



Attachment 1

County of Santa Barbara: General Services
Capital Division

PROFESSIONAL SERVICES AGREEMENT

Between

THE COUNTY OF SANTA BARBARA

And

Roesling Nakamura Terada Architects, Inc.

For

Conceptual Design and Programming Services

For

**New Probation Headquarters Building
Garden Street, Santa Barbara, CA**

PROJECT NUMBER: 19014

TABLE OF CONTENTS

<u>PART</u>	<u>TITLE</u>	<u>PAGE</u>
1	RECITALS.....	1
2	PROJECT AUTHORIZATION, TERM, MAXIMUM COMPENSATION.....	1
3	OWNER'S RESPONSIBILITIES.....	1
4	PROJECT SCOPE OF WORK (SOW).....	2
5	CONSULTANT'S RESPONSIBILITIES, SERVICES, AND DELIVERABLES.....	2
6	CONSULTANT'S SCHEDULE.....	4
7	INDEMINIFICATION & INSURANCE.....	4
8	REPRESENTATION BY COUNSEL.....	4
9	HAZARDOUS MATERIALS.....	4
10	COMPENSATION & PAYMENT.....	5
11	TERM & TERMINATION.....	7
12	DISPUTE RESOLUTION.....	8
13	MISCELLANEOUS PROVISIONS.....	11
14	NOTICES.....	13
15	LIMITS OF AGREEMENT.....	13
16	EXHIBITS AND ATTACHMENTS.....	13

END TABLE OF CONTENTS



County of Santa Barbara: General Services
Capital Division

LIST OF EXHIBITS

<u>EXHIBIT</u>	<u>TITLE</u>	<u>PAGE</u>
A	CONSULTANT'S SCOPE OF WORK & HOURLY RATES	A1
B	CONSULTANT'S STAFF & SUBCONSULTANTS.....	B1
C	CONSULTANT'S COMPENSATION	C1
D	INDEMNIFICATION AND INSURANCE REQUIREMENTS.....	D1
E	NOTICES	E1

END LIST OF EXHIBITS

PROFESSIONAL SERVICES AGREEMENT
FOR
CONCEPTUAL DESIGN AND PRGRAMMING SERVICES

This is an agreement between THE COUNTY OF SANTA BARBARA (hereinafter "Owner" or "County") and Roesling Nakamura Terada Architects, Inc. (hereinafter "CONSULTANT").

PART 1 - RECITALS

- 1.01 WHEREAS**, this Professional Services Agreement (hereinafter "PSA") sets forth the terms and conditions pursuant to which Consultant, as a Professional, will provide conceptual design and programming services (hereinafter "Services") for Owner's new Probation Headquarters Building; and
- 1.02 WHEREAS**, Consultant was selected by means of the County's qualifications based selection (QBS) 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 Two Hundred Fifty Thousand Dollars (\$250,000.00). 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 24 months ("Term"), unless earlier terminated under Part 11 of this Agreement.

2.04 Scope

- A. The Services and Deliverables identified in Exhibit A, "Consultant's Scope of Work and Hourly Rates", 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 Project Manager (OPM) within the scope of this PSA.

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:



County of Santa Barbara: General Services
Capital Division

- (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 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.

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



County of Santa Barbara: General Services
Capital Division

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 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. If applicable to the scope defined within this PSA, 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. If applicable to the scope defined within this PSA, 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 Exhibit A, "Consultant's Scope of Work & Hourly Rates"
2. This PSA establishes the Consultant's Milestone Schedule for completion of the Consultant's Services.

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, AutoCAD 2004 or newer, Microsoft Office 2003 or newer.

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.



County of Santa Barbara: General Services
Capital Division

3. If applicable to the scope defined within this PSA, Owner will print Bid Documents for distribution to Bidders at Owner's expense.
- G. Meetings
1. Required meetings are as specifically identified in Exhibit A "Consultant's Services and 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 Exhibit A "Consultant's Scope of Work & Hourly Rates" 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 OPM.

5.04 Basic Services & Deliverables: See Exhibit A

PART 6 - CONSULTANT'S SCHEDULE

6.01 Schedule

- A. Consultant shall schedule and promptly perform all Services and Deliverables in coordination with the County.
- B. Consultant shall perform all Services and Deliverables within the time and project schedule shown. Time is of the essence in accordance with the Standard of Care in this Agreement.
- C. 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

- 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



County of Santa Barbara: General Services
Capital Division

- 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 Scope of Work & 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 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 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. Prevailing Wages
 - a. Consultant acknowledges that work performed on site to support the Services under this PSA is a public work within the meaning of California Labor Code Section 1720 and that the requirements of Section 1771, et. seq. apply to such public work. Consultant has included (and will include) consideration for this obligation in calculating compensation and cost estimates under this PSA.



