

County of Santa Barbara  
General Services  
**Capital Projects Division**

**PROFESSIONAL SERVICES AGREEMENT**

Between

**THE COUNTY OF SANTA BARBARA**

And

**Kitchell/CEM, Inc.**

For

**CONSTRUCTION MANAGEMENT AND RELATED PROFESSIONAL SERVICES**

For

**Northern Branch Jail Project**

**PROJECT NUMBER: 8600**

**May 14, 2013**

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**PROFESSIONAL SERVICES AGREEMENT**

FOR

**CONSTRUCTION MANAGEMENT AND RELATED PROFESSIONAL SERVICES**

**ADULT DETENTION FACILITY**

This is an agreement between THE COUNTY OF SANTA BARBARA (hereinafter "Owner" or "County") and Kitchell/CEM, 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 Construction Management Professional, will provide Construction Management and related professional services (hereinafter "Services") for the Northern Branch Jail Project (hereinafter "Project").
- 1.02 WHEREAS**, Consultant was selected by means of the County's consultant selection process, represents itself as a Construction Management Professional having the requisite qualifications, licenses and agrees to perform such Services.
- 1.03 WHEREAS**, Consultant will perform such Services pursuant to the scope of work defined in Project Phases, the compensation for which to be negotiated individually and collectively by both parties to this PSA and collectively establishing the full compensation of this PSA, and to be given Notice To Proceed on by Owner's Authorized Representative pursuant to this PSA.

**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, a construction management Professional, will provide Construction Management services, including pre-construction phase services, to the County as it deems necessary to complete the Project. This PSA represents a negotiated scope of work and associated compensation for the entire Project. The entire Project is comprised of the sum of Project subsets, or work phases called Project Phases, for which partial compensation is identified. The County will authorize Consultant to perform the total Project, one or more phase at a time, by issuing Authorization to proceed with individual Project Phases. Each Project Phase will set forth the Project Phase title to reference the PSA Section defining the scope of services and deliverables for that phase, and the maximum compensation for the phase.

**2.02 Maximum Compensation.**

- A. Compensation for entire Project, which equals the sum of all Project Phases issued pursuant to this PSA, shall not exceed **\$2,270,000 (Two Million Two Hundred Seventy Thousand Dollars)**. If Consultant performs services or incurs expenses beyond this Maximum Compensation Limit, Consultant does so at Consultant's sole risk and expense. County shall not be obligated to pay more than the amount set forth in this paragraph except as may be provided in a written amendment signed by both parties.

**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 **72 months** ("Term"), unless earlier terminated under **Part 12** of this Agreement. All Project Phases shall be executed, but Services not necessarily completed, within the Term 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 the full extent of the Services and Deliverables agreed to between parties, and include the Project Phases identified in [Part 4](#).
- B. Any act or event affecting any particular Project Phase, such as its completion, termination, acceptance, non-acceptance, continuation or modification, shall not affect any other Project Phase or this PSA unless specifically provided herein or agreed in writing by the parties.

## PART 3 - OWNER'S RESPONSIBILITIES

### 3.01 Owner Provided Information.

- A. Owner shall provide the following for Consultant's use or information in connection with the Services:
  - 1. Santa Barbara County Response to Assembly Bill (AB) 900 Request for Applications, January 11, 2012.
  - 2. California Department of Corrections and Rehabilitation's (CDCR) "Capital Outlay and State Public Works Board (SPWB) Guidelines", March, 2012.
  - 3. "Matrix Guide to Coordination of Consultant Responsibilities", Kitchell, March, 2013.
  - 4. Owner's Project Manual.
  - 5. Utility Services Study, Flowers & Associates, August, 2009.
  - 6. Needs Assessment, Rosser International, 2008.
  - 7. 2011 Update to Needs Assessment by Rosser International.
  - 8. Architectural Program, Rosser International, November 2011.
  - 9. Final Subsequent Environmental Impact Report (EIR), Rincon Consultants, February 27, 2008.
  - 10. Addendum to EIR dated December 6, 2011.
  - 11. An initial equipment list that Owner considers more than 70% complete.
  - 12. A certified survey of the Project site prepared by a California licensed Land Surveyor or Civil Engineer. The survey will include site boundaries, contours, drainage, grades and lines of streets, pavements, and adjoining properties, rights-of-way, easements, encroachments, zoning and other restrictions; information on available public and private utilities services, above and below grade, including inverts and depths.
  - 13. Owner to provide Professional Service Agreements with other consultants retained for the Project.
  - 14. Owner to provide shop drawings, vendor support and all data required for coordination of movable furniture & equipment unless otherwise provided in this PSA.
- B. Consultant shall make a written recommendation to the Owner regarding the completeness or sufficiency of any survey or specialized study, as it pertains to Consultant's Services, 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 law, imposed by 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 PHASES

