and tests. All reports and information provided to or developed by the Consultant shall be considered to be the confidential property of the County, and Consultant shall distribute or disclose such reports and information only to those persons, organizations or agencies specifically designated in writing by the Owner. The weekly report shall include:
 - 1) Description and location of daily inspections and tests.
 - 2) List of all non-conforming items.
 - 3) Status of resolution of non-conforming items.
 - c. Provide and distribute on a timely basis reports of all material testing to the parties as directed by the Owner's Project Manager.
 - d. Consultant shall provide all required facilities for the material testing of the required site samples inclusive of transportation of such samples from the site/fabrication yard to the Consultant's facilities, required storage and subsequent disposal of such samples.
 - e. Provide a final signed report to the Owner's Project Manager and the County Building Official, if necessary, prepared by the Special Inspector, stating whether the work requiring Special Inspection was, to the best of the Special Inspector's knowledge, in conformance with the approved plans and specifications, approved change orders and the applicable workmanship provisions of the California Building Code (CBC). Note any unresolved items of non-conforming work or lapses in special inspection and test coverage such as missed inspections or periodic inspection when continuous inspection was required.
 - f. Consultant shall promptly bring non-conforming work to the attention of the Contractor and Owner's Project Manager and note all such items in Consultant's daily reports. If any item of non-conforming work is not resolved in a timely manner or is about to be incorporated in the work, the Consultant shall immediately notify the Owners Representative and post a deficiency notice at the Owner's construction site office.
 - g. Consultant shall retain all pertinent records relating to the services performed for a period of three (3) years following project completion during which period the records will be made available to the County at all reasonable times.
- F. When a particular phase of Services is authorized in an individual Project Agreement, Consultant must provide its Services and Deliverables for that phase as required herein, except where the requirements for the Services and Deliverables described herein are specifically modified in a particular PA fully executed by the County and Consultant and such modifications fall within the scope of Services authorized in this PSA.

5.05 SUPPLEMENTARY SERVICES & DELIVERABLES

County may establish a Supplemental Service Order ("SSO") in a Project Agreement for the performance of services or deliverables and such work will only commence pursuant to the SSO following prior, written authorization of the OAR or designee. Such work must still fall

within the scope of the original solicitation

PART 6 - CONSULTANT'S SCHEDULE

6.01 Each Project Agreement must contain a Consultant's Schedule

- A. Consultant will perform all Services and Deliverables within the time and project schedule stated in the Project Agreement, including milestones, if any. Consultant shall perform its Services expeditiously and on budget. Time is of the essence in this Agreement.
- B. Consultant must provide and maintain Project staffing levels as necessary to perform the Services within the time provided in the project schedule.

PART 7 - COST CONTROL

7.01 OWNER APPROVED CONSTRUCTION COST (OACC)

A Project Agreement may specify the Owner Approved Construction Cost for the Project or Project part covered by that Project Agreement. The Owner Approved Construction Cost may not be revised without Owner's prior written approval.

7.02 FORMATTING AND COMPARING ESTIMATES

- A. All required Statements of Probable Construction Cost by Consultant must be prepared per Owner's direction, in a format or formats approved by Owner's Project Manager. The identical format(s) must be used consistently throughout the Project in order to facilitate tracking the costs of various Project components. In addition, Consultant must provide a cost estimate summary sheet in CSI format for all Construction Document Phase submissions of Statements of Probable Construction Cost.
- B. The County may have an independent cost estimate prepared by an independent estimator designated by County and at County's expense. If the County chooses to have an independent estimate prepared, the Design Professional is required to answer the independent estimator's questions regarding the design. If attendance at meetings with the independent estimator to reconcile Design Professional's estimate are necessary, Consultant will be compensated according to their hourly rate schedule. In the event that the independent estimate and Design Professional's estimate cannot be reconciled, Design Professional's estimate will prevail as the Estimated Project Construction Cost.
- C. The Design Consultant must include an estimate summary of all buildings when there is more than one building. The summary includes all building cost to five feet outside the building. Site work estimates must be to within five feet outside the building and represented on a separate summary page. The summary must list the building or site work, its size, cost per square foot and total cost.
- D. If the Project involves multiple bid packages the Design Consultant must prepare separate estimates for each bid package.

7.03 CONSULTANT'S RESPONSIBILITY FOR MANAGING DESIGN TO STAY WITHIN THE OACC

- A. Owner asserts that the total Construction Cost of each Project must not exceed the Owner Approved Construction Cost set forth in the applicable Project Agreement.
- B. Consultant is fully responsible for managing and will manage the Project Design to stay within the Owner Approved Construction Cost.
- C. Consultant must reconcile each Statements of Probable Construction Cost to previous Statement of Probable Construction Cost. If any deviation occurs between estimates that affect the Construction Costs by more than 5% for any component (a component is defined as a building or the site development portion of the Project Budget), a reconciliation of where the difference occurred must be submitted with the estimate. A written description of why the change took place is required.

- D. Evaluations of the Owner's Project Budget and Statements of Probable Construction Cost prepared by the Consultant represent the Consultant's best judgment as a design professional familiar with the construction industry and trends in prevailing wages and material escalation costs.
- E. Consultant must identify and provide for reasonable additive and/or deductive Bid Items as mutually determined by Owner and Consultant to ensure reconciliation between Statements of Probable Construction Cost and the OACC.
- F. Consultant shall identify potential costs and present option(s) to reduce such cost.
- G. If the Preliminary, Revised, Updated Revised, Preliminary Final, or Final Statement of Probable Construction Cost exceeds the then-current OACC, Consultant must immediately notify Owner in writing with recommended actions to bring the Probable Construction Cost to within the OACC. Thereafter, Owner and Consultant will discuss the revisions or steps necessary to bring the current Statement of Probable Construction Cost to within the OACC. Consultant must thereafter adjust its Instruments of Service as directed by Owner, at no additional cost to Owner, to keep the Probable Construction Cost within the OACC.

7.04 CONSULTANT'S OBLIGATION TO MODIFY BID DOCUMENTS

- A. If, upon bidding the Project for construction, the lowest responsive Bid submitted by a responsible Bidder exceeds the OACC, Owner may elect to:
 - 1. Re-Bid the Project; or
 - 2. Increase the OACC; or
 - 3. Terminate the Project or a part thereof; or
 - 4. Revise the Project to reduce the construction cost.
- B. If the lowest responsive Bid submitted by a responsible Bidder exceeds the OACC by more than ten percent (10%) including all Additive Bid Items as provided in Part 7.3, "Consultant's Responsibility for Managing Design To Stay Within The OACC" Consultant must, upon Owner's request and without additional cost to Owner, modify the Bid Documents as necessary to reduce the probable Construction Cost to less than the OACC. Revising such documents is the limit of Consultant's responsibility pertaining to construction cost.
- C. Consultant may, with Owner's agreement, include contingencies in the Statements of Probable Construction Cost for design, bidding, and price escalation.

7.05 ADDENDUM ESTIMATES

- A. The Consultant must prepare and submit Addendum Estimates for all Addenda changes that may result in added construction costs in excess of \$5,000 after release of Bid Documents but prior to Bid opening.
- B. The Addendum Estimate must include only the items of work involved in each Addendum.
- C. Separate costs for deductive and additive changes within the appropriate CSI Divisions must be shown. Deductive costs must be identified by enclosing them in parentheses.
- D. All estimates must be submitted to the Owner's Project Manager for acceptance prior to Bid opening.

PART 8 - INDEMNIFICATION & INSURANCE

- 8.01** Consultant will comply with all insurance and indemnification requirements contained within this PSA, all PAs and Exhibit F to this Agreement.

PART 9 - REPRESENTATION BY COUNSEL

- 9.01** Both Parties to this PSA were represented by counsel in the negotiation and execution of this Agreement.

9.02 The Parties are aware of the provisions set forth in California Civil Code section 1717, as amended, and intend this paragraph of the PSA to meet said statutory requirements so that the reference to attorneys' fees in Part 8, "Indemnification & Insurance", applies only in the indemnification context in Part 8, "Indemnification & Insurance."

PART 10 - HAZARDOUS MATERIALS

10.01 Owner acknowledges that Consultant has no special knowledge or expertise regarding asbestos or other hazardous materials.

10.02 Unless otherwise provided in this PSA or a PA, or unless Owner has provided documented information to Consultant regarding the presence or potential presence of such hazardous materials Consultant and its subconsultants have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials in any form at the Project site, including but not limited to asbestos, asbestos products, polychlorinated biphenyl (PCB) or any other toxic substance.

10.03 If hazardous materials are a reasonable part or condition of the Project or Project site, then the following terms shall apply:

A. Definition of Hazardous Materials. "Hazardous Materials" means, but is not limited to, (a) any hazardous, toxic or regulated wastes, materials or substances, and other pollutants or contaminants, which are or become regulated by any Environmental Laws, including but not limited to regulations pertaining to storage, labeling, handling, recordkeeping, reporting, transportation, use, disposal or shipment; (b) petroleum, petroleum by-products, gasoline, diesel fuel, crude oil or any fraction thereof; (c) asbestos and asbestos containing material, in any form, whether friable or nonfriable; (d) polychlorinated biphenyls; (e) radioactive materials; (f) lead, lead-containing materials or suspected lead-containing materials; (g) any other material, waste or substance displaying or reasonably believed or suspected to have toxic, reactive, ignitable or corrosive characteristics, as all such terms are used in their broadest sense, and are defined or become defined by any Environmental Law (defined below); (h) any materials which cause or threaten to cause a nuisance upon or waste to any portion of the Premises or any surrounding property; (i) any materials which pose or threaten to pose a hazard to the health or safety of persons on the Premises or any surrounding property; (j) any substances, ingredients, materials or products containing blood borne pathogens, human remains or by-product, bio-waste or medical waste. "Environmental Laws" or "Environmental Law" means, for purposes of this Lease Agreement, any and all local, state and federal environmental, health and safety-related laws, statutes, orders, standards, court or judicial or administrative decisions, ordinances, rules, regulations, decrees, directives, guidelines, permits, and permit conditions, currently existing and as amended, enacted, issued or adopted in the future Prohibition; Environmental Laws. For quantities and uses that are more than what are regulated as household hazardous waste or materials, Consultant and the Consultant Representatives shall not be entitled to generate, manufacture, store, handle, transport to or from, use, dispose of, or ship to or from, any Hazardous Materials on, in, under or about any portion of County property or facilities ("Use") without, in each instance, first disclosing such Hazardous Materials to County, obtaining County's prior written consent thereto and complying with all Environmental Laws, including County's IPM Ordinance. If County, in its sole discretion, consents to any Use then Consultant shall be permitted to engage in such Use only for those Hazardous Materials and in such quantities (A) that are necessary and unavoidable for the intended Project, (B) to the extent disclosed pursuant to disclosure requirements and guidelines under Environmental Laws, (C) expressly approved by County in writing, and (D) only to the extent that such Use fully and completely complies with all applicable Environmental Laws. County shall have the right at all times during the Term to (i) inspect the Project site, (ii) conduct tests and investigations to determine whether

Consultant or others are in compliance with this Agreement, the applicable PA and Environmental Laws, and (iii) request lists of all Hazardous Materials in Use on, under or about any portion of the Project site or any County property. The aforementioned rights granted herein to County and its representatives shall not create (a) a duty on County's part to perform inspections, monitor or otherwise observe the Project, the Project site, other County property or observe or prevent or deter Consultant or others from such Use or (b) liability on the part of County and its representatives for any Use or any Release (as defined below), it being understood that Consultant and the Consultant Representatives shall be solely responsible for all liability in connection with or relating to such Use. Consultant warrants, represents and agrees that all Consultant Representatives shall be required by written executed agreement between Consultant and such party to comply with all the provisions of this Part 10.

- B. Releases. Consultant shall give to County immediate verbal and follow up written notice of any contamination, exposure, deaths, injuries, illnesses, spills, releases, discharges, disposals, emissions, migrations, removals, shipments or transportation of, from or relating to Hazardous Materials on, under or about any portion of the Project site or on County property (collectively, a "Release"), provided that Consultant knows or reasonably should know of such Release, regardless of cause. Consultant, at its sole cost and expense, covenants, warrants and represents to promptly investigate, remedy, clean up, remove, decontaminate, restore, respond to, otherwise fully remediate, and resolve any and all claims relating to (including, without limitation, preparation of any feasibility studies or reports and the performance of any and all closures) any Release of Hazardous Materials arising from or related to the acts or omissions of Consultant or any of the Consultant Representatives such that the affected portions of the County property and any adjacent property are returned to the condition existing prior to the Release of such Hazardous Materials (the "Remediation"). Any such Remediation shall only be performed after Consultant has obtained County's prior written consent, which consent shall not be unreasonably withheld so long as such actions would not potentially have a material adverse long-term or short-term effect on any portion of the County property or the liability of the County. Notwithstanding the foregoing, Consultant shall be entitled to respond immediately to an emergency without first obtaining County's prior written consent so long as such response complies fully with all applicable laws. Consultant, at its sole cost and expense, shall conduct and perform, or cause to be conducted and performed, all Remediation as required by any Environmental Laws or any agencies or other governmental authorities having jurisdiction thereof. If Consultant fails to so promptly complete the Remediation, County may, but without obligation to do so, take any and all steps necessary to rectify the same and Consultant shall promptly reimburse County, upon written demand, for all costs and expenses to County for performing the Remediation. All such Remediation, as required herein, shall be performed in such a manner so as to enable County to make full use of the Premises and the other portions of the Premises after the satisfactory completion of such Remediation. County acknowledges that Consultant shall have no obligation or liability with respect to Hazardous Materials existing on County property prior to the date the property was used by Consultant as intended by this Agreement, but only so long as Consultant and the Consultant Representatives have not, by action or inaction, disturbed or caused the disturbance or Release of said existing Hazardous Materials.
- C. Consultant shall immediately deliver to County documents, notices, demands and information, in the possession or control of Consultant or the Consultant Representatives, from any governmental or quasi-governmental, or any insurance company or board of fire underwriters or like or similar entities, regarding any Hazardous Material, Release or Remediation upon, under, at, in, around or from the Project site or any other County property. Consultant shall immediately inform County in writing (and orally in the event of a Release or other emergency) of (1) any and all enforcement or Remediation, or other

governmental, regulatory, or judicial acts or orders instituted, or threatened pursuant to any Environmental Law; and/or (2) all claims made by any third party in writing against County property relating to damage, contribution, cost recovery, compensation, loss or injury resulting from any actual or threatened use or presence of Hazardous Material, Remediation or Release on, under, from, to, or about the Project site or any other County property.

PART 11 - COMPENSATION & PAYMENT

11.01 Compensation

A. Payments will be made as set forth herein and as authorized in each Project Agreement.

1. Maximum Compensation Limit

a. Each Project Agreement will specify a Maximum Compensation Limit (MCL) by Owner to Consultant for that Project Agreement. The MCL includes all authorized Services and authorized Reimbursable expenses. Total payment by Owner pursuant to any Project Agreement will not exceed the MCL specified in the Project Agreement and Consultant is fully responsible for provision of all Services and Deliverables to fully perform a Project Agreement, compensation for which will not exceed the specified MCL. The total maximum compensation limits of all Project Agreements under the same PSA cannot exceed maximum compensation set forth in the PSA.

2. Consultant's Hourly Rate Schedule

- a. Consultant's Hourly Rate Schedule is set forth in Exhibit A, "Consultant's Hourly Rates."
- b. During the Term of this PSA, the OAR may authorize modifications to Consultant's Hourly Rate Schedule following Consultant's demonstration that it is consistent with the cost of similar services in the Bay Area and the increased cost of providing the service. If the modification of the rate schedule does not increase the maximum compensation limit of the PSA approved by the Board of Supervisors, the OAR shall document the modifications as an administrative amendment to the PSA that does not need to be executed by the Board of Supervisors. The administrative amendment shall explain the reason for the modification and if the modification is an increase in the rate(s). The amendment shall also include the justification for the increased cost of providing the service.
- c. Subconsultant's hourly rates are subject to approval by the OAR and documented in a Project Agreement. Consultant may not add any administrative mark-up on Subconsultant invoices.
- d. Where the class of persons authorized to provide specific Services is not designated in a Project Agreement, Services must be provided by a qualified person who is in a class that has the lowest rate of payment among those classes that contain persons who are qualified to provide the Services.

3. Consultant's Milestone Schedule

Each Project Agreement must contain a Consultant's Milestone Schedule prepared in accordance with Part 6, "Consultant's Schedule" of this PSA.

4. Changes

If, during the term of a Project Agreement, circumstances constituting a material change in scope, as described in the "Changes in Scope" section of Attachment 1 to the PA (Exhibit D) and Part 14.77 of this PSA, arise, and the County approves,

Consultant will be entitled to compensation therefore, within the Maximum Compensation Limit for that Project Agreement.