County of Santa Barbara: General Services
Capital Division

5. 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 found in the Capital Projects Division.
- B. All reimbursable expenses, including travel, mileage, copying, printing, etc. should be included in the MCL and not billed separately.

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 OPM.

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

- A. 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

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

10.07 Consultant's Accounting Records

- A. 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.
- B. Owner's Auditing Rights



County of Santa Barbara: General Services
Capital Division

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.
- C. 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 the County's OPM specifying such failure or violation, Owner may terminate this PSA.
 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. Suspension for Convenience.
1. Owner's Authorized Representative may, without cause, order Consultant in writing to suspend, delay, or interrupt the services under this PSA in whole or in part for up to 90 days. COUNTY shall incur no liability for suspension under this provision and suspension shall not constitute a breach of this Agreement.
- D. 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



County of Santa Barbara: General Services
Capital Division

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 Design, if required.
- 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.
 - 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.



County of Santa Barbara: General Services
Capital Division

- 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.
 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



County of Santa Barbara: General Services
Capital Division

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
 - 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 intended 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.

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. Owner shall be the owner of the following items incidental to this Agreement upon production, whether or not completed: all data collected, all documents of any type whatsoever, all photos, designs, sound or audiovisual recordings, software code, inventions, technologies, and other materials, and any material necessary for the practical use of such items, from the time of collection and/or production whether or not performance under this Agreement is completed or terminated prior to completion. Consultant shall not release any of such items to other parties except after prior written approval of Owner.
- B. Unless otherwise specified herein, Consultant hereby assigns to Owner all copyright, patent, and other intellectual property and proprietary rights to all data, documents, reports, photos, designs, sound or audiovisual recordings, software code, inventions, technologies, and other materials prepared or provided by Consultant pursuant to this PSA (collectively referred to as "Copyrightable Works and Inventions"). Owner shall have the unrestricted authority to copy, adapt, perform, display, publish, disclose, distribute, create derivative works from, and otherwise use in whole or in part, any Copyrightable Works and Inventions. Consultant agrees to take such actions and execute and deliver such documents as may be needed to validate, protect and confirm the rights and assignments provided hereunder. Consultant warrants that any Copyrightable Works and Inventions and other items provided under this Agreement will not infringe upon any intellectual property or proprietary rights of any third party. Consultant at its own expense shall defend, indemnify, and hold harmless Owner against any claim that any



County of Santa Barbara: General Services
Capital Division

Copyrightable Works or Inventions or other items provided by Consultant hereunder infringe upon intellectual or other proprietary rights of a third party, and Consultant shall pay any damages, costs, settlement amounts, and fees that may be incurred by Owner in connection with any such claims. This Ownership of Documents and Intellectual Property provision shall survive expiration or termination of this PSA.

- 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.

13.07 Taxes

- A. Consultant shall pay all taxes, levies, duties, and assessments of every nature due in connection with any work under this PSA and shall make any and all payroll deductions required by law. Owner shall not be responsible for paying any taxes on Consultant's behalf, and should Owner be required to do so by state, federal, or local taxing agencies, Consultant agrees to promptly reimburse Owner for the full value of such paid taxes plus interest and penalty, if any. These taxes shall include, but not be limited to, the following: FICA (Social Security), unemployment insurance contributions, income tax, disability insurance, and workers' compensation insurance

13.08 Conflicts of Interest

- A. Consultant covenants that Consultant presently has no employment or interest and shall not acquire any employment or interest, direct or indirect, including any interest in any business, property, or source of income, which would conflict in any manner or degree with the performance of services required to be performed under this PSA. Consultant further covenants that in the performance of this PSA, no person having any such interest shall be employed by Consultant. Consultant must promptly disclose to Owner, in writing, any potential conflict of interest. Owner retains the right to waive a conflict of interest disclosed by Consultant if Owner determines it to be immaterial, and such waiver is only effective if provided by Owner to Consultant in writing.

13.09 No Publicity or Endorsement

- A. Consultant shall not use Owner's name or logo or any variation of such name or logo in any publicity, advertising or promotional materials. Consultant shall not use Owner's name or logo in any manner that would give the appearance that the Owner is endorsing Consultant. Consultant shall not in any way contract on behalf of or in the name of Owner. Consultant shall not release any informational pamphlets, notices, press releases, research reports, or similar public notices concerning the Owner or its projects, without obtaining the prior written approval of Owner.

13.10 Non-Discrimination

- A. Owner hereby notifies Consultant that Owner's Unlawful Discrimination Ordinance (Article XIII of Chapter 2 of the Santa Barbara County Code) applies to this PSA and is incorporated herein 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.