### 4.01 Preparation and Approval.

- A. The Owner's Authorized Representative ("OAR") for this PSA is the Director of General Services Department, or that Director's Designee.
- B. Owner hereby approves all Project Phases executed by OAR within the limits of this PSA. OAR does not have the authority to negotiate or authorize payments or scope beyond the Maximum Compensation Limit or scope stated in this PSA.
- C. Commencement of each Project Phase is contingent on receipt by Consultant of an Authorization to Proceed issued by OAR. Consultant shall not commence work until Consultant receives the written Authorization to Proceed from the OAR.
- D. Any act or event affecting any particular Project Phase, such as its completion, termination, acceptance, non-acceptance, continuation or modification, will not affect any other Project Phase or this PSA unless specifically provided herein or agreed in writing by the parties.

#### 4.02 Changes in Scope.

- A. If Owner requests a change in the requirements of a Project Phase that Consultant contends is material and justifies an increase in compensation, Consultant shall within fourteen (14) calendar Days of the Owner's request, advise Owner in writing before proceeding with such change. Said advisement shall include Consultant's opinion of the circumstances and reasons causing the change and Consultant's estimate of cost of the 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 Project Phase.
- B. If Owner causes a material change in the Service(s) or Deliverable(s), Consultant shall within fourteen (14) calendar Days of Consultant's discovery 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 shall provide such Service or Deliverables as directed by Owner. If Owner concurs that there has been a material change in a Service or Deliverable, payment to Consultant will be adjusted in accordance with [Part 11.01.A.4, "Changes"](#).
- C. If there is a material increase in the scope of Services required to complete a Project Phase, and such increase is not the fault of and caused by Consultant, or does not result from faulty or inaccurate estimations made by Consultant, OAR may request, and Consultant, pursuant to such request, shall provide assistance in re-allocating the remaining available funds relating to the Project Phase. Such assistance shall, if requested by OAR, also include a determination of any other Services necessary to complete the Project.
- D. If Consultant discovers a means of achieving a material decrease in the scope of Services required to perform a Project Phase, Consultant shall immediately notify OAR and thereafter accept a reasonable reduction in compensation.

#### 4.03 Project Phases.

- A. The Project Phases of this PSA under which Consultant shall provide Construction Management (CM) and CM related services, including review of Architect's work products in each phase, are as follows:
  - 1. Architectural Programming.
  - 2. Schematic Design.
  - 3. Design Development.
  - 4. Construction Documents.
  - 5. Bidding.
  - 6. Construction.
  - 7. Operation/Project Close-Out.
  - 8. Warranty.

- B. The maximum compensation of each of the above listed phases will be negotiated and established as part of this PSA. The sum of these will equal the Maximum Compensation Limit of this PSA.