5. Prevailing Wages

Consultant acknowledges that work performed to support the Services or provide the Deliverables under this PSA are or can be considered a public work within the meaning of California Labor Code Section 1720, as amended, and that the requirements of Section 1771, as amended, *et seq.* apply to such public work. Consultant has included (and will include) consideration for this obligation in calculating compensation under this PSA. Consultant shall comply at all times with California prevailing wage laws, including registration, notice and recordkeeping responsibilities.

6. Errors and Omissions

Consultant must correct errors and omissions resulting from a failure to comply with any of the provisions of this PSA without cost to Owner, especially Part 5. Owner may pursue all available legal remedies for Consultant's errors and omissions.

11.02 Reimbursable Expenses

- A. When travel is authorized as a reimbursable expense in a Project Agreement, Consultant agrees to comply with the Santa Clara County travel policies and guidelines, where applicable, for all travel, lodging and meal reimbursements arising from the performance of this Agreement. Detailed travel policy requirements and limitations can be found in the County's Travel Policy Desk Reference Manual.
- B. When authorized in the Project Agreement, Owner will reimburse Consultant, at cost, for reasonable extraordinary expenses incurred in the performance of the Services. Only the following expenditures, made by Consultant with Owner's advance written approval, are payable as reimbursable expenses within the Total Compensation Limit of any Project Agreement:
 - 1. Extra-ordinary "office" expenditures specifically related to executing the scope of work in Project Agreements, including overnight mailing such as Federal Express, and additional copies of Deliverable Documents, over and above those required by the terms of the Project Agreement; and mileage reimbursement to attend meetings beyond those specified in the scope of Project Agreements. Any individual expense in excess of \$10.00 must be supported by a copy of the receipt.
 - 2. Other reimbursable expenses specifically identified in a Project Agreement.
- C. Reimbursable Expenses must be part of the maximum compensation limit identified in the agreement and not an amount that is in addition to the maximum compensation limit amount.

11.03 Payment

- A. Payment Requests
Owner will endeavor to make payments within thirty (30) County business days after the OAR's approval of the Consultant's correct Payment Request.
- B. Invoices
Consultant will submit Payment Requests on the forms shown in Exhibit E, "Sample Invoice", or on other forms approved by County, not more than once each month.
- C. Progress Payments
Owner may, at its discretion, adjust any progress payment so that it corresponds with the percentage of completion as reasonably determined by Owner.

- D. Neither Consultant, nor authorized sub consultants, may provide services to the Construction Contractor or any Subcontractor pursuant to separate agreement for any part of the Project.

11.04 Release of All Claims

Prior to final payment under any Project Agreement, Consultant must execute and deliver, and have all subconsultants and subcontractors execute and deliver, to Owner a release of all claims for payment arising under the Project Agreement, other than such claims, if any, as may be specifically excepted from the release for the reasons and in the amounts stated in the release. Otherwise, Consultant's acceptance of final payment shall constitute a release of all claims arising under the applicable Project Agreement. Otherwise, Consultant's acceptance of final payment shall constitute a release of all claims arising under the Project Agreement.

11.05 Timely Billings

- A. Consultant agrees to bill Owner on a timely basis and not later than ninety (90) Calendar Days after:
 - 1. Services are performed;
 - 2. Reimbursable Expenses are incurred; or
 - 3. Billings are otherwise due pursuant to the terms of the Project Agreement.
- B. Owner has no liability for payment of, and has sole discretion to pay or decline payment of, any billings submitted after the expiration of this ninety (90) day period.

11.06 Consultant's Accounting Records

- A. Accounting System & Records Retention
Consultant must maintain an accounting system in accordance with current standards of accounting and financial reporting for the purpose of supporting payments for Services authorized under this PSA. Consultant must retain such records for three (3) years from expiration or termination of this PSA, or until all claims, if any, have been disposed of, whichever period is longer.
- B. Owner's Auditing Rights
- C. Upon service of a written Notice to Consultant, Owner, and persons authorized by Owner, have the right at any reasonable time and place to examine, audit, and make copies of books, records, documents, accounting procedures and practices affecting the performance or administration of this PSA, or affecting any changes or modifications to this PSA.
- D. Applicability to Subcontracts
- E. Consultant must incorporate the above-stated accounting and audit requirements into all subcontracts exceeding Ten Thousand Dollars (\$10,000) in value pursuant to this PSA or any modification thereof.

PART 12 - TERMINATION

12.01 Owner's Rights

- A. Termination for Convenience
 - 1. Owner's Authorized Representative may, by written notice to Consultant, terminate all or part of this PSA or any Project Agreement at any time for Owner's convenience. Upon receipt of such notice, Consultant must immediately cease all work as specified in the notice.
 - 2. If this PSA or any Project Agreement is so terminated, Consultant will be compensated as set forth below.

B. Termination for Breach

1. If Consultant violates any of the covenants or agreements of this PSA or a Project Agreement, or if Consultant fails to fulfill in a timely and proper manner its obligations pursuant to this PSA or any Project Agreement, and does not cure such failure or violation within thirty (30) calendar days, or such shorter period as the Owner may determine is necessary and appropriate, after receipt of written notice from Owner's Authorized Representative specifying such failure or violation, Owner may terminate this PSA and any or all uncompleted Project Agreements.
 2. Owner will provide Consultant with written notice as to the effective date of termination, and Consultant is not entitled to compensation for Services or expenses beyond the specified termination date.
 3. If, after notice of termination for breach of this PSA or any Project Agreement, it is determined that Consultant did not breach this PSA or the Project Agreement, the termination will be deemed to have been made for Owner's convenience, and Consultant will receive payment, which is allowed by this PSA for a termination for convenience.
- C. The rights and remedies provided herein to Owner are in addition to any other rights and remedies provided by law, this PSA, or a Project Agreement.

12.02 Consultant's Compensation Upon Termination

- A. In the event of Owner's termination of this PSA or any Project Agreement, Consultant will receive compensation as follows:
1. For fully performed and accepted items of County-approved Service, and authorized Reimbursable Expenses pursuant to any Project Agreement, compensation will be in the amount specified in the Project Agreement for that item of Service or expense.
 2. For items of Service on which Owner has issued an Authorization to Proceed but which have not been fully completed and accepted, Consultant will be compensated for its Services accepted by Owner in an amount which bears the same ratio to the total fee otherwise payable for the performance of that Service as the Services performed bear to the total Services necessary for the full performance of that Service.
- B. In no event will the total compensation paid for any item of Service exceed the value specified in the applicable Project Agreement for that item of Service.

12.03 Delivery of Documents

Upon any termination of this PSA or any Project Agreement, Consultant must furnish Owner all documents and Instruments of Service prepared pursuant to this PSA or such Project Agreement(s), whether complete or incomplete. Consultant may retain a copy for its records.

PART 13 - DISPUTE RESOLUTION

13.01 The parties will attempt to resolve any disputes related to this Agreement informally, to the extent possible, and will act in good faith to attempt to resolve such disputes in a mutually satisfactory manner.

A. Alternate Dispute Resolution (ADR)

1. Owner intends to use ADR techniques including partnering and mediation during the Term of this Agreement, excluding arbitration.
2. Consultant and its subconsultants are expected to participate in all ADR efforts.

B. Voluntary Mediation

1. In the event a dispute or issue is not resolved by negotiation, Owner and Consultant agree to attempt to resolve the matter by mediation.

2. Said mediation is voluntary, non-binding, and intended to provide an opportunity for the parties to evaluate each other's cases and arrive at a mutually agreeable solution.
3. These provisions relating to voluntary mediation shall not be construed or interpreted as mandatory arbitration.
4. Negotiations to resolve disputes before and during mediation are initiated for settlement purposes only and are not binding unless otherwise mutually agreed by Owner and Consultant.

PART 14 - MISCELLANEOUS PROVISIONS

14.01 Capitalization and Formatting

- A. Terms capitalized in this PSA and subsequent Project Agreement may include those that are:
 1. Specifically defined; or
 2. Titles of Parts or paragraphs; or
 3. Titles of reports or Deliverables
 4. Titles of other documents.
- B. Unless otherwise indicated, highlighted, **bolded**, *italicized* or underlined, any text is not indented to imply special significance but serves merely as an aid to the reader to distinguish or quickly reference selected text.
- C. The captions of the Parts and paragraphs are for convenience only and will not be deemed relevant in resolving any question of interpretation or construction of any such Part or paragraph.

14.02 Force Majeure

Neither party shall hold the other responsible for damages or delay in performance caused by acts of God, severe weather, hurricanes, earthquakes, natural disasters, fire or other similar causes beyond the reasonable control of the other or the other's employees, agents, or representatives.

14.03 Waiver

One or more waivers by either party of any provision, term, condition or covenant will not be construed by the other party as a waiver of a subsequent breach. If either party should waive any breach of any provision of this Agreement, it shall not thereby be deemed to have waived any preceding or succeeding breach of the same or any other provision hereof. No delay or failure to require performance of any provision of this Agreement shall constitute a waiver of that provision as to that or any other instance. Any waiver granted by a party shall be in writing and shall apply to the specific instance expressly stated.

14.04 Exclusion of Consultant's Means & Methods

- A. Consultant has not been retained or compensated to provide design and construction review services relating to the Consultant's safety precautions or to means, methods, techniques, sequences, or procedure required for the Consultant to perform its Work except as required by Labor Code §6705. Omitted services include but are not limited to:
 1. Shoring
 2. Scaffolding
 3. Underpinning
 4. Temporary retainment of excavations
 5. Temporary erection methods and temporary bracing.
- B. Pursuant to **Labor Code §6705**, no contract for public works involving an estimated expenditure in excess of twenty-five thousand dollars (\$25,000), for the excavation of any

trench or trenches five feet or more in depth, shall be awarded unless it contains a clause requiring submission by the contractor and acceptance by the awarding body or by a registered civil or structural engineer, employed by the awarding body, to whom authority to accept has been delegated, in advance of excavation, of a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation of such trench or trenches.

Consultant is responsible for reviewing submissions provided by the Contractor pursuant to Labor Code **Labor Code §6705**.

14.05 Timely Approvals

Whenever the approval of Owner or Consultant is required pursuant to this PSA or any Project Agreement, such approval must not be unreasonably withheld or delayed.

14.06 Ownership & Use of Instruments of Service

- A. All Instruments of Service and other materials prepared by Consultant, including Plans, Specifications, Construction Documents, Project Manuals and other related documents and materials, in whatever media, are the sole and exclusive property of Owner. Consultant must provide Owner with such Instruments of Service and materials at appropriate times during this PSA, and on termination or suspension of this PSA or any Project Agreement. Consultant may retain a copy for its records. Consultant conveys, assigns and transfers the intellectual property rights it has to such materials, information, records and documents to Owner.
- B. Consultant is not entitled to any fees for Owner's use of Instruments of Service unless Owner enters into an agreement with Consultant for Services in connection therewith. Copies of data exchanged by, through, or between Owner and Consultant that may be relied upon are limited to the printed copies. Computer-generated files, disks, or tapes of text, data or graphics that are furnished, are only for the mutual convenience of the parties.

14.07 Reliance

- A. Unless otherwise indicated, Consultant may rely on the accuracy and technical quality of documents provided by Owner or the Owner's consultants. Unless otherwise indicated in this Agreement, Owner may rely on the accuracy and technical quality of documents provided by Consultant or by or through Consultant's subconsultants.
- B. Consultant and Owner acknowledge that remodeling or rehabilitation work may require visual inspection to verify adequacy of "as-built" conditions and that Consultant may not be responsible for those conditions not visible without exposing concealed conditions or destructive investigation. If OAR authorizes opening concealed conditions or destructive testing, Consultant will be responsible for accurately documenting the condition of those areas inspected.
- C. Consultant's review of Contractor's Submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities or for substantiating instructions for installation or performance of equipment or systems designed by the Contractor, all of which remain the responsibility of the Contractor if required by the Contract Documents.
- D. When the Contract Documents require Contractor to provide professional certification of performance characteristics of materials, systems or equipment, Consultant will be entitled to rely on such certification to establish that the materials, systems or equipment will meet the performance criteria required by the Contract Documents unless there is evidence indicating such certification should not reasonably be relied upon.

14.08 Smoking Prohibited

Smoking is prohibited on County property and within 30 feet of County property at all times and Consultant, its employees, agents and subconsultants shall comply with this requirement at all times.

14.09 Equal Opportunity/Non-Discrimination/Unfair Trade Practices

A. Compliance with all Laws and Regulations Including Nondiscrimination, Equal Opportunity, and Wage Theft Prevention

Consultant shall comply with all laws, codes, regulations, rules and orders (collectively, "Regulations") applicable to the goods and/or services to be provided hereunder. Consultant's violation of this provision shall be deemed a material default by Consultant, giving County a right to terminate the contract. Examples of such Regulations include but are not limited to California Occupational Safety and Health Act of 1973, Labor Code section 6300 *et seq.*, and the Fair Packaging and Labeling Act and the standards and regulations issued thereunder. Consultant agrees to indemnify and hold harmless the County for any loss, damage, fine, penalty, or any expense whatsoever as a result of Consultant's failure to comply with the act and any standards or regulations issued there under.

(1) Compliance with All Laws. Consultant shall comply with all applicable Federal, State, and local laws, regulations, rules, and policies (collectively, "Laws"), including but not limited to the non-discrimination, equal opportunity, and wage and hour Laws referenced in the paragraphs below.

(2) Compliance with Non-Discrimination and Equal Opportunity Laws. Consultant shall comply with all applicable Laws concerning nondiscrimination and equal opportunity in employment and contracting, including but not limited to the following: Santa Clara County's policies for contractors on nondiscrimination and equal opportunity; Title VII of the Civil Rights Act of 1964 as amended; Americans with Disabilities Act of 1990; the Age Discrimination in Employment Act of 1967; the Rehabilitation Act of 1973 (Sections 503 and 504); the Equal Pay Act of 1963; California Fair Employment and Housing Act (Government Code sections 12900 *et seq.*); California Labor Code sections 1101, 1102, and 1197.5; and the Genetic Information Nondiscrimination Act of 2008. In addition to the foregoing, Consultant shall not discriminate against any subconsultant, subcontractor, employee, or applicant for employment because of age, race, color, national origin, ancestry, religion, sex, gender identity, gender expression, sexual orientation, mental disability, physical disability, medical condition, political belief, organizational affiliation, or marital status in the recruitment, selection for training (including but not limited to apprenticeship), hiring, employment, assignment, promotion, layoff, rates of pay or other forms of compensation. Nor shall Consultant discriminate in the provision of services provided under this contract because of age, race, color, national origin, ancestry, religion, sex, gender identity, gender expression, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status.

(3) Compliance with Wage and Hour Laws. Consultant shall comply with all applicable wage and hour Laws, which may include but are not limited to, the Federal Fair Labor Standards Act, the California Labor Code, and, if applicable, any local Minimum Wage, Prevailing Wage, or Living Wage laws.

(4) Definitions: For purposes of this Section, the following definitions shall apply. A "Final Judgment, Decision, Determination, or Order" shall mean a judgment, decision, determination, or order (a) which is issued by a court of law, an investigatory government agency authorized by law to enforce an applicable Law, an arbiter, or arbitration panel and (b) for which all appeals have been exhausted or the time period to appeal has expired. For pay equity Laws, relevant investigatory government agencies include the federal Equal Employment Opportunity

Commission, the California Division of Labor Standards Enforcement, and the California Department of Fair Employment and Housing. Violation of a pay equity Law shall mean unlawful discrimination in compensation on the basis of an individual's sex, gender, gender identity, gender expression, sexual orientation, race, color, ethnicity, or national origin under Title VII of the Civil Rights Act of 1964 as amended, the Equal Pay Act of 1963, California Fair Employment and Housing Act, or California Labor Code section 1197.5, as applicable. For wage and hour Laws, relevant investigatory government agencies include the federal Department of Labor, the California Division of Labor Standards Enforcement, and the City of San Jose's Office of Equality Assurance.

(5) Prior Judgments, Decisions or Orders against Contractor. BY SIGNING THIS AGREEMENT, CONSULTANT AFFIRMS THAT IT HAS DISCLOSED ANY FINAL JUDGMENTS, DECISIONS, DETERMINATIONS, OR ORDERS THAT (A) WERE ISSUED IN THE FIVE YEARS PRIOR TO EXECUTING THIS AGREEMENT BY A COURT OR INVESTIGATORY GOVERNMENT AGENCY AND (B) FOUND THAT CONSULTANT VIOLATED AN APPLICABLE WAGE AND HOUR LAW OR PAY EQUITY LAW. CONSULTANT FURTHER AFFIRMS THAT IT HAS SATISFIED AND COMPLIED WITH—OR HAS REACHED AGREEMENT WITH THE COUNTY REGARDING THE MANNER IN WHICH IT WILL SATISFY—ANY SUCH FINAL JUDGMENTS, DECISIONS, DETERMINATIONS, OR ORDERS.