13.11 Execution in Counterparts



County of Santa Barbara: General Services
Capital Division

- A. This Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as the parties shall preserve undestroyed, shall together constitute one and the same instrument

13.12 Governing Law

- A. This PSA shall be governed by the laws of the State of California. Any litigation regarding this Agreement or its contents shall be filed in the County of Santa Barbara, if in state court, or in the federal district court nearest to Santa Barbara County, if in federal court.

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 supersedes 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.
- C. If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this PSA shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.
- D. No remedy herein conferred upon or reserved to Owner is intended to be exclusive of any other remedy or remedies, and each and every such remedy, to the extent permitted by law, shall be cumulative and in addition to any other remedy given hereunder or now or hereafter existing at law or in equity or otherwise

PART 16 - EXHIBITS

- A. The following listed Exhibits referred to herein are incorporated in this PSA as though set forth in full. In the event of conflict between the provisions contained in the numbered sections of this Agreement and the provisions contained in the Exhibits, the provisions of the Exhibits shall prevail over those in the numbered sections.
1. Exhibit A, "Consultant's Scope of Work & Hourly Rates"
 2. Exhibit B, "Consultant's Staff & Subconsultants"
 3. Exhibit C, "Consultant's Compensation"
 4. Exhibit D, "Indemnification And Insurance Requirements"
 5. Exhibit E, "Notices"



County of Santa Barbara: General Services
Capital Division

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective on the date executed by the COUNTY

County of Santa Barbara

By: _____
GREGG HART, CHAIR
BOARD OF SUPERVISORS

CONSULTANT:
Roesling Nakamura Tereda Architects, Inc.
363 5th Avenue, #202
San Diego, CA 92101

By: _____
Authorized Representative

Name: TYSON CLINE, AIA
Title: PRINCIPAL
Address: 363 5TH AVE #201
City/State/Zip: SAN DIEGO CA 92101

ATTEST:
MONA MIYASATO,
COUNTY EXECUTIVE OFFICER
CLERK OF THE BOARD

By: _____
Deputy

APPROVED AS TO FORM:
MICHEAL C. GHIZZONI
COUNTY COUNSEL

By:
Deputy County Counsel

APPROVED AS TO ACCOUNTING FORM:
BETSY SCHAFFER, CPA, CPFO
AUDITOR-CONTROLLER

By:
Deputy

Digitally signed by C. Edwin Price, Jr.
Date: 2020.07.21 09:45:59 -07'00'

APPROVED AS TO FORM:
RAY AROMATORIO, ARM, AIC
RISK MANAGER

By: Ray Aromatorio,
Risk Manager
Risk Manager

Digitally signed by Ray Aromatorio,
Risk Manager
Date: 2020.07.21 08:44:16 -04'00'

RECOMMENDED FOR APPROVAL:
JANETTE D. PELL, DIRECTOR
GENERAL SERVICES DEPARTMENT

By: Janette D. Pell
Department Head

Digitally signed by Janette D. Pell
Date: 2020.07.29 11:55:59 -07'00'

END OF AGREEMENT

EXHIBIT A

CONSULTANT'S SCOPE OF WORK HOURLY RATES

The following scope of work and hourly 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 OPM 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 OPM.

CONSULTANT FIRM NAME: Roesling Nakamura Terada Architects, Inc. & Subconsultants

SCOPE OF WORK: Phase 1 and Phase 2 of attached RNT proposal only. Phase 3 is not included in the scope of work for this PSA.

END EXHIBIT A

EXHIBIT B

CONSULTANT'S STAFF & SUBCONSULTANTS

- A. Consultant declares that the Principal-in-Charge and Project Manager will be Tyson Cline, AIA.
- B. Consultant will employ Subconsultants identified in the Consultant's response to the County's RFP 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 OPM'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 OPM. In that event Consultant must submit the name of a qualified replacement for OPM's approval.

END EXHIBIT B



County of Santa Barbara: General Services
Capital Division

EXHIBIT C

CONSULTANT'S COMPENSATION

1. COMPENSATION SUMMARY

a.	Consultant's Fixed Fee for the Basic Services described in <u>Exhibit A, "Consultant's Scope of Work and Hourly Rates"</u> shall be:		
	Design Services		\$206,943
	Reimbursable Direct Costs		\$8000
	SUBTOTAL: Fixed Fee for Basic Services		\$214,943
b.	Allowance for Reimbursable Expenses pursuant to Part 10.02	1	\$0.00
c.	Allowance for Additional Basic Services (PSA Part 5.04) and Supplementary Services (PSA Part 10.03) that may be authorized by the Owner in writing pursuant to issuance of a Supplementary Services (SS) Order , issued during the period of the PSA.		\$35,057
1.		1	\$250,000
2.	Additional Site Visits Including All Reimbursable Expenses:		
i.			
ii.			
iii.			
2.	MAXIMUM COMPENSATION (a+b+c+d)		\$250,000



