



County of Santa Barbara \* General Services  
Capital Projects Division

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**PROFESSIONAL SERVICES AGREEMENT**

Between

**THE COUNTY OF SANTA BARBARA**

And

**Blackbird Architects, Inc.**

For

**Architectural and Engineering Services**

For

**Isla Vista Community Center Rehabilitation**

PROJECT NUMBER: 8505 PH2

**January 25, 2018**



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**PROFESSIONAL SERVICES AGREEMENT**

**FOR**

**PROFESSIONAL SERVICES**

This is an agreement between THE COUNTY OF SANTA BARBARA (hereinafter "Owner" or "County") and BLACKBIRD ARCHITECTS, INC. (hereinafter "Consultant"), and collective may be referred to as "Parties".

**PART 1 - RECITALS**

- 1.01 WHEREAS**, the Owner is undertaking Phase 2 of the rehabilitation and improvements of 976 Embarcadero del Mar; a 3,600 square foot existing building located within the community of Isla Vista, California situated on roughly an 0.56 acre site as a community center (hereinafter "Project"); and
- 1.02 WHEREAS**, this Professional Services Agreement (hereinafter "PSA") sets forth the terms and conditions pursuant to which Consultant, as a Professional, will provide professional services (hereinafter "Services") for Project; and
- 1.03 WHEREAS**, Consultant was selected by means of the County's consultant selection process, represents itself as a Professional having the requisite qualifications, licenses and agrees to perform such Services; and

NOW, THEREFORE, Owner and Consultant agree as follows:

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

**2.01 Agreement For Services**

- A. This Professional Services Agreement sets forth the terms and conditions pursuant to which Consultant, as a Professional, will provide services to the County.

**2.02 Maximum Compensation**

- A. The sum of all Project Agreements issued pursuant to this PSA shall not exceed *fifty-six thousand sixty dollars (\$56,060)*. If Consultant performs services or incurs expenses beyond this Maximum Compensation Limit, Consultant does so at Consultant's sole risk and expense.

**2.03 Term**

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

**2.04 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 Projects within the scope of this PSA.
  2. The extent of the Services and/or Deliverables that may be authorized by the Owners Authorized Representative (OAR) within the scope of this PSA.



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**PART 3 - OWNER'S RESPONSIBILITIES**

**3.01 Owner Provided Information**

- A. If required and where available, Owner may provide any of the following for Consultant's use in connection with the Services:
  - (i) Specialized studies of existing site conditions, including the presence of hazardous materials, soil, air, water, pollution, etc.
- B. 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.

**3.02 Approval & Permit Fees**

- A. 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 Governmental Agency.

**PART 4 - PROJECT SCOPE OF WORK (SOW)**

**4.01 Changes in Scope**

- A. If Owner requests a change in the requirements of the SOW that Consultant contends is material and justifies an increase in compensation, Consultant must within fourteen (14) calendar Days of the Owner's request, advise Owner in writing before proceeding with such change. If written notice is not given to Owner within said fourteen (14) Days, such change will be deemed not material and Consultant will not be entitled to additional compensation for the change in the requirements of the SOW.
- B. If Owner causes a material change in the Service(s) or Deliverable(s), Consultant must within fourteen (14) calendar Days of the event that caused the material change, notify Owner in writing that Consultant contends Owner has caused a material change in their Service(s) or Deliverable(s). After said notification, Consultant must provide such Service or Deliverables as directed by Owner's Project Manager (OPM). If OPM concurs that there has been a material change in a Service or Deliverable, payment to Consultant will be adjusted in accordance with Part 10.01.A.3, "Changes."
- C. If there is a material increase in the SOW required to complete a Project Agreement, and such increase is not the fault of or caused by Consultant, or does not result from faulty or inaccurate estimations made by Consultant, OPM may request, and Consultant, pursuant to such request, must provide assistance in re-allocating the remaining available funds relating to the Project Agreement. Such assistance must, if requested by OPM, also include a determination of any other Services necessary to complete the Project.
- D. If there is a material decrease in the SOW, Consultant agrees to immediately notify OPM and to accept a reasonable reduction in compensation.



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

**5.01 Consultant as Independent Contractor**

- A. Consultant is performing all Services 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**

- A. Notwithstanding the foregoing, Consultant may use subconsultants in performing the Services under this Agreement. Consultant shall be responsible for directing the work of authorized subconsultants, and for any compensation due to subconsultants. County assumes no responsibility whatsoever concerning such compensation. Consultant may add subconsultants to those identified in exhibit B only with the prior written approval of the OPM.

**5.03 Consultant's General Responsibilities**

The following General Responsibilities shall apply to all Services under this Agreement.

**A. 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 written federal, state and local codes, statutes, laws, regulations and ordinances in force at the time a Project Agreement is awarded.
3. Consultant must use its professional judgment and expertise 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.
4. Consultant must consider all mitigation measures identified in the Project's Environmental Impact Report, Mitigated Negative Declaration or other CEQA documentation in performance of their Services.

**B. Funding by Governmental Agencies**

1. When a Project is to be constructed, wholly or in part, with funds from Federal, State, or other outside funding sources, Consultant must comply with the requirements of said Federal, State, or outside funding sources in the Construction Documents.