(6) Violations of Wage and Hour Laws or Pay Equity Laws During Term of Contract. If at any time during the term of this Agreement, Consultant receives a Final Judgment, Decision, Determination, or Order rendered against it for violation of an applicable wage and hour Law or pay equity Law, then Consultant shall promptly satisfy and comply with any such Final Judgment, Decision, Determination or Order. Consultant shall inform the Office of the County Executive-Office of Countywide Contracting Management (OCCM) of any relevant Final Judgment, Decision, Determination, or Order against it within 30 days of the Final Judgment, Decision, Determination, or Order becoming final or of learning of the Final Judgment, Decision, Determination, or Order, whichever is later. Consultant shall also provide any documentary evidence of compliance with the Final Judgment, Decision, Determination, or Order within 5 days of satisfying the Final Judgment, Decision, Determination, or Order. Any notice required by this paragraph shall be addressed to the Office of the County Executive-OCCM at 70 W. Hedding Street, East Wing, 11th Floor, San José, CA 95110. Notice provisions in this paragraph are separate from any other notice provisions in this Agreement and, accordingly, only notice provided to the Office of the County Executive-OCCM satisfies the notice requirements in this paragraph.

(7) Access to Records Concerning Compliance with Pay Equity Laws. In addition to and notwithstanding any other provision of this Agreement concerning access to Consultant's records, Consultant shall permit the County and/or its authorized representatives to audit and review records related to compliance with applicable pay equity Laws. Upon the County's request, Consultant shall provide the County with access to any and all facilities and records, including but not limited to financial and employee records, that are related to the purpose of this Section, except where prohibited by federal or state laws, regulations or rules. County's access to such records and facilities shall be permitted at any time during Consultant's normal business hours upon no less than 10 business days' advance notice.

(8) Pay Equity Notification. Consultant shall (1) directly provide each employee working in California and each person applying for a job in California with a written copy of any applicable pay equity Laws, or (2) electronically disseminate the text of applicable pay equity Laws to each California employee and job applicant, either directly or by posting a copy in conspicuous places available to employees and applicants. Such notification shall occur at least once during the term of this Agreement and, if this Agreement is a multi-year Agreement, at least annually thereafter.

(9) Material Breach. Failure to comply with any part of this Section shall constitute a material breach of this Agreement. In the event of such a breach, the County may, in its discretion, exercise any or all remedies available under this Agreement and/or at law. County may, among other things, take any or all of the following actions:

- (i) Suspend or terminate any or all parts of this Agreement.
- (ii) Withhold payment to Consultant until full satisfaction of a Final Judgment, Decision, Determination, or Order.
- (iii) Offer Consultant an opportunity to cure the breach.

(10) Subcontractors. Consultant shall impose all of the requirements set forth in this Section on any subconsultants or subcontractors permitted to perform work under this Agreement. This includes ensuring that any subconsultant or subcontractor receiving a Final Judgment, Decision, Determination, or Order for violation of an applicable wage and hour Law promptly satisfies and complies with such Final Judgment, Decision, Determination, or Order.

B. Unfair or Deceptive Advertising or Trade Practices. Consultant warrants, represents and agrees that it shall comply at all times with all laws and regulations relating to unfair, deceptive or misleading business practices, unfair trade practices, and requirements relating to disclosures, misleading advertising, weights and measures, health, safety, environment, serial and identification numbers, labeling, toxic substances, and/or the requirements of California Proposition 65.

14.10 Contracting Principles.

Consultant agrees to comply with the County's Contracting Principles set forth in the Board Policy Manual. The Contracting Principles require, among other things, that Consultant be a fiscally responsible entity and treat its employees fairly. Consultant is also required to:

- 1. Comply with all applicable federal, state and local rules, regulations and laws;
- 2. Maintain financial records, and make those records available upon request;
- 3. Provide to the County copies of any financial audits that have been completed during the term of the contract; and upon the County's request, provide the County reasonable access, through representatives of the Consultant, to facilities, financial and employee records that are related to the purpose of the contract, except where prohibited by federal or state laws, regulations or rules.

14.11 Budget Contingency

This Agreement is contingent upon the appropriation of sufficient funding by the County for the services covered by this Agreement. Notwithstanding the termination provisions above, if funding is reduced, depleted or deleted by the County for services covered by this Agreement, the County has the option to either terminate this Agreement without notice (except that necessary to transition any projects in the discretion of the County) and with no liability occurring to the County, or to offer an amendment to this Agreement indicating the reduced amount.

14.12 Assignment of Clayton Act, Cartwright Act Claims

Consultant hereby assigns to the County all rights, title, and interest in and to all causes of

action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the Consultant for sale to the County pursuant to this Agreement.

14.13 Authority

Each party executing the Agreement on behalf of such entity represents that he or she is duly authorized to execute and deliver this Agreement on the entity's behalf.

14.14 Notice and Cooperation in Legal Proceedings.

Consultant shall give prompt notice, in writing, to the County of the commencement of any action, lawsuit or other legal proceeding against County or against Consultant with respect to any aspect or part of the Services or this PSA. Consultant shall fully cooperate with County, and shall cause all the Consultant Representatives to fully cooperate, in connection with the prosecution or defense of any such legal proceedings.

14.15 California Public Records Act

All documents, Information and records provided to or made available to County in response to this RFP become the sole and exclusive property of the County. The County is a public agency subject to the disclosure requirements of the California Public Records Act ("CPRA"). If proprietary information is contained in documents submitted by Consultant to County, and Consultant expressly claims that such information falls within one or more CPRA exemptions, Consultant must clearly mark such information "CONFIDENTIAL AND PROPRIETARY," and identify the specific lines containing the confidential information. In the event of a request for such information, the County will make reasonable efforts to provide notice to Consultant prior to such disclosure. If Consultant contends that any documents are exempt from the CPRA and wishes to prevent disclosure, it is required at its own cost, liability and expense to obtain a protective order, injunctive relief or other appropriate remedy from a court of law in Santa Clara County at least two (2) days before the County deadline to respond to the CPRA request. If Consultant fails to obtain such a remedy before the County responds to the CPRA request, County will disclose the requested information and shall not be liable or responsible for such disclosure.

Consultant agrees that it shall defend, indemnify and hold County harmless for, from and against each and every loss, damage (whether general, punitive or otherwise), liability, action, administrative proceedings, claim, demand, lawsuit, cause of action, judgment, settlement amount, mediation cost, attorneys' fees, court cost, litigation, injury, allegation and penalties (the "CPRA Claims") that may or do result from denial by County of a CPRA request for any information arising from any representation, or any action (or inaction), by Consultant or any of the Consultant Representatives.

14.16 Third Party Beneficiaries

Neither this PSA nor any of the PAs confer any rights or remedies upon any person or entity other than the parties. There are no third party beneficiaries to this PSA or any of the PAs.

14.17 Changes to Scope of Services

On County's reasonable request, and prior to making any changes to the Services, Consultant will provide to County for written approval prior to such change any and all documents, information, representations, depictions or clarifications as to the scope of the changes. No changes or modifications will be made to the Services unless first approved in writing by Owner.

14.18 Subconsultants

If any obligation is performed for Consultant through any Consultant employee, subconsultant,

agent, contractor, representative, officer, director, affiliate, parent company or subsidiary (collectively and each, the "Consultant Representatives"), Consultant will remain fully responsible and liable for the performance of all obligations under this PSA and PAs and Consultant will be solely responsible for all payments due to its Consultant Representatives. No contract, subcontract or other agreement entered into by Consultant with any third party in connection with the Services or Deliverables contemplated herein will provide for any indemnity, guarantee or assumption of liability by, or other obligation of, County with respect to such arrangement. None of the Consultant Representatives will be deemed an employee or agent of County or a third party beneficiary for any purposes under this PSA or any of the PAs.

14.19 Submission of PSA/PA; Nonbinding Until Signed

Each of the Parties agree, accept and understand that a submission of this PSA or any PA, or any amendment thereto, for examination, review, editing or signature by either Party, in any form or by electronic or digital means, by email, facsimile or DocuSign, by verbal confirmation or discussion or by any other means of delivery, does not constitute a binding agreement or contract, nor does it constitute a meeting of the minds or a commitment to execute the PSA, or any PA, or any amendment thereto, and this PSA or any such PA, or any amendment thereto, shall only be legally binding and enforceable upon full execution by all Parties. The Parties acknowledge and agree that this PSA, any PAs, and any amendments thereto, are nonbinding on either Party and neither Party may claim any legal rights against the other by reason of the existence of this PSA, any PA, or any amendments thereto, or by reason of actions taken in reliance upon this PSA, any PA, or any amendments thereto (including, but not limited to, any obligation to continue negotiations) unless and until this PSA, the subject PA(s), and any applicable amendments thereto, are fully executed by all of the Parties.

14.20 Obey All Laws

Consultant and the Consultant Representatives will comply strictly with all federal, state, local and County laws, rules and regulations, including County policies.

14.21 Conflict of Interest

- A. Consultant represents and warrants that (1) no official or employee of County has been employed or paid by it or any of the Consultant Representatives to aid in the procuring of this PSA; and, (2) no official or employee of County will be employed or paid by Consultant or any of the Consultant Representatives or otherwise personally benefit from this PSA.
- B. Consultant shall comply, and require its Consultant Representatives to comply, with all applicable (i) requirements governing avoidance of impermissible client conflicts; and (ii) federal, state and local conflict of interest laws and regulations including, without limitation, California Government Code section 1090 et. seq., the California Political Reform Act (California Government Code section 87100 et. seq.) and the regulations of the Fair Political Practices Commission concerning disclosure and disqualification (2 California Code of Regulations section 18700 et. seq.). Failure to do so constitutes a material breach of this PSA and is grounds for immediate termination of this PSA by the County.
- C. In accepting this PSA, Consultant covenants that it and its subconsultants presently has/have no interest, and will not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of this PSA or any of the PAs. Consultant, on its own behalf and on behalf of its subconsultants, further covenants that, in the performance of this PSA, it and its subconsultants will not employ any contractor or person having such an interest. Consultant, including but not limited to the Consultant Representatives, may be subject to the disclosure and disqualification provisions of the California Political Reform Act of 1974 (the "Act"), that (1) requires such persons to disclose economic interests that may foreseeably be materially affected by the work performed under this PSA, and (2) prohibits such persons from making or

participating in making decisions that will foreseeably financially affect such interests.

14.22 If the disclosure provisions of the Political Reform Act are applicable to any individual providing Service under this PSA, Consultant shall, upon execution of this PSA, provide the County with the names, description of individual duties to be performed, and email addresses of all individuals, including but not limited to Consultant’s employees, agents and subcontractors, that could be substantively involved in “making a governmental decision” or “serving in a staff capacity and in that capacity participating in making governmental decisions or performing duties that would be performed by an individual in a designated position,” (2 CCR 18701(a)(2)), as part of Consultant’s Services to the County under this PSA. Consultant shall immediately notify the County of the names and email addresses of any additional individuals later assigned to provide such Services to the County under this PSA in such a capacity. Consultant shall immediately notify the County of the names of individuals working in such a capacity who, during the course of the PSA, end their Services to the County.

If the disclosure provisions of the Political Reform Act are applicable to any individual providing Services under this PSA, Consultant shall ensure that all such individuals identified pursuant to this section understand that they are subject to the Act and shall conform to all requirements of the Act and other laws and regulations listed in subsection (A) including, as required, filing of Statements of Economic Interests within 30 days of commencing service pursuant to this PSA, annually by April 1, and within 30 days of their termination of service pursuant to this PSA.

14.23 Bribery Clause

Consultant certifies, represents and warrants that Consultant and the Consultant Representatives have not been convicted of bribery or attempting to bribe an officer or employee of the County or any federal, state, local or municipal entity, agency, department or public corporation, nor has Consultant or any of the Consultant Representatives made an admission of guilt of such conduct which is a matter of record.

14.24 Entire PSA – Governing Language

This PSA constitutes the entire agreement by and between the parties with respect to the subject matters hereof, and supersedes all prior understandings and agreements relating thereto. This PSA comprises the complete and final expression of the rights, obligations, duties, and undertakings of the parties and sets forth all consideration, covenants, understandings and inducements pertaining thereto. Any translation of this PSA is done for local requirements and in the event of a dispute between the English and any non-English version, the English version of this PSA shall govern. No alteration, amendment, waiver, cancellation or other change in any term or condition of this PSA shall be valid or binding on either party unless the same has been agreed to in writing and signed by both parties. Each party represents and warrants that it has executed this PSA freely, fully intending to be bound by the terms and provisions contained in this PSA.

14.25 Changes or Amendments to PSA

This PSA sets forth all agreements by and between the Parties as to the subject matter herein. No modification or amendment shall be valid unless set forth in writing and signed by Owner and Consultant.

14.26 Paragraph Headings

The headings and captions of the various paragraphs and subparagraphs hereof are for convenience only, and they shall not limit, expand or otherwise affect the construction or interpretation of this PSA.

14.27 Cumulative Remedies

The rights and remedies of the Parties to this PSA, whether pursuant to this PSA or in accordance with law, shall be construed as cumulative, and the exercise of any single right or remedy shall constitute neither a bar to the exercise of nor the waiver of any other available right or remedy.

14.28 Construction

This PSA shall not be construed more strongly against either Party regardless of who is more responsible for its preparation.

14.29 Governing Law, Exclusive Jurisdiction

This PSA, and all the rights and duties of the Parties arising from or relating in any way to the subject matter of this PSA or the transaction(s) contemplated by it, shall be governed by, construed and enforced in accordance with the law of the State of California (excluding any conflict of laws provisions that would refer to and apply the substantive laws of another jurisdiction). Any suit or proceeding relating to this PSA, including arbitration, administrative, settlement and mediation proceedings, shall be brought only in Santa Clara County, California. EACH OF THE PARTIES CONSENT TO THE EXCLUSIVE PERSONAL JURISDICTION AND VENUE OF THE COURTS, STATE AND FEDERAL, LOCATED IN SANTA CLARA COUNTY, CALIFORNIA.

14.30 Use of County’s Name for Commercial Purposes

Consultant shall not use the name or logo of the County or reference any endorsement from the County in any fashion for any purpose, without the prior express written consent of the County.

14.31 Disentanglement

Consultant shall cooperate with County to ensure a smooth transition at the time of termination of this PSA, regardless of the nature or timing of the termination. Consultant shall cooperate with County's efforts to ensure that there is no interruption of work required under the PSA and no adverse impact on the provision of services or County's activities. Consultant also agrees to work with other County Consultants in the provision of services that are similar or the same as covered under this PSA.

14.32 Living Wage

Unless otherwise exempted or prohibited by law or County policy, where applicable, Contractors that contract with the County to provide Direct Services developed pursuant to a formal Request for Proposals process, as defined in County of Santa Clara Ordinance Code Division B36 (“Division B36”) and Board Policy section 5.5.5.5 (“Living Wage Policy”), and their subcontractors, where the contract value is \$100,000 or more (“Direct Services Contract”), must comply with Division B36 and the Living Wage Policy and compensate their employees in accordance with Division B36 and the Living Wage Policy. Compliance and compensation for purposes of this provision includes, but is not limited to, components relating to fair compensation, earned sick leave, paid jury duty, fair workweek, worker retention, fair chance hiring, targeted hiring, local hiring, protection from retaliation, and labor peace. If Consultant and/or a subcontractor or subconsultant violates this provision, the Board of Supervisors or its designee may, at its sole discretion, take responsive actions including, but not limited to, the following:

- a) Suspend, modify, or terminate the Direct Services Contract.
- b) Require the Consultant and/or Subcontractor to comply with an appropriate remediation plan developed by the County.
- c) Waive all or part of Division B36 or the Living Wage Policy.

This provision shall not be construed to limit an employee's rights to bring any legal action for violation of the employee's rights under Division B36 or any other applicable law. Further, this

provision does not confer any rights upon any person or entity other than the Board of Supervisors or its designee to bring any action seeking the cancellation or suspension of a County contract. By entering into this contract, Consultant certifies that it is currently complying with Division B36 and the Living Wage Policy with respect to applicable contracts, and warrants that it will continue to comply with Division B36 and the Living Wage Policy with respect to applicable contracts.

14.33 Beverage Nutritional Criteria

It is the policy of the Board that County funds that are being used to purchase food and beverages on behalf of the County must not be used to purchase beverages that do not meet the County's nutritional beverage criteria. These criteria may be waived in the event of an emergency or in light of medical necessity. The criteria for waiver are set forth in the Administrative Guidelines for this section.

14.34 Time of the Essence

Time is of the essence of this PSA. Failure to comply with any time requirement of this PSA shall constitute a material breach of this PSA.

14.35 Bailee Disclaimer

The Parties understand and agree that the County does not purport to be Consultant's bailee, and is therefore not responsible in any way for any of the Consultant Representatives.

14.36 Incorporation of Exhibits

All exhibits referred to in this PSA and any addenda, appendices, attachments, exhibits, and schedules which may, from time to time, be referred to in any duly executed amendment hereto are by such reference incorporated in this PSA and shall be deemed to be part of this PSA.