County of Santa Barbara: General Services
Capital Division

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



Capital Division

EXHIBIT D

**Indemnification and Insurance Requirements
(For Design Professional Contracts)**

INDEMNIFICATION

CONSULTANT agrees to indemnify, defend (with counsel reasonably approved by COUNTY) and hold harmless COUNTY (i.e., OWNER) and its officers, officials, employees, agents and volunteers from and against any and all claims, actions, losses, damages, costs, expenses (including but not limited to attorneys' fees), judgments and/or liabilities that arise out of, or pertain to, or relate to the negligence, recklessness, or willful misconduct of the CONSULTANT and its employees, subcontractors, or agents in the performance of services under this Agreement, but this indemnity does not apply to liability for damages arising from the sole negligence, active negligence, or willful acts of the COUNTY.

NOTIFICATION OF ACCIDENTS AND SURVIVAL OF INDEMNIFICATION PROVISIONS

CONSULTANT shall notify COUNTY immediately in the event of any accident or injury arising out of or in connection with this Agreement. The indemnification provisions in this Agreement shall survive any expiration or termination of this Agreement.

INSURANCE

CONSULTANT shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the CONSULTANT, its agents, representatives, employees or subcontractors.

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office (ISO) Form CG 00 01 covering CGL on an "occurrence" basis, including products-completed operations, personal & advertising injury, with limits no less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate.
2. **Automobile Liability:** ISO Form Number CA 00 01 covering any auto (Code 1), or if CONTRACTOR has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than \$1,000,000 per accident for bodily injury and property damage.
3. **Workers' Compensation:** as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.
4. **Professional Liability (Errors and Omissions)** Insurance appropriate to the CONTRACTOR'S profession, with limit of no less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate.

If the CONSULTANT maintains higher limits than the minimums shown above, the OWNER requires and shall be entitled to coverage for the higher limits maintained by the CONSULTANT. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the OWNER.

B. Other Insurance Provisions



County of Santa Barbara: General Services
Capital Division

The insurance policies are to contain, or be endorsed to contain, the following provisions:

1. **Additional Insured** – COUNTY (i.e., OWNER), its officers, officials, employees, agents and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the CONSULTANT including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the CONSULTANT's insurance at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used).
2. **Primary Coverage** – For any claims related to this Agreement, the CONSULTANT's insurance coverage shall be primary insurance as respects the OWNER, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the OWNER, its officers, officials, employees, agents or volunteers shall be excess of the CONSULTANT's insurance and shall not contribute with it.
3. **Notice of Cancellation** – Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the OWNER.
4. **Waiver of Subrogation Rights** – CONSULTANT hereby grants to OWNER a waiver of any right to subrogation which any insurer of said CONSULTANT may acquire against the OWNER by virtue of the payment of any loss under such insurance. CONSULTANT agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not the OWNER has received a waiver of subrogation endorsement from the insurer.
5. **Deductibles and Self-Insured Retention** – Any deductibles or self-insured retentions must be declared to and approved by the OWNER. The OWNER may require the CONSULTANT to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.
6. **Acceptability of Insurers** – 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".
7. **Verification of Coverage** – CONSULTANT shall furnish the OWNER with proof of insurance, original certificates and amendatory endorsements as required by this Agreement. The proof of insurance, certificates and endorsements are to be received and approved by the OWNER before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the CONSULTANT's obligation to provide them. The CONSULTANT shall furnish evidence of renewal of coverage throughout the term of the Agreement. The OWNER reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.
8. **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 terminate the Agreement. Maintenance of required insurance coverage is a material element of the Agreement and failure to maintain or renew such coverage or to provide evidence of renewal may be treated by OWNER as a material breach of contract.



Capital Division

9. **Subcontractors** – CONSULTANT shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and CONSULTANT shall ensure that OWNER is an additional insured on insurance required from subcontractors.
10. **Claims Made Policies** – If any of the required policies provide coverage on a claims-made basis:
 - i. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
 - ii. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of contract work.
 - iii. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the CONSULTANT must purchase “extended reporting” coverage for a minimum of five (5) years after completion of contract work.
11. **Special Risks or Circumstances** – OWNER reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

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.

END EXHIBIT D



County of Santa Barbara: General Services
Capital Projects Division

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 Division
1105 Santa Barbara St. (Historic Courthouse, 2nd Floor)
Santa Barbara, CA 93101

Attention: Patrick Zuroske, Assistant Director, General Services Department
(805) 568-3096 / pzuroske@countyofsb.org

b. **Consultant:**

Roesling Nakamura Terada Architects, Inc.
363 5th Avenue, #202
San Diego, CA 92101

Attention: Tyson Cline, AIA, Principal Partner
(805) 626-5330

END EXHIBIT E



County of Santa Barbara: General Services
Capital Projects Division