**C. OSHPD Jurisdiction**

1. When a Project is within the jurisdiction of the State of California, Office of Statewide Health Planning and Development ("OSHPD"), Consultant's Instruments of Service must meet all OSHPD requirements.

**D. Sequence of Consultant's Services**

1. In general, Consultant's Services will proceed sequentially by the Phases described in Part 5.04, "Basic Services & Deliverables."
2. This PSA establishes the Consultant's Milestone Schedule for completion of the Consultant's Services.



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E. 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 files and other Instruments of Service, and computer disks containing the submittal in the following electronic formats: Microsoft PC compatible operating system, or AutoCAD 2004 or newer, or Microsoft Office 2003 or newer, or PDF.

F. 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 beyond the number of copies identified in the SOW at Owner's expense.
3. Owner will print Bid Documents for distribution to Bidders at Owner's expense.

G. Meetings

1. Required meetings are as specifically identified in Part 5.04, "Basic Services & Deliverables".
2. Unless otherwise requested by the OPM, Consultant must prepare agendas for and take minutes of all meetings conducted/attended by Consultant. This includes meetings that are chaired by the OPM.
3. The Consultant's fee for attendance at and preparation of minutes for all meetings specifically identified in Part 5.04, "Basic Services & Deliverables," will be considered included in the overall fee identified for this PSA.

H. Consultant's Staff and Subconsultants

1. Consultant's staff and Subconsultants are identified in Exhibit B, "Consultant's Staff and Subconsultants" and are subject to the requirements set forth therein.
2. Changes to Consultant's staff and Subconsultants are subject to approval as an amendment to the PSA by the OAR.

**5.04 Basic Services & Deliverables**

A. SCHEMATIC DESIGN THROUGH CONSTRUCTION ADMINISTRATION:

1. Schematic Design Phase:
  - a. Limited as-built measurements of the existing building for augmentation of the as-built drawings provided by The County to include Phase 1 items and enable design documentation for the project.
  - b. Schematic documentation of the proposed project.
  - c. One in-progress design meeting with the Ad Hoc Committee, and one meeting with the County of Santa Barbara to discuss design issues and obtain direction and feedback on the project.
  - d. Coordination of consultant work product and deliverables including structural, mechanical, plumbing, electrical, landscape architecture, and civil engineering.
2. Construction Documents Phase:
  - a. Updates of project drawings based on comments from the Schematic Design Phase.
  - b. Construction documentation of the proposed project.
  - c. Coordination of consultant work product and deliverables including structural, mechanical, plumbing, electrical, landscape architecture and civil engineering.
  - d. One in-progress design meeting with the County of Santa Barbara to discuss design issues and obtain direction and feedback on the project.



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3. Bidding Phase:
  - a. Attendance at Pre-bid conference
  - b. Responses to questions from bidding contractors or subcontractors.
  - c. Assistance in evaluating bids if requested by the client.
4. Construction Observation Phase:
  - a. Attendance at preconstruction meeting.
  - b. Attendance at regular construction meetings throughout the duration of the project.
  - c. Site visits to observe progress of the construction.
  - d. Coordination with the client as well as the General Contractor or Construction Manager at Risk throughout the project.
  - e. Review of submittals.
  - f. Responses to RFIs.
  - g. Generation of punch-list items.
  - h. Generation of Record Drawing information (note – for all disciplines, this work shall be CAD files prepared by the design team based on receipt of a single set of clear and complete as-built drawing information provided by the contractor)
5. Landscape Architecture: (VAI)
  - a. Preparation of schematic landscape plan for project improvement area.
  - b. Preparation of construction documents for irrigation, including details and specifications as necessary for establishment of the layout of all piping, valves, control equipment, drip emitters and/or sprinkler heads for the efficient irrigation of all areas of the site to be planted.
  - c. Preparation of a construction documents planting plan and details indicating the location, species, quantities and size of all plant material.
  - d. Specifications for the landscape portions of the work.
  - e. Site visits to observe progress and of the construction.
  - f. Document the progress of construction through written field observations notes.
  - g. Generation of Record Drawing information.
6. Civil: (Above Grade Engineering)
  - a. Preparation of grading and drainage plans for the proposed site improvements.
  - b. Preparation of final pavement sections based on the soils report recommendations. Note that retaining wall profiles, details and calculations are to be provided by the structural engineer if applicable.
  - c. Preparation of a stormwater management plan that addresses increased runoff and water quality to meet the local agency standards.
  - d. Preparation of plans for temporary erosion control facilities for protection of the graded areas and drainage devices. Details and erosion control notes will be provided to assist in implementation.
  - e. Review of submittals.
  - f. Responses to RFIs.
  - g. Generation of Record Drawing information.
7. Structural: (HUME Engineering)
  - a. Structural engineering design for the project including:
    - (1) Direction for replacing damaged plywood/framing at exterior walls and roof.
    - (2) Direction for strengthening rafters at new rooftop HVAC units (assumed that existing girders can support unit weights based on information provided).
    - (3) Shade structure support columns, foundations, and attachment to structure.
  - b. Engineering will consist of signed structural calculations, details and a set of structural plans and sheet specifications necessary for construction and bidding.
  - c. Two site visits during construction.
  - d. One concrete mix design.
  - e. Structural steel shop drawing review.