14.37 Responsibility for Property

Except as otherwise provided in this PSA, Consultant assumes the risk of and shall be responsible for any loss or damage to any materials, documents or other property delivered to it by the County, and for the security and condition of any and all property both personal or otherwise used or operated by Consultant or any of the Consultant Representatives regardless of location. Consultant shall return County property to the County in the condition in which it was received, except for reasonable wear and tear, upon the expiration or earlier termination of this PSA.

14.38 Liens, Claims, Encumbrances and Title

Consultant represents and warrants that, to the extent payments have been received from the County per the terms of this Agreement, all the Services shall remain and are free and clear of all liens, claims or encumbrances of any kind. If, because of any act or omission of Consultant, or any of the Consultant Representatives, any mechanic's lien or other lien, charge, or order for the payment of money are filed against any portion of County real or personal property, Consultant shall at its own expense, cause the same to be discharged of record within thirty (30) days after written notice from County; and Consultant shall indemnify, defend, and save harmless County from, for and against all resulting costs, liabilities, suits, claims and demands, including legal fees and court costs, resulting.

14.39 Assignment; Subcontracting

Consultant may not assign any of its rights, delegate any of its duties or subcontract any portion of its Services, work or deliverables under this PSA without the prior written consent of Owner. No assignment, delegation, or subcontracting will release Consultant from any of its obligations or alter any of its obligations to be performed under the PSA. Any attempted assignment, delegation or subcontracting in violation of this provision is void.

14.40 Intellectual Property Indemnity

- A. Intellectual Property. Consultant represents, warrants and agrees for the benefit of County that: (1) Any Services performed or Information provided by Consultant, or through or on behalf of Consultant (including the Intellectual Property rights used in, as a part of, with, or in relation thereto) do not and will not violate, misappropriate, or infringe any third party Intellectual Property rights, or privacy, publicity, legal or other rights; and (2) there are no existing or threatened claims or proceedings by any person or entity against Consultant or any of the Consultant Representatives that would impair or prevent Consultant’s ability to fully perform under this PSA, fully provide any of the Services or Information or would create liability for the County or County Representatives. Consultant shall defend, indemnify and hold the County and the County Representatives harmless for, from and against each and every claim, allegation, charge, action, lawsuit and litigation (including but not limited to all judgments, costs, fees, and reasonable attorneys’ fees) by each and every third party alleging that any or all of the Services and Information, in whole or in part, collectively or individually, infringe upon or violate any Intellectual Property rights of any third party or third parties (the “Infringement Claims”). Intellectual Property, as used herein means trademarks, patents, proprietary rights, copyrights and other intellectual property, including international or worldwide rights.
- B. Indemnification Procedures. In connection with any of the Infringement Claims for which County seeks indemnification or defense in accordance with this PSA, County: (a) will give Consultant written notice of any such Infringement Claims within County’s knowledge or reasonable belief as soon as possible; provided, however, that failure to provide such notice shall not relieve Consultant from its liability or obligation hereunder, except to the extent of any actual material prejudice as a direct result of such failure to notify; and (b) will reasonably cooperate with Consultant, at Consultant’s expense, in connection with the defense and settlement of the Infringement Claims. Consultant shall not settle any of the Infringement Claims without the prior written consent of the County Board of Supervisors or their designee, which shall not be unreasonably withheld or delayed. Delay is unreasonable only if such delay precludes a timely settlement of Infringement Claims and results in material adverse impacts to Consultant’s rights or obligations relating to the Infringement Claims. Nothing contained herein shall require County to agree to a settlement that results in an admission of liability or responsibility of or by County and such denial of or delay in settlement shall be deemed reasonable. County, at its cost, may participate in the defense of any Infringement Claims through counsel of its own choosing.

14.41 Debarment

Consultant represents and warrants that it and the Consultant Representatives (collectively Consultant) are not suspended, debarred, excluded, or ineligible for participation in any County, state or federal funded program, or from receiving federal funds as listed in the List of Parties Excluded from Federal Procurement or Non-procurement Programs issued by the Federal General services Administration. Consultant must within thirty (30) calendar days advise the County if, during the Term of this PSA, Consultant becomes suspended, debarred, excluded or ineligible for participation in any federal or state funded program, or from receiving federal funds as listed in the List of Parties Excluded from Federal Procurement or Non-procurement Programs issued by the Federal General services Administration. Consultant shall defend, indemnify, and hold the County harmless for any loss or damage resulting from the conviction, debarment, exclusion or ineligibility of the Consultant.

14.42 Severability

Should any part of the PSA between County and the Consultant be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect the validity of the remainder of the PSA which shall continue in full force and effect, provided that such remainder can, absent the excised portion, be reasonably interpreted to give the effect to the intentions of the parties.

14.43 Ambiguities

Any rule of construction to the effect that ambiguities are to be resolved against the drafting party does not apply in interpreting this PSA. Should any ambiguities or conflicts between contract terms and conditions contained in this PSA and its exhibits exist, the terms and conditions in this PSA shall control over its exhibits.

14.44 Joint and Several

If Consultant consists of more than one person or entity, the obligations of all such persons or entities shall be joint and several. Each provision to be performed by Consultant hereunder shall be deemed to be both a covenant and a condition.

14.45 Other Representations and Warranties

Consultant represents, warrants and covenants that the following is true and correct and shall be true and correct at all times during the Term:

- A. Consultant is in good standing under the laws of the State of California and is authorized to carry on and do business in the State of California as such business is now conducted and to perform its obligations under this PSA.
- B. Consultant has the full right, power, and lawful authority to enter into this PSA and its execution and delivery of this PSA by it or on its behalf has been fully authorized by all requisite actions.
- C. Consultant has provided County with true and correct copies of documentation reasonably acceptable requested by acceptable to County designating the parties authorized to execute this PSA on its behalf.
- D. Consultant's execution, delivery and performance of its obligations under this PSA will not violate any applicable laws, regulations, or rules nor to its knowledge after due inquiry, constitute a breach or default under any contract, agreement, or instrument to which it is a party, or any judicial or regulatory decree or order to which it is a party or by which it is bound.
- E. Consultant has not made an assignment for the benefit of creditors, filed a petition in bankruptcy, been adjudicated insolvent or bankrupt, petitioned a court for the appointment of any receiver of or trustee for it or any substantial part of its property, or commenced any proceeding relating it under any reorganization, arrangement, readjustment of debt, dissolution, or liquidation law or statute of any jurisdiction, whether now or later in effect. There has not been commenced nor is there pending against it any proceeding of the nature described in the first sentence of this subsection. No order for relief has been entered with respect to it under the Federal Bankruptcy Code.
- F. All documents, instruments, and other information delivered by Consultant to the County pursuant to this PSA are true, accurate, correct and complete to the best of Consultant's knowledge unless otherwise indicated in writing delivered concurrently with such delivery. County shall be entitled to rely upon the accuracy and completeness of the information, surveys, and reports provided by Consultant or any of Consultant's employees, agents, subcontractors or consultants.

- G. This PSA, when executed by it and delivered, shall constitute its legal, valid and binding obligation. No consent, approval, or authorization of any third person to its execution, delivery, and performance of this PSA is required, other than consents, approvals, and authorizations which have already been unconditionally given.
- H. Upon its receipt of knowledge that any fact or condition which would cause any warranty or representation made by it pursuant to this Section is not true, promptly give written notice of such fact or conditions to the County. Each of the foregoing items (a) to (h), inclusive shall be deemed to be ongoing representations, warranties and covenants and shall survive termination, expiration or cancellation of this PSA.

14.46 County Reliance and Consequential Damages

Acceptance by County of the Services (in whole or in part) performed under this PSA does not operate as a release of the Consultant from such professional responsibility for the Services performed or provided. It is further understood and agreed that Consultant is apprised of the scope(s) of the work to be performed under this PSA and Consultant agrees that the work can and shall be performed in a fully competent manner.

Consultant recognizes that the timely and competent completion of the Services is an important inducement to enter into this PSA, and that the failure of Consultant to timely and competently perform may result in foreseeable and known substantial negative financial consequences to the County.

14.47 Further Assurances

Consultant covenants and agrees that it will execute such other and further instruments and documents as are or may become necessary or convenient to effectuate and carry out this PSA.

14.48 OFAC

Consultant represents and warrants to County that: (i) Consultant and the Consultant Representatives are not acting, and shall not act, directly or indirectly, for or on behalf of any person, group, entity, or nation named by any Executive Order or the United States Treasury Department as a terrorist, "Specially Designated National and Blocked Person," or other banned or blocked person, entity, nation, or transaction pursuant to any law, order, rule or regulation enforced or administered by the federal Office of Foreign Assets Control; and (ii) Consultant and the Consultant Representatives are not engaged in the Project or entering into this PSA, directly or indirectly, on behalf of, or instigating or facilitating this transaction, directly or indirectly, on behalf of any such person, group, entity, or nation.

14.49 Representation by Counsel

The parties to this PSA were represented by their respective counsel in the negotiation and execution of this PSA. The parties are aware of the provisions set forth in California Civil Code section 1717 and intend this paragraph of the PSA to meet said statutory requirements so that the reference to attorneys' fees in the Insurance provisions and exhibits of this PSA, applies only in the indemnification context in such provisions and exhibits.

14.50 Compliance with Laws.

Consultant and each of the Consultant Representatives shall comply with all laws, codes, regulations, rules and orders (collectively, "Regulations") applicable to the Services and the Deliverables to be provided hereunder. Any violation of this shall be deemed a material default by Consultant, giving County a right to terminate the PSA or any PA in whole or in part. Examples of such Regulations include but are not limited to California Occupational Safety and Health Act of 1973, Labor Code section 6300 *et seq.* and the standards and regulations issued there under.

14.51 Health Insurance Portability and Accountability (HIPAA) and Patient Privacy Law Compliance

- A. If Consultant is providing services at one or more Santa Clara County medical care facilities, including but not limited to the Santa Clara Valley Medical Center (SCVMC), then Consultant and each of the Consultant Representatives may have direct or incidental contact with patients or Protected Health Information ("PHI") while providing services under this Agreement. Consultant and each of the Consultant Representatives shall maintain the confidentiality of any and all patient and employee information and all PHI they have direct or incidental contact with while providing services under this Agreement.
- B. Consultant and each of the Consultant Representatives shall comply with all applicable federal, state and local laws, rules, regulations ("Laws") that are in effect at the inception of this Agreement and that become effective during the term of Agreement, including without limitations Civil Code Section 56.10 et seq. and the Health Insurance Portability and Accountability Act (42 USC sections 1320d et. seq.).
- C. If, as part of the scope of the services provided herein, Consultant or any of the Consultant Representatives will have direct contact with patients or PHI, such individuals are required to sign a confidentiality agreement developed by County specifically for the purpose of HIPAA compliance, patient privacy and/or protection of PHI.
- D. Consultant shall indemnify, defend and hold harmless the County for any loss or damage resulting from a violation of this provision or any local, state or federal laws related to patient privacy.

14.52 Proof of Immunization

- A. Consultant and all its personnel, including subconsultants, agents and employees, that are providing services on site at a Santa Clara County medical care facility, including SCVMC, must provide proof of immunizations including rubella, mumps, and varicella titers, live vaccine or disease; a documented TB test; and a Hepatitis B vaccination or declination form, prior to starting work on any such site.
- B. Costs of documentation and additional immunizations, if needed, are the responsibility of the Consultant.

14.53 Wage Theft Prevention

- A. Compliance with Wage and Hour Laws: Consultant, and any subcontractor it employs to complete work under this Agreement, must comply with all applicable federal, state, and local wage and hour laws. Applicable laws may include, but are not limited to, the Federal Fair Labor Standards Act, the California Labor Code, and any local Minimum Wage Ordinance or Living Wage Ordinance.
- B. Final Judgments, Decisions, and Orders: For purposes of this Section, a "final judgment, decision, or order" refers to one for which all appeals have been exhausted. Relevant investigatory government agencies include: the federal Department of Labor, the California Division of Labor Standards Enforcement, a local enforcement agency, or any other government entity tasked with the investigation and enforcement of wage and hour laws.
- C. Prior Judgments against Consultant and/or its subcontractors: BY SIGNING THIS AGREEMENT, CONSULTANT AFFIRMS THAT IT HAS DISCLOSED ANY FINAL JUDGMENTS, DECISIONS, OR ORDERS FROM A COURT OR INVESTIGATORY GOVERNMENT AGENCY FINDING—IN THE FIVE YEARS PRIOR TO EXECUTING THIS AGREEMENT—THAT CONSULTANT OR ITS SUBCONSULTANT(S) HAS VIOLATED ANY APPLICABLE WAGE AND HOUR LAWS. CONSULTANT FURTHER AFFIRMS THAT IT OR ITS SUBCONCONSULTANT (S) HAS SATISFIED AND COMPLIED WITH—OR HAS REACHED AGREEMENT WITH THE COUNTY REGARDING THE MANNER IN WHICH IT WILL SATISFY—ANY SUCH JUDGMENTS, DECISIONS, OR ORDERS.
- D. Judgments During Term of PSA: If at any time during the term of this Agreement, a court or investigatory government agency issues a final judgment, decision, or order finding that

Consultant or any subcontractor it employs to perform work under this Agreement has violated any applicable wage and hour law, or Consultant learns of such a judgment, decision, or order that was not previously disclosed, Consultant must inform the Office of the County Executive-Office of Countywide Contracting Management (OCCM), no more than 15 days after the judgment, decision, or order becomes final or of learning of the final judgment, decision, or order. Consultant and its subconsultants shall promptly satisfy and comply with any such judgment, decision, or order, and shall provide the Office of the County Executive-OCCM with documentary evidence of compliance with the final judgment, decision, or order within 5 days of satisfying the final judgment, decision, or order. The County reserves the right to require Consultant to enter into an agreement with the County regarding the manner in which any such final judgment, decision, or order will be satisfied.

- E. County's Right to Withhold Payment: Where Consultant or any subconsultant it employs to perform work under this Agreement has been found in violation of any applicable wage and hour law by a final judgment, decision, or order of a court or government agency, the County reserves the right to withhold payment to Consultant until such judgment, decision, or order has been satisfied in full.
- F. Material Breach: Failure to comply with any part of this Section constitutes a material breach of this Agreement. Such breach may serve as a basis for termination of this Agreement and/or any other remedies available under this Agreement and/or law.
- G. Notice to County Related to Wage Theft Prevention: Notice provided to the Office of the County Executive as required under this Section shall be addressed to: Office of the County Executive—OCCM; 70 West Hedding Street; East Wing, 11th Floor; San José, CA 95110. The Notice provisions of this Section are separate from any other notice provisions in this Agreement and, accordingly, only notice provided to the above address satisfies the notice requirements in this Section.

14.54 Survival

Those sections and provisions of this PSA that by their nature should survive termination, cancellation or expiration of this PSA, shall so survive, including but not limited to Parts 1, 8, 9, 10, 12, 13, 14, 15, 16, 17 and 18 inclusive, and each Subpart and Subsection contained therein.

PART 15 - NOTICES

All notices will be deemed to have been given when made in writing and delivered or mailed to the representatives of Owner and Consultant at their respective addresses as shown in Exhibit G, "Notices."

PART 16 - LIMITS OF AGREEMENT

- A. This PSA and all fully executed Project Agreements constitute the entire and integrated agreement between Owner and Consultant and supersede all prior negotiations, representations, or agreements, either written or oral, preceding this PSA or any Project Agreement.
- B. This PSA including Project Agreements may be amended only by written agreement signed by Owner and Consultant or as otherwise authorized herein.

PART 17 - EXHIBITS

The following listed Exhibits referred to herein are incorporated in this PSA as though set forth in full:

1. Exhibit A, "Consultant's Hourly Rate Schedule"

- 2. Exhibit B, "Consultant's Staff & Subconsultants"
- 3. Exhibit C, "Sample Project Agreement"
- 4. Exhibit D, Sample "Attachments 1, 2, 3 & 4 to Sample Project Agreement"
- 5. Exhibit E, "Sample Invoice Format"
- 6. Exhibit F, "Indemnification & Insurance Requirements"
- 7. Exhibit G, "Notices"
- 8. Exhibit H, "Nondisclosure Agreement" (To be signed at same time PSA is signed).

PART 18 - COUNTERPARTS; ELECTRONIC/DIGITAL SIGNATURES:

This Profession Service Agreement (PSA), any of the Project Agreements (PA), and any amendments to either, may each be executed in counterparts, and all of such counterparts so executed together shall be deemed to constitute one and the same agreement, and each such counterpart shall be deemed to be an original provided all of the parties have fully executed the PSA, PA, or amendment to either. Unless otherwise prohibited by law or County policy, the parties agree that an electronic copy of a signed PSA, PA, or amendment, or an electronically signed PSA, PA, or amendment, has the same force and legal effect as a contract executed with an original ink signature. The term "electronic copy of a signed contract" refers to a transmission by facsimile, electronic mail, or other electronic means of a copy of an original signed PSA, PA, or amendment in a portable document format. The term "electronically signed PSA, PA, or amendment" means a PSA, PA, or amendment that is executed by applying an electronic signature using technology approved by the County.