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- f. RFI responses and repair of damaged existing conditions as noted above.
  - g. Generation of punch-list items.
  - h. Please note that the following will not be included in this contract:
    - (1) Structural Observations and site visits beyond those listed above.
    - (2) Survey or site measurements of existing foundations walls and footings.
  - i. Generation of Record Drawing information.
8. Mechanical: (MEC – Mechanical Engineering Consultants)
- a. Heating, ventilating and air conditioning system engineering design/documentation: based on the understanding of the building systems, the existing rooftop package units will need to be replaced, and the remaining HVAC system and equipment can remain as-is.
  - b. The existing water heater will be evaluated and designed for replacement if necessary.
  - c. The existing roof drains and drain system will remain as-is.
  - d. Project specifications as related to mechanical scope.
  - e. Title 24 energy documentation, excluding light compliance.
  - f. Responses to questions from bidding contractors or subcontractors.
  - g. Review of submittals.
  - h. Responses to RFIs.
  - i. Generation of Punch-list items.
  - j. Generation of Record Drawing information.
9. Electrical: (Alan Noelle Electrical Engineering)
- a. Electrical engineering schematic design documents will consist of schematic power and lighting plans.
  - b. Electrical engineering construction documents will consist of electrical plans, symbols list, panel schedule, one line diagram, sheet specifications, lighting Title 24 documentation, miscellaneous details as required by the plan check authority, and any changes required by the plan check authority to obtain a building permit.
  - c. All low voltage, security, AV, fire alarm, and communications systems are outside the scope of work. Raceways, backboards, and line voltage power shall be provided based on requirements provided by the County during the design phases.
  - d. Responses to questions from bidding contractors or subcontractors.
  - e. Review of submittals.
  - f. Responses to RFIs.
  - g. Generation of Punch-list items.
  - h. Generation of Record Drawing information.

## PART 6 - CONSULTANT'S SCHEDULE

**6.01** The consultant's submittal dates and meeting dates (for presentations) are contingent upon County meeting the dates shown for submitting review comments.

- 1. Schematic Design Three (3) weeks
- 2. Construction Documents Eight (8) weeks

- A. Consultant shall perform all Services and Deliverables within the time and project schedule shown. 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 - INDEMNIFICATION & INSURANCE

### 7.01 Exhibit D Requirements

- A. Indemnification and Insurance requirements are set forth in Exhibit D, "Indemnification & Insurance."

## PART 8 - REPRESENTATION BY COUNSEL



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- A. Both parties to this PSA were represented by counsel in the negotiation and execution of this Agreement.
- B. The parties are aware of the provisions set forth in California Civil Code §1717 and intend this paragraph of the PSA to meet said statutory requirements so that the reference to attorneys' fees in Part 7, "Indemnification & Insurance", applies only in the indemnification context in Part 7, "Indemnification & Insurance."

**PART 9 - HAZARDOUS MATERIALS**

**9.01 Responsibility for Hazardous Materials**

- A. Owner acknowledges that Consultant has no special knowledge or expertise regarding asbestos or other hazardous materials.
- B. Unless otherwise provided in this PSA, 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.

**9.02 Hold Harmless Clause**

- A. To the fullest extent permitted by law, Owner agrees to bring no claim against Consultant and its Subconsultants and to defend, indemnify, and hold harmless Consultant and its Subconsultants from third party claims relating to the investigation, detection, abatement, replacement, or removal of asbestos or other hazardous material, or relating to sudden or gradual escape or release of hazardous contaminants of any kind into or on the land, the atmosphere, or any water course or body of water, excepting only such claims which arise out of the sole negligence or willful misconduct of Consultant or its Sub-consultants.

**PART 10 - COMPENSATION & PAYMENT**

**10.01 Compensation**

- A. Payments will be made as set forth herein
  - 1. Maximum Compensation Limit
    - a. The Maximum Compensation Limit (MCL) includes all authorized Services and authorized Reimbursable expenses. Total payment by Owner will not exceed the MCL specified in Exhibit C and Consultant is fully responsible for provision of all Services and Deliverables, compensation for which will not exceed the specified MCL.
  - 2. Consultant's Hourly Rate Schedule
    - a. Consultant's Hourly Rate Schedule is set forth in Exhibit A, "Consultant's Hourly Rates."
    - b. Modifications to Consultant's Hourly Rate Schedule will not be allowed for the duration of this PSA.
    - c. Non-Fixed fee Services provided by Subconsultants are subject to approval by the OAR and are to be identified in this PSA.
  - 3. Changes
    - a. If, during the term of a this PSA, circumstances constituting a material change in scope as described in Part 4.01, "Changes In Scope", arise, Consultant will be entitled to compensation therefore, within the MCL. If such changes mean that the SOW cannot be completed as originally envisioned, then Consultant must immediately inform the OPM



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and assist OPM in allocating the remaining compensation among the unfinished Services in order to accomplish as much of the original intent as possible within the Total Compensation Limit of this PSA.

4. Errors and Omissions
  - a. Consultant must correct errors and omissions attributable to Consultant without cost to Owner.
  - b. Owner has the right to pursue claims for any errors and omissions caused by Consultant.

**10.02 Reimbursable Expenses**

- A. When travel is authorized as a reimbursable expense, Consultant agrees to comply with the Santa Barbara County and Federal 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 obtained from the Capital Projects Division.
- B. Where authorized in this PSA, Owner will reimburse Consultant, at cost, for reasonable 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:
  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 this PSA; and mileage reimbursement to attend meetings beyond those specified in the SOW. Any individual expense in excess of \$10.00 must be supported by a copy of the receipt.
  2. Other reimbursable expenses specifically identified in this PSA.

**10.03 Supplementary Services & Deliverables**

- A. County has established a Supplemental Services Allowance (SSA) for the performance of services not included within the Scope of Services and Deliverables. Consultant will only commence work pursuant to the SSA following prior, written authorization of County's Project Manager (OPM) and the Owner's Authorized Representative (OPR).
- B. **Cost Estimating**
  1. If additional cost estimating is needed, this can be provided by the team (via the team's cost estimator C.P. O'Halloran) as an additional service. The cost for 50% Construction Documents Cost Estimate would be approximately \$5,600.

**10.04 Payment**

- A. Payment Requests
  1. Owner will endeavor to make payments within thirty (30) Days after the OPM's approval of the Consultant's correct Payment Request.
- B. Invoices
  1. Consultant will submit Payment not more than once each month.
- C. Progress Payments
  1. Owner may, at its discretion, adjust any progress payment so that it corresponds with the percentage of completion as reasonably determined by Owner.

**10.05 Release of All Claims**



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- D. Prior to final payment under any Project Agreement, Consultant must execute and deliver to Owner a release of all claims 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.

**10.06 Timely Billings**

- E. Consultant agrees to bill Owner on a timely basis and not later than ninety (90) Days after:
1. Services are performed;
  2. Reimbursable Expenses are incurred; or
  3. Billings are otherwise due pursuant to the terms of the PSA.
- F. 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.

**10.07 Consultant's Accounting Records**

- G. Accounting System & Records Retention
1. 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.
- H. Owner's Auditing Rights
1. 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.
- I. Applicability to Subcontracts
1. 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 11 - TERM & TERMINATION**

**11.01 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 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 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 if Consultant fails to fulfill in a timely and proper manner its obligations pursuant to this PSA, and does not cure such failure or violation within thirty (30) 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.



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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, it is determined that Consultant did not breach this PSA, 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.

**11.02 Consultant's Compensation Upon Termination**

- A. In the event of Owner's termination of this PSA, Consultant will receive compensation as follows:
1. For fully performed and accepted items of Service, and authorized Reimbursable Expenses pursuant to this PSA, compensation will be in the amount specified in the PSA 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 this PSA for that item of Service.

**11.03 Delivery of Documents**

- A. Upon any termination of this PSA, Consultant must furnish Owner all documents and Instruments of Service prepared pursuant to this PSA, whether complete or incomplete. Consultant may retain a copy for its records.

**PART 12 - DISPUTE RESOLUTION**

**12.01 Consultant's Questions & Concerns**

- A. Questions regarding the terms, conditions and Services of this PSA will be decided by the Director who will furnish the decisions to Consultant in writing within thirty (30) Days after receiving a written request from Consultant.

**12.02 Dispute Resolution During Construction**

- A. Alternate Dispute Resolution (ADR)
1. Owner intends to use ADR techniques including Partnering and Mediation during Construction.
- B. Consultant and its subcontractors shall participate in all ADR efforts as directed by owner.
- C. The cost of Partnering training facilities and facilitator will be borne by Owner.

**12.03 Negotiations Before and During Mediation**

- A. Negotiations to resolve disputes before and during Mediation are initiated for settlement purposes only and are not binding unless otherwise agreed by Owner and Consultant.

**12.04 Mediation**

- A. 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.



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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.
- B. Initiation of Mediation
1. Any party to a dispute or claim may initiate Mediation by notifying the other party or parties in writing.
- C. Request for Mediation
1. A Request for Mediation must contain a brief statement of the nature of the dispute or claim, and the names, addresses, and phone numbers of all parties to the dispute or claim, and those who will represent them, if any, in the Mediation.
- D. Selection of Mediator
1. Upon receipt of a Request for Mediation, within fourteen (14) Days, the parties will confer to select an appropriate Mediator agreeable to all parties.
  2. If the parties cannot agree on a Mediator, they hereby agree to accept a Mediator appointed by a recognized association such as the American Arbitration Association.
- E. Qualifications of a Mediator:
1. Any Mediator selected must have expertise in the area of the dispute and be knowledgeable in the Mediation process.
  2. No person shall serve as a Mediator in any dispute in which that person has any financial or personal interest in the result of the Mediation.
  3. Before accepting an appointment, the prospective Mediator must disclose any circumstances likely to create a presumption of bias or prevent a prompt meeting with the parties. Upon receipt of such information, the parties will confer and decide whether to select another Mediator.
- F. Vacancies
1. If any Mediator becomes unwilling or unable to serve, another Mediator will be selected unless the parties agree otherwise.
- G. Representation
1. Any party may be represented by person(s) of their choice who must have full authority to negotiate.
  2. The names and addresses of such person(s) must be communicated in writing to all parties and to the Mediator.
- H. Time and Place of Mediation
1. The Mediator will set the time of each Mediation session.
  2. The Mediation will be held at a convenient location agreeable to the Mediator and the parties, as determined by the Mediator.
  3. All reasonable efforts will be made by the parties and the Mediator to schedule the first session within sixty (60) Days after selection of the Mediator.
- I. Identification of Matters in Dispute
1. Unless a longer period of time is required by the Mediator, at least ten (10) Days before the first scheduled Mediation session, each party must provide the Mediator a brief memorandum setting forth its position with regard to the issues that need to be resolved. At the discretion of the Mediator, or otherwise agreed by the parties, the parties may mutually exchange such memoranda.