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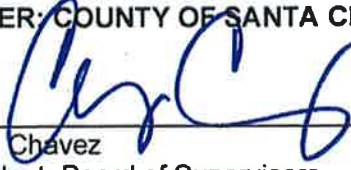
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IN WITNESS WHEREOF, the Parties hereto have executed this Professional Service Agreement on the date signed by the Board of Supervisors.

OWNER: COUNTY OF SANTA CLARA:


Cindy Chavez
President, Board of Supervisors

Date: SEP 22 2020

CONSULTANT: 4LEAF, INC.

DocuSigned by:

Kevin Duggan
President / Principal-in-Charge

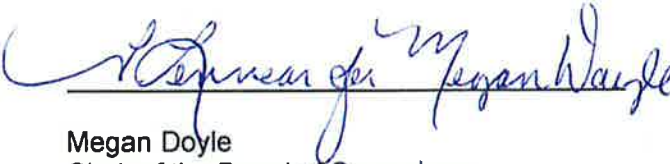
Date: 9/11/2020

License No.: C2272268

ATTEST:

~~Signed and certified that a copy of this document has been delivered by electronic or other means to the President, Board of Supervisors.~~

If this Agreement is signed outside of the State of California, a notarized acknowledgement is required.


Megan Doyle
Clerk of the Board of Supervisors

APPROVED AS TO FORM AND LEGALITY:

DocuSigned by:

John A. Castro
Deputy County Counsel

**EXHIBIT A
CONSULTANT'S AND SUBCONSULTANT'S HOURLY RATES**

The following rates, which include all overhead, administrative costs, and profit, will be used in arriving at fees for hourly-rate Services. Any rate increases approved by the OAR shall take effect on the yearly anniversary of the Board of Supervisors' approval of the PSA.

Modifications to Consultant's and Subconsultants' Hourly Rate Schedules to include the rates identified in Exhibit A, and the addition of personnel not identified in Exhibit A, will be negotiated by the parties using as a benchmark the prevailing rates/increase for similar Consulting Services in the SF Bay Area, and are subject to approval as an amendment to the PSA.

Reimbursable: County will pay only pre-approved reimbursable expenses at costs. No mark-ups are allowed.

RATE SCHEDULE:

4LEAF Billable Hourly Rates/ Fees

Billable hourly rates/Fees indicated in the table below are a not to exceed amount. The County reserves the right to negotiate such rate on a project by project basis. All rates/fess are to be firm-fix for the term of the Agreement.

Plan Review California Licensed Consultant	Billable Hourly Rate
Professional Engineer	\$190
Civil Engineer	\$190
Structural Engineer	\$210
Land Surveyor	\$210
Electrical Engineer	\$210
Plumbing Engineer	\$190
Mechanical Engineer	\$190
Geotechnical Engineer	\$275
Project Management/Office Engineer	\$225
Expert Witness	\$500
Project Management/Field Engineering	\$225

Plan Review Certified Consultant	Billable Hourly Rate
Fire Plans Examiner	\$210
Structural Plans Examiner	\$210
LEED	\$190
Certified Access Specialist (CASp)	\$210
Electrical Plans Examiner	\$140
Plumbing Plans Examiner	\$140
Mechanical Plans Examiner	\$140

Building Inspectors with ICC Certifications	Billable Hourly Rate
Building Inspector	\$130
Electrical Inspector	\$130
Plumbing Inspector	\$130
Mechanical Inspector	\$130
Fire Inspector	\$150
Building Plans Examiner	\$150
California Department State Architect (DSA)	\$210
Certified Access Specialist (CASp)	\$210
Permit Technician	\$85

Inspection Services	Billable Hourly Rate
<i>Residential Jurisdiction Combo:</i>	
Construction and/or Public Works (excluding DSA & OSHPD)	\$160
Inspector of Record Services (including DSA & OSHPD)	\$190
Special Inspections per CTS Fee Schedule +10% markup	Subconsultant

Inspection Services	Billable Hourly Rate
Off-site work	\$130
Staff Augmentation	\$130

BASIS OF CHARGES

Rates are inclusive of “tools of the trade” such as forms, telephones, and consumables.

- All invoicing will be submitted monthly.
- Staff Augmentation work (excluding plan review) is subject to 4-hour minimum charges unless stated otherwise. Services billed in 4-hour increments.
- New Construction of Residential and Commercial plan reviews will be done in 10 business days or less and 5 business days or less for re-checks. Residential Additions, Commercial Additions, and Small Commercial/Non-Residential Remodels/Tenant Improvements plan reviews will be done in 7 business days or less and 5 business days or less for re-checks. This is not inclusive of holidays or the day of the pick-up of plans.
- Plan review of deferred submittals & revisions will be billed at the hourly rates listed in the Compensation Schedule.
- All plan review services will be subject to a two (2) hour minimum charge.
- 4LEAF assumes that these rates reflect the contract period.
- Overtime and Premium time will be charged as follows:
 - *Regular time (work begun after 5AM or before 4PM)* *1 x hourly rate*
 - *Nighttime (work begun after 4PM or before 5AM)* *1.125 x hourly rate*
 - *Overtime (over 8-hour M-F or Saturdays)* *1.5 x hourly rate*
 - *Overtime (over 8 hours Sat or 1st 8-hour Sun)* *2 x hourly rate*
 - *Overtime (over 8 hours Sun or Holidays)* *3 x hourly rate*
- Overtime will only be billed with prior authorization of designated County Project Manager.
- All work with less than 8 hours rest between shifts will be charged the appropriate overtime rate.
- Mileage driven during the course of Inspections will be charged at cost plus 20%.
- Payment due on receipt. ~~All payments over 30 days will be assessed a 1.5% interest charge.~~
- ~~• Client shall pay attorneys’ fees, or other costs incurred in collecting delinquent amounts.~~
- Client agrees that 4LEAF’s liability will be limited to the value of services provided.
- Subconsultants will be billed at the published rates plus 10%.

BASIC OF CHARGES

CTS

INSPECTIONS, ENGINEERING & SPECIAL SERVICES

	Standard Rate/Hour	Discounted Rate/Hour
^ FIELD INSPECTION AND LABORATORY SERVICE		
Steel	\$218.00	\$112.00
Nondestructive - UT, MT, PT	\$223.00	\$112.00
Steel Visual/UT Combination	\$223.00	\$112.00
Concrete ACI	\$218.00	\$112.00
Concrete ICC	\$218.00	\$112.00
Masonry	\$218.00	\$112.00
Fireproofing	\$218.00	\$112.00
Shear Wall Nailing/Framing/Hold Downs	\$218.00	\$112.00
Soil Technician w/Nuclear Gauge and/or Sand Cone (<i>portal-to-portal</i>)	\$218.00	\$120.00
Asphalt Technician (<i>portal-to-portal</i>)	\$218.00	\$120.00
Shoring/Soldier Piers	\$218.00	\$112.00
Roofing & Waterproofing	\$218.00	\$180.00
Multi-Disciplined Inspector	\$218.00	\$180.00
Inspector Requiring G1 Pay Grade	\$253.00	\$180.00
Specialty Inspector or Where Formal Certification is Required	\$218.00	\$180.00
Field Inspector with Special Enhancement	\$218.00	\$180.00
Laboratory Technician	\$218.00	\$112.00
Technician Typist	\$218.00	\$112.00
**PROFESSIONAL ENGINEERING SERVICES		
Principal Engineer (Civil/Structural)	\$353.00	\$225.00
Geotechnical Engineer	\$303.00	\$225.00
Professional Geologist	\$290.00	\$215.00
Consulting Engineer (Civil/Structural)	\$273.00	\$200.00
Associate Engineer, Licensed	\$248.00	\$200.00
Project Manager	\$218.00	\$145.00
Staff Engineer	\$218.00	\$145.00
Field Supervision	\$193.00	\$145.00
ASNT Level III	\$258.00	\$200.00
Drafting	\$153.00	\$115.00
Quality Control Manager	QOR	
SPECIAL SERVICES		
Portable and Mobile Laboratories, NDT and Soils	QOR	
* Epoxy Bolt/Expansion Anchor - Installation Observation	\$218.00	\$112.00
* Epoxy Bolt/Expansion Anchor Proof Load Testing (<i>portal-to-portal</i>)	\$218.00	\$112.00
* Coring, 1 Person (including equipment) (<i>portal-to-portal</i>)	\$279.00	\$210.00
* Coring, 2 Persons (including equipment) (<i>portal-to-portal</i>)	\$443.00	\$350.00
* Asphalt Coring (<i>portal-to-portal</i>)	\$303.00	\$275.00
Project Research	QOR	
Ultrasonic Testing for Non-Metallic Materials	QOR	
Pavement Rehabilitation Analysis Using Deflections	QOR	
Roof Moisture Survey	QOR	
Soil Drilling Equipment	QOR	
Geotechnical Site Investigations/Foundation Reports	QOR	
Pachometer, Schmidt Hammer, Windsor Probe, Skidmore - Equipment Fee \$115/Day (<i>portal-to-portal</i>)	\$288.00	
Floor Flatness Testing FF/FL - Equipment Fee \$115/Day (<i>portal-to-portal</i>)	\$288.00	
Measuring Moisture Vapor Emission Rate (Calcium Chloride) - \$55/Kit (<i>portal-to-portal</i>)	\$288.00	
Relative Humidity Testing - \$75/Kit (<i>portal-to-portal</i>)	\$288.00	
Ferrosan - Equipment Fee \$115/day (<i>portal-to-portal</i>)	\$288.00	
GPR - Equipment Fee \$115/day (<i>portal-to-portal</i>)	\$343.00	
Administration, Secretarial, Special Projects, Notary, Certified Payroll	\$163.00	\$100.00
Concrete/Grout/Mortar Mix Design Review (less than 48 hours notice - \$500)	\$345.00	\$300.00
Welding Procedure Review (less than 48 hours notice - \$500)	\$345.00	\$300.00
Welder Qualification Test Record (WQTR)	\$250.00	
DSA Interim Reports	\$178.00	
Geotechnical Pad Letter (less than 48 hours notice - \$550)	\$345.00	\$300.00
Final Letter (less than 48 hours notice - \$550)	\$345.00	\$300.00
EXPERT WITNESS TESTIMONY		
Court appearance, per day	\$2,420.00	
Court appearance, per half day	\$1,210.00	

* Field inspection and laboratory technician services will be billed in accordance with minimums shown on Basis of Charges.

**Professional engineering services will be billed in two hour increments.

GENERAL

Fees for tests and inspection include cost of technician, normal equipment and regular reports. Engineering services will be charged at applicable rates and will require travel and mileage charges for equipment transport and storage per code (portal to portal) from the nearest CTS laboratory. Soils testing with nuclear gauge and/or sand cone equipment and inspections requiring equipment will require applicable travel and mileage charges for equipment transport and storage per code (portal-to-portal) from the nearest CTS laboratory. Fees for special projects, services overseas, or elsewhere in the United States, will be quoted on request. With prior notification to Client; charges are subject to change at any time. Construction Testing Services reserves the right to adjust the rates quoted in this contract based upon any Union or prevailing wage increases and/or changes in any industry requirements.

MINIMUM HOURLY CHARGES – INSPECTION

Technician personnel and the following minimum charges are contractual commitment:

One-half day or less	4 Hours
Over one-half day	8 Hours
Show-up time (less than 2 hours notice = 4 hour charge)	2 Hours

WORKING HOURS AND PREMIUM TIME

Regular workday is the first 8 hours between 6:00 am and 6:00 pm Monday through Friday. Premium time is as follows:

Overtime, Weekdays and Saturdays (first 8 hours)	1.5 x quoted hourly rate
Overtime Saturdays (over 8 hours) and Sundays (first 8 hours)	2 x quoted hourly rate
Overtime Sundays (over 8 hours) and Holidays	3 x quoted hourly rate
Shift differential, swing and graveyard - (Work performed between 2:00 pm and 4:00 am)	12.5%/hour additional to base or quoted rate.

MISCELLANEOUS CHARGES - Only Where Applicable

Notary Services Fee	\$40.00/each	
Facsimile Charges. Plus \$1.00/page (n/c for cover page)	\$7.00/minimum	
Wireless Router/Data Card for Jobsite Internet	\$135.00/day	
iPad Monthly Rental Fee	\$100.00/month	
Electronic Reporting Fees/Subscriptions (PlanGrid, BIM, etc.)	At Cost	
Parking Fees	At Cost	
Air Travel	Cost Plus 10%	
Outside Services	Cost Plus 20%	
Subsistence (per union contract)	\$130.00/day	
Mileage	Standard Federal Rate	
Sample Pickup	\$26.00/each	\$18.00/each
Weekend Sample Pickup	\$105.00/each	
Project Administration	12% of Monthly Invoice	Included in Rates
Samples Made by Others: Concrete Cylinders	\$130 + Test	
Samples Made by Others: All Other Tests	\$55.00 + Test	
Laboratory Sample Witness Fee	\$130.00	
Laboratory Sample Storage Fee (per sample)	\$120.00	
EZ Cure Boxes (Thermostatically Controlled Curing Boxes)	QOR	
Returned Check Fee	\$150.00	

TESTS

Testing fees shown include normal time for performing test. Samples requiring special preparation will be charged at the laboratory technician rate. Fees for tests not listed will be quoted upon request. There will be a minimum charge of \$100.00 for any engineering report. Please note some tests maybe tested by subconsultants. Samples delivered to the laboratory after 3:00pm or samples needing results within 24 hours will incur a 50% mark-up.

CONCRETE AND MASONRY TESTS

		Standard Rate/Each	Discounted Rate/Each
CONCRETE			
Compressive Strength of Cylindrical Concrete Specimens (6x12)	ASTM C39	\$84.00	\$37.00
Compressive Strength of Cylindrical Concrete Specimens (4x8)	ASTM C39	\$84.00	\$37.00
Compressive Strength of Cylindrical Concrete Specimens (Over 8000 PSI)	ASTM C39	\$143.00	
Cylinder molds. 6" x 12" and 4" x 8"	ASTM C470	\$72.00	
Compressive Strength of Lightweight Insulating Concrete	ASTM C495	\$94.00	
Obtaining and Testing Sawed Beams and Drilled Cores of Concrete (Cores)	ASTM C42	\$121.00	
Flexural Toughness of Fiber Reinforced Concrete (Round Panel)	ASTM C1550	\$440.00	
Flexural Strength of Concrete (Using Simple Beam with Third-Point Loading)	ASTM C78	\$308.00	
Flex Beams per Caltrans Test Methods	CT523 and CT524	\$308.00	
Length Change of Hardened Hydraulic-Cement Mortar and Concrete (Shrinkage, 1 Sample)	ASTM C157	\$150.00	
Shotcrete Nozzleman Qualification Letter (Per Nozzleman, Per Position)	ACI 506, ASTM C42 and C1140	\$440.00	\$300.00
Shotcrete Pre-Qualification Cores (Compression and Visual)	ACI 506, ASTM C42 and C1140	\$110.00	\$75.00
Shotcrete Production Cores	ASTM C1140	\$140.00	\$75.00
Coefficient of Thermal Expansion	AASHTO T336	\$535.00	
Determining Density of Structural Lightweight Concrete (Cylinders)	ASTM C567	\$405.00	
Standard Specification for Concrete Made by Volumetric Batching and Mixing	ASTM C685	\$965.00	
Cement Quality Sampling	CBC 2010	\$667.00	
Physical Testing of Gypsum, Gypsum Plasters and Gypsum Concrete	ASTM C472	\$55.00	
Splitting Tensile Strength of Cylindrical Concrete Specimens	ASTM C496	\$253.00	
Static Modulus of Elasticity and Poisson's Ratio of Concrete in Compression	ASTM C469	\$215.00	
Grab Sample, Sealing and Storing in a Humidity and Temperature Controlled Room	CBC	\$150.00	
Density of Hydraulic Cement	ASTM C188	\$195.00	
Testing of Controlled Low Strength Material (CLSM) Test Cylinders	ASTM D4832	\$150.00	
GFRC Pull Test	PCI	\$374.00	
GFRC Flexural Test	PCI	\$374.00	
Foaming Agents for Use in Producing Cellular Concrete Using Preformed Foam (Cell-Crete)	ASTM C796	\$525.00	
MASONRY			
Compressive Testing of Grout (Masonry)	ASTM C1019	\$124.00	\$47.00
Compressive Strength of Hydraulic Cement Mortars Using 2" Cube Specimens	ASTM C109	\$124.00	\$47.00
Compressive Strength of Masonry Prisms	ASTM C1314	\$187.00	\$115.00
Testing Concrete Masonry Units and Related Units (Core Compression)	CBC 2105A.4	\$187.00	\$115.00
Compressive Strength of Molded Masonry Mortar Cylinders and Cubes (2" Sample)	ASTM C780 A7.6	\$124.00	\$47.00
Testing Concrete Masonry Units (CMU) and Related Units (Full Unit)	ASTM C140	\$184.00	
Linear Drying Shrinkage of Concrete Masonry Units (Per Unit)	ASTM C426	\$270.00	
Masonry Core Shear Testing	CBC 2105A.4	\$270.00	
Testing Concrete Masonry Units (Absorption, Moisture Content, Unit Weight)	ASTM C140	\$340.00	
Brick and Clay Tile (modulus of rupture, compression, saturation coefficient, suction rate, efflorescence)*	ASTM C67	\$1,000.00	
Mortar Molds. 2" x 4". Single Use		\$121.00	
Mortar or Grout, Stored and Cured, Not Tested (Including Mold)		\$121.00	
AGGREGATES (SOILS AND CONCRETE)			
Determining Sieve Analysis of Fine and Coarse Aggregates (Coarse Only)	CT202/ASTM C136	\$220.00	\$150.00
Sieve Analysis of Fine and Coarse Aggregates (Fine Only)	CT202/ASTM C136	\$295.00	\$175.00
Sieve Analysis of Fine and Coarse Aggregates (Wash Included)	CT202/ASTM C117	\$370.00	\$225.00
Sieve Analysis of Fine and Coarse Aggregates (200 Wash Only)	ASTM C117/D1140	\$220.00	\$150.00
Standard Test Methods for Particle-Size Distribution (Gradation) of Soils Using Sieve Analysis	ASTM D6913	\$350.00	
Evaluating Cleanness of Coarse Aggregate	CT227	\$370.00	
Soundness of Aggregates by Use of Sodium Sulfate or Magnesium Sulfate	ASTM C88/CT214	\$275.00	
Unit Weight of Aggregate	CT212	\$158.00	
Clay Lumps and Friable Particles in Aggregates	ASTM C142	\$215.00	
Flat Particles, Elongated Particles or Flat and Elongated Particles in Coarse Aggregate	ASTM D4791/CT235	\$370.00	
Organic Impurities in Fine Aggregates for Concrete	CT213/ASTM C40	\$336.00	
Density, Relative Density(Specific Gravity), and Absorption of Coarse Aggregate	ASTM C127/CT206	\$336.00	
Density, Relative Density(Specific Gravity), and Absorption of Fine Aggregate	ASTM C128/CT207	\$336.00	
Standard Test Methods for Specific Gravity of Soil Solids by Water Pycnometer	ASTM D854	\$336.00	
Resistance to Degradation of Small Size Coarse Aggregate by Abrasion and Impact in the Los Angeles Machine	ASTM C131(535) and C211	\$535.00	\$350.00
Percentage of Crushed Particles/Standard Test Method for Determining the Percentage of Fractured Particles in Coarse Aggregate	ASTM D5821/CT205	\$405.00	
Uncompacted Void Content of Fine Aggregate (as Influenced by Particle Shape, Surface Texture, and Grading)	ASTM C1252/AASHTO T304A	\$405.00	
Sand Equivalent Value of Soils and Fine Aggregate	ASTM D2419/CT217	\$270.00	
Durability Index (Fine)	ASTM D3744/CT229	\$405.00	\$300.00
Durability Index (Coarse)	ASTM D3744/CT229	\$405.00	\$300.00
Durability Index (Fine and Coarse)	ASTM D 3744/CT229	\$405.00	\$300.00
Lightweight Particles in Aggregate	ASTM C123/AASHTO T113	QOR	
Resistance of Rock to Wetting and Drying	CRD-C169	\$590.00	