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2. At the first session, the parties will be expected to produce all information reasonably required for the Mediator to understand the issue(s) presented. The Mediator may require each party to supplement such information.

J. Authority of Mediator

1. The Mediator does not have authority to impose a settlement on the parties but will attempt to assist the parties in reaching a satisfactory resolution of their dispute.
2. The Mediator is authorized to conduct joint and separate meetings with the parties and to make oral and written recommendations for settlement.
3. Whenever necessary, the Mediator may also obtain expert advice concerning technical aspects of the dispute, provided the parties agree and assume the expenses of obtaining such advice. Arrangements for obtaining such advice will be made by the Mediator or the parties, as determined by the Mediator
4. The Mediator is authorized to end the Mediation whenever, in the Mediator's judgment, further efforts at Mediation would not contribute to a resolution of the dispute between the parties.

K. Privacy

1. Mediation sessions are private.
2. The parties and their representatives may attend Mediation sessions.
3. Other persons may attend only with the permission of the parties and with the consent of the Mediator.

L. Confidentiality

1. The Mediator will not divulge confidential information disclosed to a Mediator by the parties or by witnesses in the course of the Mediation.
2. All records, reports, or other documents received by a Mediator while serving as Mediator, are confidential.
3. The Mediator must not be compelled to divulge such records or to testify in regard to the Mediation in any adversary proceeding or judicial forum.
4. The parties must maintain the confidentiality of the Mediation and must not rely on, or introduce as evidence in any arbitration, judicial or other proceedings:
  - a. Views expressed or suggestions made by the other party with respect to a possible settlement of the dispute;
  - b. Statements made by the other party in the course of the Mediation proceedings;
  - c. Proposals made or views expressed by the Mediator;
  - d. Whether the other party had or had not indicated willingness to accept a proposal for settlement made by the Mediator.

M. No Stenographic Record

1. There shall be no stenographic record of the Mediation.

N. Termination of Mediation

1. The Mediation shall be terminated:
  - a. By the execution of a Settlement Agreement by the parties;
  - b. By a written declaration of the Mediator to the effect that further efforts at Mediation are no longer worthwhile; or



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- c. By a written declaration of a party or parties to the effect that the Mediation proceedings are terminated.
- O. Exclusion of Liability
  - 1. No Mediator shall be a necessary party in judicial proceedings related to the Mediation.
- P. Interpretation and Application of These Mediation Provisions
  - 1. The Mediator will interpret and apply these Mediation provisions insofar as they relate to the Mediator's duties and responsibility.
- Q. Expenses
  - 1. The expenses of witnesses for each party must be paid by the party producing the witnesses.
  - 2. All other expenses of the Mediation, including required traveling and other expenses of the Mediator, and the expenses of any witness called by the Mediator, or the cost of any proofs or expert advice produced at the direct request of the Mediator, will be apportioned as the Mediator finds appropriate or as otherwise agreed to by the parties.

**12.05 Compensation for Participation in Mediation**

- A. Consultant is not entitled to compensation for time spent in or for negotiations or Mediation to resolve questions or disputes between Consultant and Owner arising out of this PSA.

**PART 13 - MISCELLANEOUS PROVISIONS**

**13.01 Capitalization and Formatting**

- A. Terms capitalized in this PSA include those that are:
  - 1. Specifically defined; or
  - 2. Titles of Parts or paragraphs; or
  - 3. Titles of reports or Deliverables; or
  - 4. Titles of other documents.
- B. Unless otherwise indicated, **highlighted**, **emboldened**, *italicized*, or underlined 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. Text shown with Strike Through font is meant to, and does, exclude such text from the PSA. It is shown as such merely for the convenience of the Owner.
- D. 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.

**13.02 Force Majeure**

- A. Neither party shall hold the other responsible for damages or delay in performance caused by acts of God, strikes, lockouts, accidents, or other events beyond the control of the other or the other's employees, agents, or representatives.

**13.03 Waiver**

- A. In the event any provision of this PSA is held to be invalid and unenforceable, the remaining provisions will be valid and binding on the parties.
- B. 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.





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**13.04 Timely Approvals**

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

**13.05 Ownership & Use of Instruments of Service**

- A. All Instruments of Service and other materials prepared by Consultant, in whatever media, are the 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. Consultant may retain a copy for its records. Consultant does not convey, assign or transfer the intellectual property rights it has so as to limit its ability or right to develop, design or work on other projects of or for its other clients.
- B. In the event Owner desires to re-use the Instruments of Service, in total or in part, on this Project site or any other site, or to complete any incomplete portion of construction documentation, Owner will defend, indemnify, and hold Consultant harmless from any and all claims, loss, damage, defense costs, expense, and other costs resulting from such use of Consultant prepared documents, unless Owner enters into an agreement with Consultant for Services in connection therewith.
- C. 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.
- D. Copies of data exchanged by, through, and 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. Any risk of translation or reliance on information obtained or derived from the computer-generated material will be at the user's sole risk, and no representations are made, either expressed or implied, as to the long-term performance of data thus transferred.

**13.06 Reliance**

- A. Unless otherwise indicated, Consultant may rely on the accuracy and technical quality of documents provided by Owner or the Owner's consultants.

**PART 14 - NOTICES**

- A. 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 E, "Notices."

**PART 15 - LIMITS OF AGREEMENT**

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

**PART 16 - EXHIBITS**

- A. 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, "Consultant's Compensation"



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4. Exhibit D, "Indemnification And Insurance Requirements"
5. Exhibit E, "Notices"

Dept 063

Fund 0030

Program 1930

Account 8700

Project 8505



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IN WITNESS WHEREOF, the parties have executed this Second Amendment to be effective on the date executed by County.

COUNTY

By: Das Williams ~~JOAN HARTMANN, CHAIR~~  
BOARD OF SUPERVISORS

Dated: \_\_\_\_\_

ATTEST:

MONA MIYASATO,  
COUNTY EXECUTIVE OFFICER  
CLERK OF THE BOARD

By: \_\_\_\_\_  
Deputy

CONSULTANT:

Blackbird Architects, Inc.

By: KR  
AUTHORIZED REPRESENTATIVE  
Name: KEN RADTKEY  
Title: President  
Address: 235 PALM AVE.  
City/State/Zip: SB, CA, 93101

APPROVED AS TO FORM:

MICHAEL C. GHIZZONI  
COUNTY COUNSEL

By: [Signature]  
Deputy County Counsel

APPROVED AS TO ACCOUNTING FORM:

THEODORE A. FALLATI, CPA  
AUDITOR-CONTROLLER

By: Theo Fallati  
Deputy

APPROVED AS TO FORM:

RAY AROMATORIO, ARM, AIC  
RISK MANAGER

By: [Signature]  
Risk Manager

RECOMMENDED FOR APPROVAL:

JANETTE D. PELL, DIRECTOR  
GENERAL SERVICES DEPARTMENT

By: [Signature]  
Department Head

END OF AGREEMENT



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**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 Hourly Rate Schedule to include out-years beyond 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 Central Coast area, and are subject to approval as an administrative modification to the PSA by the OAR.

CONSULTANT FIRM NAME: Blackbird Architects

<u>Consultant/Job Title</u>	<u>Billable Hourly Rate (\$)</u>
Principal Architect	\$200 / hr
Senior Associate	\$165 / hr
Associate	\$135 / hr
Designer	\$115 / hr
Draftsman	\$95 / hr
Clerical	\$75 / hr

**END EXHIBIT A**



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**EXHIBIT B**

**CONSULTANT'S STAFF & SUBCONSULTANTS**

- A. Consultant declares that the Project Manager will be Adam Sharkey, Architect.
- B. Consultant will employ Subconsultants identified in the Consultant's proposal for this project and said Subconsultants 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 any other Subconsultants. Upon Owner's request Consultant must provide copies of all Subconsultant contract agreements to Owner.
- C. None of the above named Staff or Subconsultants shall be replaced without OAR's approval pursuant to an amendment to this PSA. If Consultant's Project Manager or any other designated key staff person or Subconsultant 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.

CONSULTANT'S KEY STAFF & SUB-CONSULTANTS:

ARCHITECTURE (Designated Project Manager)