SOILS, AGGREGATE, ASPHALTIC CONCRETE SERVICES & TESTS

		Standard Rate/Each	Discounted Rate/Each
SOILS			
Direct Shear Test of Soils Under Consolidated Drained Conditions	ASTM D3080	\$535.00	
Consolidated Undrained Triaxial Compression Test for Cohesive Soils (per point)	ASTM D4767	\$1,000.00	
Consolidated Undrained Triaxial Compression Test for Cohesive Soils (added points)	ASTM D4767	\$200.00	
Consolidated Undrained Triaxial Compression Test for Cohesive Soils (single point)	ASTM D4767	\$325.00	
One-Dimensional Consolidation Properties of Soils Using Incremental Loading	ASTM D2435	\$300.00	
Caltrans Corrosivity Package		\$505.00	
Determining Field and Laboratory Resistivity and pH Measurements for Soil and Water	CT643	QOR	
Soils and Waters for Sulfate Content	CT417	QOR	
Soils and Waters for Chloride Content	CT422	QOR	
Particle-Size Analysis of Soils (with Hydrometer)	ASTM D422	\$590.00	
Pore Water Extraction and Determination of the Soluble Salt Content of Soils by Refractometer	ASTM D4542	\$625.00	
Standard Test Method for Particle-Size Analysis of Soils (without Hydrometer)	ASTM D422	\$535.00	
Liquid Limit, Plastic Limit, and Plasticity Index of Soils	ASTM D4318/CT204	\$535.00	\$250.00
Laboratory Compaction Characteristics of Soil Using Modified/Standard Effort	ASTM D1557/D698	\$502.00	\$275.00
Hydrometer Only	ASTM D422	\$535.00	
pH of Soils	ASTM D4972	\$467.00	
Relative Compaction of Untreated and Treated Soils and Aggregates	CT216	\$590.00	
Determining the Resistance "R" Value of Treated and Untreated Bases, Subbases, and Basement Soils by the Stabilometer	ASTM D2844/CT301	\$590.00	\$375.00
Laboratory Determination of Water(*moisture) Content of Soil and Rock by Mass	ASTM D2216/CT226	\$150.00	
Density of Soil in Place by the Drive-Cylinder Method	D2937	\$116.00	
Expansion Index of Soils	ASTM D4829	\$99.00	
Hydraulic Conductivity of Saturated Porous Materials Using a Flexible Wall Permeameter (Permeability)	ASTM D5084/CT220	\$550.00	
Lab Compaction Characteristics of Soil 1 Point Proctor (Check Point)	ASTM D698/D1557	\$337.00	
Maximum Index Density and Unit Weight of Soils Using a Vibratory Table	ASTM D4253	\$285.00	
Minimum Index Density and Unit Weight of Soils and Calculation of Relative Density	ASTM D4254	\$285.00	
Density of Hydraulic Cement	ASTM C188	\$253.00	
Volatile Organic Content	EPA 8260B	QOR	
Semi Volatile Organics by GC/MS (Basic Target List)	EPA 8270C	QOR	
Total Organic Carbon	ASTM 2974/EPA 5310Bm	QOR	
ICP Metals Concentration	EPA 6020 - CAM/CCR 17	QOR	
Total Extractable Petroleum Hydrocarbons: TPH, MTBE, Benzene, Toluene, Ethylbenzene, Zylenes, %SS	EPA 8015B	QOR	
ICP Metals Concentration	EPA 6020	QOR	
pH	EPA 9045D	\$535.00	
Sequential Batch Extraction of Waste with Acidic Extraction Fluid	ASTM D5284	QOR	
Chromium Soluble	EPA 7196A	QOR	
Moisture, Ash and Organic Matter of Peat and Other Organic Soils (Organic Content)	ASTM D2974	\$270.00	
Universal Soil Classification System (USCS) Test	ASTM D2487	\$300.00	
California Bearing Ratio Test	ASTM D1883	\$370.00	
Unconfined Compressive Strength of Cohesive Soil	ASTM D2166/CT221	\$187.00	
ASPHALT			
Quantitative Extraction of Bitumen from Bituminous Paving Mixtures (Solvent)	ASTM D2172/CT310	\$732.00	
Determining Low Temperature Performance Grade (PG) of Asphalt Binders	ASTM 6816	QOR	
Thickness/Height of Compacted Bituminous Paving Mixture Specimens (Cores)	ASTM D3549/CT308	\$270.00	\$155.00
Method of Prep of Bituminous Mixture Test Specimens	ASTM D6926/CT304	\$270.00	
Bulk Specific Gravity and Density of Compacted Bituminous Mixtures (LTMD)	ASTM D1188 and D2726/CT308	\$990.00	\$500.00
Indirect Tensile (IDT) Strength of Bituminous Mixtures (TSR)	ASTM D6931/CT371	\$3,146.00	
Mechanical Size Analysis (Coarse and Fine) of Extracted Aggregate	ASTM D5444/CT202	\$405.00	
Marshall Stability and Flow of Bituminous Mixtures	ASTM D6927	\$990.00	
Theoretical Maximum Specific Gravity and Density (Rice)	ASTM D2041/CT309	\$405.00	\$225.00
Measuring the Permeability of Bituminous Pavements and Seal Coats	CT341	QOR	
Swell of Bituminous Mixtures	CT305	\$370.00	
Moisture Vapor Susceptibility of Bituminous Mixtures/Moisture or Volatile Distillates in Asphalt	ASTM D1461/CT307	\$930.00	
Stabilometer Value (1 sample)	CT366	\$370.00	
Determination of Asphalt Content of Bituminous Paving Mixtures by the Ignition Method	CT382/ASTM D6307	\$405.00	
Determination of Correction Factor of Bituminous Paving Mixtures by the Ignition Method	CT382/ASTM D6307	\$405.00	
Determination of Asphalt and Moisture Contents of Bituminous Mixtures by Microwave Oven	CT370	\$405.00	
Effect of Water on Compressive Strength of Compacted Bituminous Mixtures (Set of 6)	ASTM D1075	\$3,330.00	
Compressive Strength of Bituminous Mixtures	ASTM D1074	\$270.00	
Hamburg Wheel Track	AASHTO T324	\$3,630.00	
Moisture Susceptibility	AASHTO T283	\$3,630.00	

		Standard Rate/Each	Discounted Rate/Each
MATERIALS MECHANICAL TESTS			
Mechanical Testing of Steel Products (General Tensile)	ASTM A370	\$470.00	
Fillet Weld Break Test for Qualification (Welding)	AWS B4.0	\$205.00	
Tension Testing of Metallic Materials, Tension Testing Wrought and Cast Aluminum and Magnesium-Alloy Products, (Welding Coupon Tensile)	ASTM E8, B557 and AWS B4.0	\$470.00	
Mechanical Testing of Steel Products (Couplers)	ASTM A370	\$460.00	
Impact Testing of Miniaturized Charpy V-Notch Specimens, Notched Bar Impact Testing of Metallic Materials	ASTM E2248 and ASTM E23	QOR	
Testing, Practices, and Terminology for Chemical Analysis of Steel Products	ASTM A751	\$336.00	
Mechanical Testing of Steel Products & Bend Testing of Material for Ductility; #3-#8	ASTM A370 and E290	\$370.00	\$200.00
Mechanical Testing of Steel Products & Bend Testing of Material for Ductility; #9-#11	ASTM A370 and E290	\$440.00	\$250.00
Mechanical Testing of Steel Products & Bend Testing of Material for Ductility; #14+	ASTM A370 and E290	QOR	
Mechanical Testing of Steel Products, Standard Specification for Steel Wire, Plain, for Concrete Reinforcement	ASTM A370, A82 and A185	\$440.00	
Guided Bend Test for Ductility of Welds, Mechanical Testing of Welds	ASTM E190 and AWS B4.0	\$270.00	
Determining the Mechanical Properties of Externally and Internally Threaded Fasteners, Anchor Bolts Only (Tension and Yield)	ASTM F307, F1554 and F606	\$528.00	
Rockwell Hardness of Metallic Materials	ASTM E18	\$150.00	
Proof Test for Carbon and Alloy Steel (Nuts Only)	ASTM A194 or A563	\$337.00	
Radiographic Examination of Metallic Castings/Weldments	ASTM E94, E1030 and E1032	QOR	
Macroetching Metals and Alloys	ASTM E340, E381 and AWS	\$337.00	
Determining the Mechanical Properties of Externally and Internally Threaded Fasteners, Washers, Direct Tension Indicators, and Rivets (HSB Assemblies)	ASTM F606	\$370.00	\$300.00
Mechanical Testing of Steel Products (Terminators Tensile)	ASTM A370	\$370.00	
Strength for Sewn or Bonded Seams of Geotextiles	ASTM D4884	\$336.00	
Tearing Strength of Fabrics by the Tongue (Single Rip) Procedure	ASTM D2281	\$336.00	
Breaking Strength and Elongation of Textile Fabrics (Grab Test)	ASTM D5034	\$270.00	
Tensile Properties of Fiber Reinforced Polymer Matrix Composite Bars	ASTM D3039	\$990.00	
Steel Strand, Uncoated Seven-Wire for Prestressed Concrete	ASTM A416 and A1061	\$1,463.00	
FIREPROOFING			
Thickness and Density of Sprayed Fire-Resistive Material (SFRM)	ASTM E605	\$270.00	\$150.00
Cohesion/Adhesion of Sprayed Fire-Resistive Materials (Test Kit Only)	ASTM E736	\$77.00	\$50.00

CONTACT INFORMATION

Headquarters: 2118 Rheem Drive • Pleasanton, CA 94588 • P 925.462.5151 • F 925.462.5183
Peninsula: 50 California Street, Suite 1500 • San Francisco, CA 94111 • P 415.334.4747 • F 415.438.2357
Oakland: 246 30th Street, Suite 101 • Oakland, CA 94601 • P 510.444.4747 • F 510.835.1825
San Jose: 2033 Gateway Place, #500 • San Jose, CA 95110 • P 408.573.6992 • F 408.437.1201
Stockton: 343 East Main Street, #711 • Stockton, CA 95202 • P 209.507.7555 • F 209.507.7554
Rocklin: 4400 Yankee Hill Road • Rocklin, CA 95677 • P 916.419.4747 • F 916.419.4774
Las Vegas: 3842 E. Post Road • Las Vegas, NV 89120 • P 702.257.4747 • F 702.257.4718

BASIC OF CHARGES

**Essel Environmental Engineering & Consulting
 Environmental Testing Services**

Designation	Hourly Rate		
Professional Geologist	\$150		
Certified Industrial Hygienist	\$150		
Professional Engineer	\$165		
Senior Project Manager	\$105		
Project Manager	\$90		
Project Specialist	\$80		
Senior Technician	\$95		
Technician	\$85		
Project Coordinator	\$75		
Admin Support	\$65		
ANALYSIS	TURNAROUND TIME		
ASBESTOS	Same Day	1 Day*	3 Days
PCM (air)	\$25	\$20	\$13
PLM (bulk)	\$35	\$25	\$18

TEM (air)	\$150	\$115	\$90
Point Count – 400	\$150	\$110	\$75
OTHER	Same Day	1 Day*	3 Days
Lead Paint Chips	\$46	\$35	\$23
Ceramic Tile		\$75	\$52
TCLP or STLC			\$220
PCBs			\$100
MICROBIOLOGY	Same Day	1 Day*	3 Days
Non-Viable Air	\$104	\$75	\$52
Non-Viable Bulk	\$104	\$75	\$52
Total and Fecal (E. Coli) Presence		\$87	\$100
Soil, Groundwater & Vapor	Same Day	5 Day*	10 Days
Soil - TPH		\$135	\$85
Soil - VOCs		\$135	\$85
Soil – SVOCs		\$135	\$85
Pesticides		\$500	\$325
PCBs			-
Metals		\$245	155
Asbestos (NOA)		\$190	125
Moisture Content		\$64	32
pH		\$35	18
Water			
Any other tests		Cost + 20%	Cost + 20%

END OF EXHIBIT A

EXHIBIT B

CONSULTANT'S STAFF & SUBCONSULTANTS

- A. Consultant declares that the Principal-in-Charge will be Kevin J Duggan, and Consultant's Executive Project Manager, Craig Tole.
- B. Consultant will employ Sub-consultants it deems appropriate to the complexity and nature of the required Services and said Sub-consultants must, if their specialty is licensable, be licensed by the State of California to perform their specific Services. Consultant must obtain Owner's approval of all Sub-consultants pursuant to the terms of the PSA. Upon Owner's request Consultant must provide copies of all Sub-consultant contract agreements to Owner.
- C. No mark-ups are allowed: County will not pay any mark-ups for managing and coordinating sub-consultants.
- D. Travel: County will pay only pre-approved travel expenses at costs as per County Travel Policy. No mark ups are allowed.
- E. Reimbursable: County will pay only pre-approved reimbursable expenses at costs. No mark-ups are allowed.

F. Consultant / Subconsultants:

4LEAF, Inc.