Adam Sharkey, Architect  
**Blackbird Architects, Inc.**

STRUCTURAL

Contact TBD  
**HUME Engineering**

MECHANICAL/PLUMBING ENGINEERING

Contact TBD, Principal Engineer  
**MEC – Mechanical Engineering Consultants**

CIVIL ENGINEERING

Contact TBD, Principal Engineer  
**Above Grade Engineering**

ELECTRICAL ENGINEERING

Contact TBD, Principal Engineer  
**Alan Noelle Electrical Engineering**

LANDSCAPE ARCHITECTURE

Susan Van Atta, LA  
**Van Atta Associates, Inc.**

COST ESTIMATION

Contact TBD  
**C.P. O'Halloran & Associates**

**END EXHIBIT B**



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**EXHIBIT C**

**CONSULTANT'S COMPENSATION**

**1. COMPENSATION SUMMARY**

a.	Consultant's <b>Hourly Not to Exceed Fee</b> for the <b>Basic Services</b> described in <b>Part 5.04</b> shall be:	
	Schematic Design Phase	\$5,740.00
	Construction Documents Phase	\$26,080.00
	Bid Phase	\$1,000
	Construction Administration Phase	\$16,140
	<b>SUBTOTAL: a. Fixed Fee for Basic Services</b>	<b>\$48,960.00</b>
b.	<b>Allowance for Reimbursable Expenses pursuant to Part 9.02</b>	<b>\$1,500.00</b>
	Reimbursable to be identified in billings, requisition shall be increased to cover these additional costs.	
c.	Allowance for Supplementary Services (PSA Part 9.03) that may be authorized by the Owner in writing pursuant to issuance of a <b>Supplementary Services (SS) Order</b> , issued during the period of the PSA.	
	Cost Estimating	\$5,600.00
	<b>SUBTOTAL: c. Supplementary Services</b>	<b>\$5,600.00</b>
2.	<b>MAXIMUM COMPENSATION (a+b+c)</b>	<b>\$56,060.00</b>

**3. PROGRESS PAYMENTS**

- a. For **FIXED FEE** portion, Progress Payments will be on the basis of completion of Project 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. (**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.

**END EXHIBIT C**



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**EXHIBIT D**

**INDEMNIFICATION AND INSURANCE REQUIREMENTS**

**ARCHITECTS & ENGINEERS (Consultants) SERVICES CONTRACTS**

**1. Indemnification**

A. Indemnification pertaining to other than Design Professional Services:

CONSULTANT agrees to indemnify, defend (with counsel reasonably approved by OWNER) and hold harmless OWNER and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages, and/or liability arising out of this Agreement from any cause whatsoever, including the acts, errors or omissions of any person and for any costs or expenses (including but not limited to attorneys' fees) incurred by OWNER on account of any claim except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of indemnitees. CONSULTANT's indemnification obligation applies to OWNER's "active" as well as "passive" negligence but does not apply to OWNER's "sole negligence" or "willful misconduct" within the meaning of California Civil Code Section 2782. CONSULTANT shall notify OWNER immediately in the event of any accident or injury arising out of or in connection with this Agreement. This Indemnification provision shall survive any expiration or termination of this Agreement.

B. Indemnification pertaining to Design Professional Services:

CONSULTANT shall indemnify and hold OWNER, its officers, employees, and agents harmless from and against any and all claims, damages, costs, expenses (including attorney's fees), judgments or liabilities that arise out of, pertain to or relate to the negligence, recklessness, or willful misconduct on the part of the CONSULTANT or his employees or other independent Consultants directly responsible to him to the fullest extent allowable by law. CONSULTANT shall notify OWNER immediately in the event of any accident or injury arising out of or in connection with this Agreement. This Indemnification provision shall survive any expiration or termination of this Agreement

**2. Additional Insured** – All policies, except for the Workers' Compensation, Errors and Omissions and Professional Liability and Automobile Liability policies, shall contain endorsements naming OWNER and its officers, employees, agents and volunteers as additional insureds with respect to liabilities arising out of the performance of services hereunder. The additional insured endorsements shall not limit the scope of coverage for OWNER to vicarious liability but shall allow coverage for OWNER to the full extent provided by the policy. Such additional insured coverage shall be at least as broad as Additional Insured (Form B) endorsement form ISO, CG 2010.11 85.

**3. Waiver of Subrogation Rights** – CONSULTANT shall require the carriers of required coverages to waive all rights of subrogation against OWNER, its officers, employees, agents, volunteers, consultants and subconsultants. All general or auto liability insurance coverage provided shall not prohibit CONSULTANT and CONSULTANT's employees or agents from waiving the right of subrogation prior to a loss or claim. CONSULTANT hereby waives all rights of subrogation against OWNER.

**4. Policies Primary and Non-Contributory** – All policies required herein are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by OWNER.

**5. Severability of Interests** – CONSULTANT agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and there will be no cross liability exclusions that preclude coverage for suits between CONSULTANT and OWNER or between OWNER and any other insured or additional insured under the policy.



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**6. Proof of Coverage** – CONSULTANT shall furnish Certificates of Insurance to the OWNER Department administering the Agreement evidencing the insurance coverage, including endorsements, as required, prior to the commencement of performance of services hereunder, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to the Department, and CONSULTANT shall maintain such insurance from the time CONSULTANT commences performance of services hereunder until the completion of such services. Within fifteen (15) days of the commencement of this Agreement, CONSULTANT shall furnish a copy of the Declaration page for all applicable policies and will provide complete certified copies of the policies and endorsements immediately upon request.

**7. Acceptability of Insurance Carrier** – Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum A.M. Best's Insurance Guide rating of "A VII".

**8. Deductibles and Self-Insured Retention** – Any and all deductibles or self-insured retentions in excess of \$10,000 shall be declared to and approved by Risk Management.

**9. Failure to Procure Coverage** – In the event that any policy of insurance required under this Agreement does not comply with the requirements, is not procured, or is canceled and not replaced, OWNER has the right but not the obligation or duty to cancel the Agreement or obtain insurance if it deems necessary and any premiums paid by OWNER will be promptly reimbursed by CONSULTANT or OWNER payments to CONSULTANT will be reduced to pay for OWNER purchased insurance.