2126 Rheem Drive
Pleasanton, CA 94588

Craig Tole, Executive Project Manager
(925) 462-5959 – Office
(925)580-4055 – Cell
ctole@4leafinc.com

Kevin Duggan, President
(925) 462-5959
kduggan@4leafinc.com

Construction Testing Services (CTS)

Tom Wipfli,
Project Manager
(925) 462-5151 – Office
(925) 724-9297 – Cell
twipfli@cts-1.com

Ron Harr
Quality Control Manager – Special Inspection
(925) 462-5151 – Office
(925) 250-7169 – Cell
rharr@cts-1.com

Essel Environmental Engineering & Consulting

Julie Thome
Sales Director
(415) 910-1578
jthome@esseltek.com

- G. Consultant represents and warrants that the above-named sub-consultant(s) and Staff (1) are appropriate to the complexity and nature of the required Services, (2) are, if their specialty is licensable, licensed by the State of California to perform their specific Services, and (3) have demonstrated competence and meets the professional qualifications necessary for the satisfactory performance of the services required. Consultant further warrants and represents that the sub-consultant's and staff contract agreement(s) are and shall be consistent with and otherwise comply with applicable terms and conditions of the PSA and this PA, including but not limited to provisions of standard of care, compliance with laws, insurance, confidentiality, indemnity, and jurisdiction. Upon Owner's request Consultant will provide copies of all Sub-consultant and Staff contract agreements to the Owner.
- H. None of the above-named Staff or Sub-consultants shall be replaced without OAR's approval pursuant to

an amendment to this PA or PSA Consultant must provide the names of all key staff and lead personnel of subconsultants associated with each Project in the applicable Project Agreement prior to the work. If Consultant's Project Manager or any other designated key staff person or Sub-consultant fails to perform to the satisfaction of Owner, on written notice from Owner's Project Manager, Consultant will have fifteen (15) calendar Days to remove that person from the Project and provide a replacement acceptable to OAR. In that event Consultant must submit the name of a qualified replacement for OAR's approval.

END EXHIBIT B

EXHIBIT C

SAMPLE PROJECT AGREEMENT

(Subject to County’s Changes. This format will be used for all Project Agreements authorized pursuant to this PSA. Owner shall prepare all Project Agreements and Consultant shall provide information and data requested by Owner sufficient to draft the PA.)

<p>PROJECT AGREEMENT NO. [#] TO PSA BETWEEN THE COUNTY OF SANTA CLARA AND [XXX] FOR [XXX] SERVICES FOR VARIOUS PROJECTS</p>
<p>PROJECT TITLE: [TITLE]</p>
<p>PROJECT AGREEMENT TITLE: [TITLE]</p>

Account Assignment	G/L Account	Cost Center	WBS	Amount
X	XXX	XXX	XXX	XXX

WHEREAS, on [DATE] the County of Santa Clara, a political subdivision of the state of California (“Owner” or “County”), issued a Request for Statement of Qualifications (“RFSOQ”) for construction management services for various projects to which [XXX] (“Consultant”) responded and was selected by County based on that RFSOQ response. Thereafter, on [DATE], Owner and Consultant entered into a Professional Services Agreement (“PSA”), for Consultant to provide the [XXX] for Various Projects, which expires on [DATE]. The PSA was previously amended on [DATE] to [XXX] (“First Amendment”) and amended on [DATE] to [XXX] (“Second Amendment”). Consultant and Owner are each a “Party” and collectively the “Parties” to this Project Agreement No. [#], as referenced herein; and,

WHEREAS, the PSA requires that Consultant’s Services will be provided pursuant to individual Project Agreements to be executed by the Parties and that no commencement of work under any Project Agreement shall begin until Consultant has received an Authorization to Proceed from Owner’s Project Manager.

NOW, THEREFORE, the Parties agree to the foregoing and as follows:

1. PURPOSE.

1.1 This is Project Agreement (“PA”) No. [#] pursuant to the PSA.

1.2 Consultant will perform the services described and set forth in Attachment 1, Consultant’s Services and Deliverables (the “PA Services,” “Scope of Work,” or “SOW”). The PA Services may only be modified with Owner’s prior written approval in advance of any additional or modified work being performed.

Project Agreement No. [PA number] to PSA with
[Consultant Firm name] dated [PSA date]
Project No. 263-CPXXXX

1.3 All capitalized terms used in this PA shall have the same meaning as those used in the PSA, unless expressly defined in this PA. All terms, conditions and provisions of the PSA are incorporated into and made a part of this PA without change.

2. OWNER'S PROJECT MANAGER. The Owner's Project Manager is [NAME]. All communications concerning the Project shall be through the Project Manager.

3. SCHEDULE AND EXPIRATION DATE. Services and Deliverables shall be provided according to Attachment 2, Consultant's Milestone Schedule. Consultant's Milestone Schedule may only be modified with Owner's prior written approval. The Parties mutually agree that the expiration date of this PA shall be [DATE].

4. MAXIMUM COMPENSATION LIMIT. The maximum compensation limit for PA Services pursuant to this PA shall be as stated in Attachment 3, Consultant's Compensation, which shall not be exceeded by Consultant. Consultant's Compensation, as stated in Attachment 3, together with all prior and current Project Agreements to date, shall not cumulatively exceed the Maximum Compensation Limit ("MCL") specified in the PSA. Nothing stated herein authorizes or approves an increase in the PSA MCL or in the compensation limit specified in Attachment 3 to this PA. Consultant is fully responsible for not exceeding these limits and solely assumes and accepts all liability, cost and expense for exceeding these limits.

5. ATTACHMENTS. The following listed Attachments are incorporated into this PA as though set forth in full herein.

Attachment 1: Consultant's Services and Deliverables (the SOW)

Attachment 2: Consultant's Milestone Schedule

Attachment 3: Consultant's Compensation & Payment Request Form

Attachment 4: List of Subconsultants (if any)

6. COUNTERPARTS; ELECTRONIC/DIGITAL SIGNATURES. This PA may be executed in any number of counterparts, and all of such counterparts so executed together shall be deemed to constitute one and the same agreement, and each such counterpart shall be deemed to be an original provided all of the Parties have fully executed the PA. Unless otherwise prohibited by law or County policy, the parties agree that an electronic copy of a signed PA, or amendment, or an electronically signed PA, or amendment, has the same force and legal effect as a contract executed with an original ink signature. The term "electronic copy of a signed contract" refers to a transmission by facsimile, electronic mail, or other electronic means of a copy of an original signed PA, or amendment in a portable document format. The term "electronically signed PA, or amendment" means a PA, or amendment that is executed by applying an electronic signature using technology approved by the County.

7. SUBMISSION OF PA; NONBINDING UNTIL SIGNED. Each of the Parties agree, accept and understand that a submission of this PA for examination, review, editing, or signature by either Party, in any form or by electronic or digital means, by email, facsimile or DocuSign®, by verbal confirmation or discussion or by any other means of delivery, does not constitute a binding agreement or contract, nor does it constitute a meeting of the minds or a commitment to execute the PA, and this PA shall only be legally binding and enforceable upon full execution by all Parties. The Parties acknowledge and agree that this PA is nonbinding on either Party and neither Party may claim any legal rights against the other by reason of the existence of this PA, or by reason of actions taken in reliance upon this PA (including, but not limited to, any obligation to continue negotiations) unless and until this PA is fully executed by all of the Parties.

8. **CONSTRUCTION.** This PA shall not be construed more strongly against either Party regardless of who is more responsible for its preparation.

9. **SIGNING AUTHORITY.** By signing below, each signatory for a Party warrants and represents that he/she executed this PA, in his/her authorized capacity, that he/she has the authority to bind the entity or person for whom he/she signs to contractual obligations and that, by his/her signature, the entity or person on behalf of which he/she acted executed this PA.

IN WITNESS WHEREOF, this PA is effective as of the last date executed by all the parties below (“Effective Date”).

CONSULTANT: [Entity]

By: _____
[Name, Title]

Date

OWNER: County of Santa Clara

[Name, Title]
Facilities and Fleet Department

Date

Roger Soohoo, Deputy Director
Facilities and Fleet Department
Owner’s Authorized Representative

Date

Sylvia Gallegos, Deputy County Executive

Date

APPROVED AS TO FORM AND LEGALITY:

John A. Castro, Deputy County Counsel

**EXHIBIT D
SAMPLE ATTACHMENTS 1,2,3 & 4 TO SAMPLE PROJECT AGREEMENT**

**ATTACHMENT 1
TO
PROJECT AGREEMENT NO.**

CONSULTANT'S SERVICES AND DELIVERABLES

I. Project Description

(Introduction to provide context for services and deliverables required from Consultant. Every Project Agreement will state this same description in Attachment 1 for a project-specific PSA. Revise the Project Description for Project Agreements issued for a non project-specific PSA).

II. Basic Services & Deliverables pursuant to PSA

(This sub-paragraph should be divided into Services and Deliverables. Cite the applicable reference to the scope of work outlined in the PSA, Basic Services & Deliverables. See example below.)

a) **Services:**

B. Schematic Design Phase

b) **Deliverables:**

- Schematic Design Documents including specifications;
- Basis of Design Narrative;
- Color Palette;
- Schematic Design Cost Estimate.

- c) This sub-paragraph applies if this Project Agreement is for the preparation of Construction Documents, including the Project Manual (specifications). If a product must be specified by name brand, Consultant will identify at least two conforming products in the Project Manual, unless criteria for a sole source supplier per Public Contract Code section 3400 is met.

If the Consultant prepares a performance specification, Consultant certifies that there are at least two suppliers that can meet Consultant's performance specification, unless criteria for a sole source supplier per Public Contract Code section 3400 is met.

- d) (This sub-paragraph applies if this Project Agreement is for the preparation of Construction Documents) Consultant must provide a declaration statement, signed by a principal of Consultant's firm, that the work of Consultant and its subconsultants was coordinated, the submittal is complete, and that all review comments from the 100% SD/DD Phase submittal have been incorporated and coordinated. All Drawings, Project Manual, Technical Specifications and

calculations submitted by Consultant to Owner must also contain a statement that the document was reviewed for accuracy, completeness and coordination and the coordination check was performed immediately prior to submission to Owner. The respective Design Professional(s) of Record as appropriate for each discipline must sign the statement.

III. Modifications to Basic Services & Deliverables pursuant to PSA

(Specify any scope or tasks either added to or deleted from the Basic Services and Deliverables description in the PSA pursuant to Part II of this Attachment above.)

IV. Supplementary Services pursuant to PSA

(If none, state NA. Otherwise, cite the applicable reference and a short-hand three or four word description for each service. See example below.)

A1. Surveys, evaluations, or studies

V. Compensation for Changes in Scope

The Consultant must notify the County Project Manager, in writing, within ten days of occurrence, of any direction by the County Project Manager which will cause a change in the Consultant's Services and Deliverables for this Project Agreement, for which the Consultant intends to seek additional compensation. The County Project Manager, in response, may revise or rescind any such direction, or both parties will negotiate and implement an Additional Basic Services Order and/or a Supplemental Services Order, as appropriate.

VI. Information and Documentation to support Invoice. Consultant must submit appropriate documentation to support each invoice, including: a narrative description of services performed during the period; milestones achieved and deliverables completed.

END ATTACHMENT 1

EXHIBIT D (Continued)

**ATTACHMENT 2
TO**

Project Agreement No. [PA number] to PSA with
[Consultant Firm name] dated [PSA date]
Project No. 263-CPXXXX

PROJECT AGREEMENT NO. _
CONSULTANT'S MILESTONE SCHEDULE

Notice to Proceed Date: _____ (Tentative)

INSERT MILESTONE SCHEDULE

Consultant shall complete permit comment reviews, package construction documents, and support in the allotted time described above and within the PA expiration date.

END ATTACHMENT 2

**EXHIBIT D (Continued)
ATTACHMENT 3
CONSULTANT'S COMPENSATION**

1. COMPENSATION SUMMARY

a.

Consultant's **Fixed Fee (Maximum Fee** if done on hourly basis--PM to edit!) for the **Basic Services** described in **Part 6** shall be:

Planning Programming, Schematic Design, Design Development,
Construction Documents, Quality Control,
Bidding Support, Construction Support

SUBTOTAL: Fixed Fee for Basic Services	\$0
---	------------

b.

SUBTOTAL: Itemized Supplementary Services	\$0
--	------------

c. Allowance for Supplementary Services (PSA Part 5) that may be authorized by the Owner in writing pursuant to issuance of a **Supplementary Services (SS) Order**.

d. Allowance for Reimbursable Expenses pursuant to Part 6

2. MAXIMUM COMPENSATION (a+b+c+d) \$0

3. PROGRESS PAYMENTS

Project Agreement No. [PA number] to PSA with
[Consultant Firm name] dated [PSA date]
Project No. 263-CPXXXX

- a. For **FIXED FEE** portion, Progress Payments will be on the basis of one of two ways, or a combination of both: Monthly and based on the percent of work completed during the billing period. Or Upon completion of Project Agreement Milestones.
- b. For **HOURLY FEE** portion, Progress Payments will be made monthly and based on the actual hours worked during the billing period charged at the hourly rates set forth in Exhibit A or B to the PSA, or as modified in this Project Agreement. **(Consultant must include back up information for payment including a breakdown of the staff hours for particular tasks performed: task-fee breakdown)**
- c. Only invoices identifying personnel listed in Exhibit A or B to the PSA will be accepted by Owner for payment.
- d. Consultant must submit appropriate documentation and information to support each invoice, including a narrative description of services performed during the period; completed milestones and deliverables.
- e. Consultant invoices will be paid by County only after County has determined that all applicable deliverables, milestones and documentation have been provided justifying payment subject to the satisfaction of County, in its sole discretion.

END ATTACHMENT 3

EXHIBIT D (Continued)

**ATTACHMENT 4
TO
PROJECT AGREEMENT NO.**

**LISTING OF SUBCONSULTANTS AND SUBCONSULTANTS'
HOURLY RATES FOR NON- FIXED FEE SERVICES**

(Describe Subconsultants in detail)

A. Consultant may employ subconsultants that Consultant deems appropriate to the complexity and nature of the Project pursuant to the requirements of the PSA. Such subconsultants must be licensed or certified, as appropriate, in the State of California for their particular area of expertise. Consultant is solely responsible for managing and coordinating the work of subconsultants, and for compensating the subconsultant for Services and Deliverables provided.

B. No mark-ups are allowed: County will not pay any mark-ups for managing and coordinating the Project, any subconsultants or any other third parties.

C. Travel: County will pay only pre-approved travel expenses at costs as per County Travel Policy. No mark ups are allowed.

D. Reimbursable: County will pay only pre-approved reimbursable expenses at costs. No mark-ups are allowed.

List of subconsultants Contacts	Services	Consultant's Team (Principal's name)

E. Consultant may not replace a subconsultant without County's prior written approval. If Consultant's designated Project Manager, or any designated key staff person or Sub-consultant, fails to perform to the satisfaction of Owner, Consultant will have fifteen (15) days from County's written notice to remove and replace that person with a replacement acceptable to Owner.

1 Sub-Consultant: WRA	Billable Hourly Rate
	\$
	\$

F. None of the above-named Staff or subconsultants shall be replaced without OAR's approval pursuant to an administrative amendment to this PSA. If Consultant's Project Manager or any other designated key staff person or Sub-consultant fails to perform to the satisfaction of Owner, on written notice from Owner's Project Manager, Consultant will have fifteen (15) calendar Days to remove that

Project Agreement No. [PA number] to PSA with
[Consultant Firm name] dated [PSA date]
Project No. 263-CPXXXXx

person from the Project and provide a replacement acceptable to OAR. In that event Consultant must submit the name of a qualified replacement for OAR's approval.

G. Consultant represents and warrants that the above-named subconsultant(s) and staff (1) are appropriate to the complexity and nature of the required Services, (2) are, if their specialty is licensable, licensed by the State of California to perform their specific Services, and (3) have demonstrated competence and meets the professional qualifications necessary for the satisfactory performance of the services required. Consultant further warrants and represents that the subconsultant's and staff contract agreement(s) are and shall be consistent with and otherwise comply with applicable terms and conditions of the PSA and this PA, including but not limited to provisions of standard of care, compliance with laws, insurance, confidentiality, indemnity, and jurisdiction. Upon Owner's request Consultant will provide copies of all subconsultant and Staff contract agreements to the Owner.

H. None of the above named Staff or subconsultants shall be replaced without Owner's approval pursuant to this Project Agreement and PSA terms. Consultant must provide the names of all key staff and lead personnel of subconsultants associated with each Project in the applicable Project Agreement prior to the work. If Consultant's Project Manager or any other designated key staff person or subconsultant fails to perform to the satisfaction of the Owner, on written notice from the Owner's Project Manager, Consultant will have fifteen (15) calendar days to remove that person from the Project and provide a replacement acceptable to the Owner. In that event Consultant must submit the name of a qualified replacement for Owner's approval.

I. Consultant represents, warrants and agrees that (1) Consultant is solely responsible and liable for all work and services performed by subconsultants and Staff, (2) Consultant is at all times solely liable and responsible for payment of all subconsultants and staff, (3) Owner is not responsible or liable for payment or other obligations to Consultant's subconsultants and Staff, (4) Owner is not, nor shall Owner be considered or alleged to be, an employer of Consultant's subconsultants or staff or the employees or agents of subconsultants or staff.

END ATTACHMENT 4

END EXHIBIT DTO PSA

I hereby certify under penalty of perjury that all items, units, quantities, and prices of work shown on this Payment Request are true and correct; that all work has been performed, and materials supplied in full accordance with the terms and conditions of the construction contract on this project.

(Name) Consultant's Signature

Date

Signature of Project Manager

Date

Signature of County Representative or
Designee

Date

END EXHIBIT E

EXHIBIT F

INSURANCE REQUIREMENTS

Indemnity

To the fullest extent permitted by law (including, without limitation, California Civil Code Section 2782.8), Consultant shall indemnify, defend and hold harmless the County of Santa Clara (hereinafter "County"), its officers, agents and employees, from any claim, liability, loss, injury or damage (collectively, "Litigation") arising out of, or in connection with, performance of this Agreement due to the negligence, recklessness, or willful misconduct of Consultant and/or its agents, employees or sub-consultants, excepting only to the extent such loss, injury or damage is caused by the negligence, recklessness or willful misconduct of personnel employed by the County. The Consultant shall reimburse the County for all costs, attorneys' fees, expenses and liabilities incurred with respect to any litigation in which the Contractor contests its obligation to indemnify, defend and/or hold harmless the County under this Agreement and does not prevail in that contest.

Insurance

Without limiting the Contractor's indemnification of the County, the Contractor shall provide and maintain at its own expense, during the term of this Agreement, or as may be further required herein, the following insurance coverages and provisions:

A. Evidence of Coverage

Prior to commencement of this Agreement, the Contractor shall provide a Certificate of Insurance certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition, a certified copy of the policy or policies shall be provided by the Contractor upon request.

This verification of coverage shall be sent to the requesting County department, unless otherwise directed. The Contractor shall not receive a Notice to Proceed with the work under the Agreement until it has obtained all insurance required and such insurance has been approved by the County. This approval of insurance shall neither relieve nor decrease the liability of the Contractor.

B. Qualifying Insurers

All coverages, except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A- V, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by the County's Insurance Manager.

C. Notice of Cancellation

All coverage as required herein shall not be canceled or changed so as to no longer meet the specified County insurance requirements without 30 days' prior written notice of such cancellation or change being delivered to the County of Santa Clara or their designated agent.

D. Insurance Required

Project Agreement No. [PA number] to PSA with
[Consultant Firm name] dated [PSA date]
Project No. 263-CPXXXX

1. Commercial General Liability Insurance - for bodily injury (including death) and property damage which provides limits as follows:
 - a. Each occurrence - \$1,000,000
 - b. General aggregate - \$2,000,000
 - c. Personal Injury - \$1,000,000

2. General liability coverage shall include:

- a. Premises and Operations
- b. Personal Injury liability
- c. Severability of interest

3. General liability coverage shall include the following endorsement, a copy of which shall be provided to the County:

Additional Insured Endorsement, which shall read:

“County of Santa Clara, and members of the Board of Supervisors of the County of Santa Clara, and the officers, agents, and employees of the County of Santa Clara, individually and collectively, as additional insureds.”

Insurance afforded by the additional insured endorsement shall apply as primary insurance, and other insurance maintained by the County of Santa Clara, its officers, agents, and employees shall be excess only and not contributing with insurance provided under this policy. Public Entities may also be added to the additional insured endorsement as applicable and the contractor shall be notified by the contracting department of these requirements.

4. Automobile Liability Insurance

For bodily injury (including death) and property damage which provides total limits of not less than one million dollars (\$1,000,000) combined single limit per occurrence applicable to all owned, non-owned and hired vehicles.

4a. Aircraft/Watercraft Liability Insurance (Required if Contractor or any of its agents or subcontractors will operate aircraft or watercraft in the scope of the Agreement)

For bodily injury (including death) and property damage which provides total limits of not less than one million dollars (\$1,000,000) combined single limit per occurrence applicable to all owned, non-owned and hired aircraft/watercraft.

5. Workers' Compensation and Employer's Liability Insurance

- a. Statutory California Workers' Compensation coverage including broad form all-states

coverage.

- b. Employer's Liability coverage for not less than one million dollars (\$1,000,000) per occurrence.

6. Professional Errors and Omissions Liability Insurance

- a. Coverage shall be in an amount of not less than one million dollars (\$1,000,000) per occurrence/aggregate.
- b. If coverage contains a deductible or self-retention, it shall not be greater than fifty thousand dollars (\$50,000) per occurrence/event.
- c. Coverage shall include contractual liability coverage.
- d. Coverage as required herein shall be maintained for a minimum of two years following termination or completion of this Agreement.

7. Claims Made Coverage

If coverage is written on a claims made basis, the Certificate of Insurance shall clearly state so. In addition to coverage requirements above, such policy shall provide that:

- a. Policy retroactive date coincides with or precedes the Consultant's start of work (including subsequent policies purchased as renewals or replacements).
- b. Policy allows for reporting of circumstances or incidents that might give rise to future claims.

E. Special Provisions

The following provisions shall apply to this Agreement:

- 1. The foregoing requirements as to the types and limits of insurance coverage to be maintained by the Contractor and any approval of said insurance by the County or its insurance consultant(s) are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Contractor pursuant to this Agreement, including but not limited to the provisions concerning indemnification.
- 2. The County acknowledges that some insurance requirements contained in this Agreement may be fulfilled by self-insurance on the part of the Contractor. However, this shall not in any way limit liabilities assumed by the Contractor under this Agreement. Any self-insurance shall be approved in writing by the County upon satisfactory evidence of financial capacity. Contractor's obligation hereunder may be satisfied in whole or in part by adequately funded self-insurance programs or self-insurance retentions.
- 3. Should any of the work under this Agreement be sublet, the Contractor shall require each of its subcontractors of any tier to carry the aforementioned coverages, or Contractor may insure subcontractors under its own policies.

4. The County reserves the right to withhold payments to the Contractor in the event of material noncompliance with the insurance requirements outlined above.

F. Fidelity Bonds (Required only if contractor will be receiving advanced funds or payments)

Before receiving compensation under this Agreement, Contractor will furnish County with evidence that all officials, employees, and agents handling or having access to funds received or disbursed under this Agreement, or authorized to sign or countersign checks, are covered by a BLANKET FIDELITY BOND in an amount of AT LEAST fifteen percent (15%) of the maximum financial obligation of the County cited herein. If such bond is canceled or reduced, Contractor will notify County immediately, and County may withhold further payment to Contractor until proper coverage has been obtained. Failure to give such notice may be cause for termination of this Agreement, at the option of County.

END EXHIBIT F

EXHIBIT G

All notices are deemed to have been given when made in writing and delivered or mailed to the representatives of Owner and Consultant at their respective addresses as follows:

1. Owner:

County of Santa Clara Capital Programs Division
2310 North First Street, 2nd Floor, Suite 200
San Jose, CA 95131-1011

Attention: [PROJECT NAME] / [PROJECT MANAGER]

2. Consultant:

4LEAF, INC.
Craig Tole, Executive Project Manager
925.580.4055 | Ctole@4leafinc.com
2126 Rheem Drive
Pleasanton, CA 94588

END EXHIBIT G

EXHIBIT H TO PSA

NON-DISCLOSURE AGREEMENT

This Non-Disclosure Agreement (“NDA”) by and between **4Leaf, Inc.** (“Consultant”) and the **County of Santa Clara** (referred to interchangeably as “County” or “Owner”) relates to the disclosure of certain confidential information. This NDA is incorporated into and made a part of the PSA to which it is attached.

In consideration of the mutual covenants and agreements hereinafter set forth, the adequacy of which are acknowledged, the parties agree as follows:

1. This NDA will commence following full execution by both parties and will continue in full force and effect until the conclusion of the business relationship between the County and the Consultant, or for a period of one year following execution of this NDA, whichever is longer. The obligations with respect to the treatment of all Confidential Information that is received under this NDA will survive termination or expiration of this NDA.
2. The Consultant will return all Confidential Information received from the County upon termination or conclusion of this NDA. The Confidential Information will remain the exclusive property of the County, and no copies will be made or retained without the written consent of the County.
3. “Confidential Information” means any and all tangible and intangible information, whether written, oral or in any other medium, originated by or uniquely within the knowledge of the County and not generally available to third parties. Confidential Information includes, without limitation, any and all diagrams, schematics, documentation, maps, address information, system and device configurations, trade secrets, data captured from a County network or information system, financial information, know-how, designs, methodologies, processes, manuals, marketing information, price lists, customer lists, supplier lists, employee information, facility infrastructure, computer programs, and systems designs. County’s Confidential Information also includes all County Property as defined below.

3.1 DATA OWNERSHIP

3.1.1 All “County Property” is Confidential Information, and, as used in this NDA, means and includes, collectively and singularly, all of the following County property: information, appraisals, data or materials provided to Consultant by County or on behalf of County; PHI, Customer Data and PII (as defined below); the Deliverables; County documents, materials, specifications, lists, maps, outlines, emails, electronic communications; County programming, object code, website, publication, source code, technology, metadata, data, device, or other asset of any kind; County copyrights, trade names, trade dress, domain names, patents, trade secrets, moral rights, termination rights, ownership rights, authorship and other proprietary rights of County including, without limitation, all goodwill, all information and materials provided by, developed for, developed by, or on behalf of County and all derivative work thereto; and, all County rights necessary for any and all local, national, or worldwide development, manufacture, modification, enhancement, sale, licensing, use, reproduction, publication or display.

3.1.2 Personally Identifiable Information and Customer Data (collectively the “Customer Data and PII”) includes but is not limited to any and all information pertaining to or about persons and/or entities receiving County services, accessing County links or websites (including but not limited to links and websites developed for the benefit of the County), or participating in any County held or sponsored activities, regardless of whether County provided these links, websites, services, contests or games directly. Customer Data and PII also includes but is not limited to any and all names, addresses, emails, phone numbers, social security numbers, bank account or credit card information, driver license numbers, age, sex, religion, physical descriptions and website or internet use data or metadata. All Customer Data and PII is exclusively and solely County Property. All Customer Data

and PII is always County Confidential Information, except as otherwise determined solely by the County in writing.

3.1.3 Should County Confidential Information be divulged to unauthorized third parties, Consultant shall comply with all applicable federal and state laws and regulations, including but not limited to California Civil Code sections 1798.29 and 1798.82 at Consultant's sole expense (if applicable). Consultant shall not charge the County for any expenses associated with Consultant's compliance with the obligations set forth in this section.

4. Consultant shall review and maintain the Confidential Information in accordance with the following terms and conditions:

(a) Consultant agrees to treat all Confidential Information (as defined above) as confidential and not to disclose the same to any third party. The Consultant shall keep the Confidential Information in strict confidence, using the same standard of care as it does with respect to its own Confidential Information, but in no event less than a reasonable degree of care.

(b) No copies of the Confidential Information shall be made, unless agreed to in writing by the County.

(c) All of the Confidential Information shall be kept and maintained in a safe and secure place with adequate safeguards to insure that unauthorized persons do not have access to the Confidential Information and shall not leave County property unless authorized in advance by County. Consultant shall, at all times, keep the County informed in writing of the location of the Confidential Information.

(d) The Consultant will permit access to Confidential Information only to individuals authorized in writing by the County and who have a bona fide need to know, provided that all such persons must be required to comply with the terms of this NDA with respect to such Confidential Information.

(e) The Confidential Information shall be used solely by Consultant for the limited purpose stated in this NDA or as otherwise authorized in writing by County.

(f) Any oral discussions between the County and Consultant that relate to the Confidential Information shall be kept secret and confidential and are deemed to be Confidential Information.

(g) Upon the request of the County or after the termination of this NDA, Consultant shall promptly return all of the Confidential Information including all work products of Consultant containing Confidential Information to the County. Consultant shall certify that all Confidential Information and copies or extracts thereof have been returned or destroyed.

(h) Consultant shall immediately notify the County in writing of any misuse or misappropriation of the Confidential Information or violation of this NDA that may come to its attention.

(i) Consultant, its agents, employees, representatives, subsidiaries, affiliated, or parent companies shall not, for themselves or for the benefit of any person or entity, other than the County, use, or disclose the Confidential Information whether written or oral, software technology, or otherwise or any portion thereof, for any purpose, at any time or in any place, without the express prior written approval of the County.

5. Confidential Information will not include any information that the Consultant can demonstrate that, absent breach of this NDA, was/is:

- (a) Publicly known at the time of disclosure by the County, or becomes publicly known through no fault of the Consultant;
- (b) Rightfully received by Consultant from a third party without a duty of confidentiality;
- (c) Already known to the Consultant at the time of receiving such Confidential Information or is independently developed by the Consultant without reference to the Confidential Information;
- (d) Permitted to be disclosed by written consent of the County; or;
- (e) Required to be disclosed by law or by an order of a governmental agency, legislative body or court of competent jurisdiction; provided that the Consultant provides the County with prompt notice of such requirement, so that the County may seek an appropriate protective order and/or waive compliance with this NDA.

6. Disclosure by the County of Confidential Information does not constitute a warranty that the Confidential Information is accurate, complete, or adequate for the purposes contemplated by the Consultant. Confidential Information is provided "AS IS". COUNTY DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY, ANY IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, ANY IMPLIED WARRANTY OF NON-INFRINGEMENT, AND ANY EXPRESS WARRANTY WITH RESPECT TO ANY OF THE CONFIDENTIAL INFORMATION AND DOCUMENTATION DISCLOSED HEREUNDER. County accepts no responsibility as a result of any expenses, losses, damages, or actions incurred or undertaken by the Consultant as a result of the Consultant's receipt or use of any Confidential Information or documentation.

7. County may in its sole discretion terminate this NDA in whole or in part by providing three (3) calendar days written notice to Consultant. Termination under this provision shall not relieve Consultant of any obligation occurring prior to termination, such as confidentiality, payments, and other provisions which by their nature would survive termination.

8. Upon the end of term of this NDA, or its termination, or at any time upon written demand by the County, all Confidential Information, together with any copies, memoranda, working papers, notes and photographs thereof, will, at the County's option, be returned or destroyed by the Consultant. The return of any Confidential Information will not relieve the Consultant of its obligation to maintain the confidentiality of the Confidential Information for the full period contemplated by this NDA; said confidentiality obligation shall survive termination of this NDA.

9. This NDA contains the entire understanding and agreement of the parties with respect to the disclosure of the Confidential Information, and supersedes all prior agreements and discussions concerning the subject matter hereof, whether oral or written.

10. The parties agree that a breach of this NDA is likely to cause irreparable harm to the County for which money damages alone would be an inadequate remedy. Accordingly, the County will be entitled to seek specific performance and injunctive or other equitable relief as a remedy for breaches of this NDA.

11. If any provision of this NDA is held illegal, invalid, or unenforceable by any court of competent jurisdiction, such provision will be deemed separable from the remaining provisions hereof and the remaining portions shall remain in full force and effect.

12. All sections of this NDA shall survive termination, cancellation and expiration of this NDA regardless of the reason for termination, cancellation or expiration.

13. Consultant shall indemnify, defend and hold harmless the County of Santa Clara ("County"), its officers, agents and employees, from, for and against any and all claims, liabilities, losses, injuries and damages (collectively, "Litigation") arising out of, pertaining to or relating to the negligence, recklessness or willful misconduct of Consultant and/or any of its officers, directors, owners, agents, employees, contractors, subcontractors or subconsultants, excepting only to the extent such loss, injury or damage is caused by the gross negligence or willful misconduct of personnel employed by the County. The Consultant shall reimburse the County for all costs, attorneys' fees, expenses and liabilities incurred with respect to any Litigation in which the Consultant is obligated to indemnify, defend and hold harmless the County under this PSA. The cost to defend charged to the Consultant shall not exceed the Consultant's proportionate percentage of fault.

14. Unless where preempted by Federal laws such as in Copyright Laws, this NDA shall be enforced and interpreted under the laws of the State of California and the County of Santa Clara, without any regards to the conflict of law principles.

15. The parties to this NDA hereby agree to submit to the exclusive jurisdiction of and venue in the courts of competent jurisdiction, federal or state, in the County of Santa Clara in any disputes related to or arising out of this NDA.

16. No delay or failure to require performance of any provision of the NDA shall constitute a waiver of that provision as to that or any other instance. Any waiver granted by a party must be in writing and shall apply to the specific instance expressly stated.

17. Consultant shall not assign or transfer this NDA, or all or any part of its rights hereunder, by operation of law or otherwise, without the prior written consent of County. Any unauthorized assignment or transfer shall be null and void and shall constitute grounds for immediate termination of this NDA by County. This NDA shall inure to the benefit of and be binding upon any permitted successor or assign.

18. Each party acknowledges that it has read and understands this NDA and agrees to be bound by its terms.

19. By signing below, signatory warrants and represents that he/she executed this NDA in his/her authorized capacity and that by his/her signature on this NDA, he/she or the entity upon behalf of which he/she acted, executed this NDA.

County of Santa Clara.

Signature: _____

Cindy Chavez
President, Board of Supervisors

Date: SEP 22 2020

4LEAF, INC. (Receiving Party):

Signature: _____

DocuSigned by:
Kevin Duggan
813734365483455

Kevin Duggan
President

Date: 9/11/2020

Attest:

Megan Doyle, Clerk
Board of Supervisors

END EXHIBIT H