**10. Insurance Review** – Insurance requirements are subject to periodic review by OWNER. The Program Risk Administrator or designee is authorized, but not required, to reduce, waive or suspend any insurance requirements whenever Risk Management determines that any of the required insurance is not available, is unreasonably priced, or is not needed to protect the interests of OWNER. In addition, if the Department of Risk Management determines that heretofore unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonably priced or available, the Program Risk Administrator or designee is authorized, but not required, to change the above insurance requirements to require additional types of insurance coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against OWNER, inflation, or any other item reasonably related to OWNER's risk.

Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this Agreement. CONSULTANT agrees to execute any such amendment within thirty (30) days of receipt.

Any failure, actual or alleged, on the part of OWNER to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of OWNER.

**11. Insurance Specifications** – CONSULTANT agrees to provide insurance set forth in accordance with the requirements herein. If CONSULTANT uses existing coverage to comply with these requirements and that coverage does not meet the specified requirements, CONSULTANT agrees to amend, supplement or endorse the existing coverage to do so. The type(s) of insurance required is determined by the scope of the contract services.

Without in any way affecting the indemnity herein provided and in addition thereto, CONSULTANT shall secure and maintain throughout the Agreement term the following types of insurance with limits as shown:

A. Workers' Compensation/Employers Liability – A program of Workers' Compensation insurance or a state-approved, self-insurance program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with one million dollar (\$1,000,000) limits covering all persons including volunteers providing services on behalf of CONSULTANT and all risks to such persons under this Agreement.

If CONSULTANT has no employees, it may certify or warrant to OWNER that it does not currently have any employees or individuals who are defined as "employees" under the Labor Code and the requirement for Workers' Compensation coverage will be waived by the Owner's Program Risk Administrator.





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With respect to CONSULTANTS that are non-profit corporations organized under California or Federal law, volunteers for such entities are required to be covered by Workers' Compensation insurance.

B. Commercial/General Liability Insurance – CONSULTANT shall carry General Liability Insurance covering all operations performed by or on behalf of CONSULTANT providing coverage for bodily injury and property damage with a combined single limit of not less than one million dollars (\$1,000,000) per occurrence and a two million dollar (\$2,000,000) general aggregate limit.

C. Professional Liability Insurance – CONSULTANT shall carry Professional Liability Insurance of not less than one million dollars (\$1,000,000) per occurrence and a two million dollar (\$2,000,000) general aggregate limit. If insurance coverage is provided on a "claims made" policy, the "retroactive date" shall be shown and must be before the date of the start of the contract work. The claims made insurance shall be maintained or "tail" coverage provided for a minimum of three (3) years after contract completion.

D. Automobile Liability Insurance – Primary insurance coverage shall be written on ISO Business Auto coverage form for all owned, hired and non-owned automobiles or symbol 1 (any auto). The policy shall have a combined single limit of not less than one million dollars (\$1,000,000) for bodily injury and property damage, per occurrence.

If CONSULTANT owns no autos, a non-owned auto endorsement to the General Liability policy described above is acceptable.

E. Umbrella Liability Insurance – An umbrella (over primary) or excess policy may be used to comply with limits or other primary coverage requirements. When used, the umbrella policy shall apply to bodily injury/property damage, personal injury/advertising injury and shall include a "dropdown" provision providing primary coverage for any liability not covered by the primary policy. The coverage shall also apply to automobile liability.

## 12. Special Provisions

The following provisions shall apply to this Agreement:

A. The foregoing requirements as to the types and limits of insurance coverage to be maintained by the CONSULTANT and any approval of said insurance by the OWNER 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 CONSULTANT pursuant to this Agreement, including but not limited to the provisions concerning indemnification.

B. The OWNER acknowledges that some insurance requirements contained in this Agreement may be fulfilled by self-insurance on the part of the CONSULTANT. However, this shall not in any way limit liabilities assumed by the CONSULTANT under this Agreement. Any self-insurance shall be approved in writing by the Owner upon satisfactory evidence of financial capacity. CONSULTANT's obligation hereunder may be satisfied in whole or in part by adequately funded self-insurance programs or self-insurance retentions.

C. Should any of the work under this Agreement be sublet, the CONSULTANT shall require each of its Subconsultants of any tier to carry the aforementioned coverages, or Consultant may insure Subconsultants under its own policies.

D. The OWNER reserves the right to withhold payments to the Consultant in the event of material noncompliance with the insurance requirements outlined above.

E. Owner hereby notifies CONSULTANT that OWNER's Unlawful Discrimination Ordinance (Article XIII of Chapter 2 of the Santa Barbara County Code) applies to this Agreement and is incorporated herein



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by this reference with the same force and effect as if the ordinance were specifically set out herein and  
CONSULTANT agrees to comply with said ordinance.

**END EXHIBIT D**



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**EXHIBIT E**

**NOTICES**

1. 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:

**a. Owner:**

County of Santa Barbara  
Capital Projects Division  
1105 Santa Barbara St. (Historic Courthouse, 2<sup>nd</sup> Floor)  
Santa Barbara, CA 93101

Attention: Celeste Manolas

**b. Consultant:**

Blackbird Architects, Inc.  
235 Palm Avenue  
Santa Barbara CA 93105

Attention: Ken Radtkey

**END EXHIBIT E**