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

### **5.01 State of California AB 900 Agreements.**

- A. The Project is primarily funded through a conditional award under State of California Assembly Bill (AB) 900 lease-revenue bond financing of new detention facilities. Accordingly, to remain eligible for the conditional award, the County of Santa Barbara is obligated to comply with the terms of primarily the following two agreements executed by the County of Santa Barbara on Jan. 15, 2013 and the State of California Public Works Board ("SPWB"), California Department of Corrections and Rehabilitation ("CDCR") and Board of State and Community Corrections ("BSCC") on Feb. 11, 2013. Consultant's work product and delivery shall comply with the terms and conditions of the following agreements and their Exhibits and Attachments. These agreements are attached to this PSA as Exhibits and made part of this agreement:
  - 1. Exhibit H: BSCC Jail Construction Agreement ("JCA"), February 11, 2013.
  - 2. Exhibit I: CDCR Project Delivery and Construction Agreement ("PDCA"), February 11, 2013.
- B. Consultant's responsibilities under the Agreements referred to in [Part 5.01.A](#) include but are not limited to the following:
  - 1. Books and Records. Consultant shall maintain adequate fiscal and Project books, records, documents, and other evidence pertinent to Consultant's work on the Project in accordance with generally accepted accounting principles. Adequate supporting documentation shall be maintained in such detail so as to permit tracing transactions from the invoices, to the financial statement, to the accounting records, and to the supporting documentation.
  - 2. Record Maintenance Period. These records shall be maintained for a minimum of three years after the date on which no Project bonds are outstanding (hereinafter "Expiration Date"), estimated to be 2037 if 20-year bonds are issued in 2014. If any litigation, claim, negotiation, audit, or other action involving the records has been started before the Expiration Date, the records must be retained until the completion of the action and resolution of all issues which arise from it, or until the Expiration Date, whichever is later.
  - 3. Access to Books and Records. Consultant shall make such books, records, supporting documentations, and other evidence available to the BSCC or designees, the CDCR, the State Public Works Board, the State Department of General Services, the State Department of Finance, the Bureau of State Audits, or their designated representatives, during the course of the Project and the Records Maintenance Period and provide suitable facilities for access, monitoring, inspection, and copying thereof. Further, Consultant shall include a similar Record Maintenance Period and right of the state to audit records and interview staff in any subcontract related to the performance of this Agreement.
  - 4. Contractor Advisement. By its execution of this Agreement, Consultant acknowledges that a partial source of financing for the agreement between the County and Contractor for construction of the Project is the State Financing, and that the County may not have funds to finance the Agreement for Construction independently of the State Financing. Consultant shall in all ways cooperate with the County and the BSCC in maintaining a good working relationship. Consultant shall cooperate as instructed by the OAR or other County designee in resolving any disputes arising under the Agreement.

5. Construction Specification Institute (“CSI”) Divisions. To the extent applicable to this Agreement, Consultant shall list construction costs according to CSI Division. CSI Divisions for Project will be set forth in the Schedule of Values to be approved by County.

## 5.02 Scope of Project.

- A. The Project scope is defined as provided in the County BSCC Construction Agreement’s exhibit B, described as follows:
  1. This project will design and construct approximately 139,000 square feet (sf) of housing, treatment, and program space on approximately 6 acres of the greater 50± acres of county owned land. The project will include one new building constructed primarily of steel and concrete for long-term durability. This building will house both male and female inmates in a mix of medium and maximum security, and will include special use beds for mental health and medical purposes. It will also include space for all core operational functions.
  2. The housing space will consist of approximately 344 beds in three types of units. A general population housing unit will provide approximately 16 administrative segregation beds and 64 general population beds. A direct supervision housing unit will have approximately 72 beds and an indirect supervision housing unit will be subdivided into a podular configuration with approximately 192 beds. The direct supervision unit and general population unit will also include space for an officer’s station, storage, multipurpose room, recreation yard, dayroom, interview area, laundry, dental, exam area, and staff restroom. The indirect supervision unit will be rated medium or maximum security and will include a multipurpose room, an exercise yard, and a central control area. Each pod will contain its own dayroom. The medical/mental health housing will include approximately 32 special use beds for mental health and medical purposes. The new jail will include appropriate treatment, program, and support services space for but not be limited to, health care services, intake and release, vocational and industrial training, food preparation, laundry, transportation, maintenance, visitation, administrative and staff support space, and records storage.
  3. This project will include the design of all systems including, but not limited to: electrical; plumbing; mechanical; heating, ventilation, and air conditioning; security; fire protection systems; site design; architectural design; structural design; and approximately 150 parking spaces for staff and visitors. In addition, there will be secure fencing surrounding the facility to provide grounds security.
  4. This scope as defined in this Part 5.02.A may be modified only if the BSCC and CDCR give Owner written approval, and OAR gives subsequent direction to Consultant in writing.

## 5.03 Construction Delivery Method.

- A. The delivery method will be design-bid-build (DBB). The construction may utilize multiple bid packages to be managed by Consultant (see [Part 5.03.B](#)).
- B. Owner anticipates that the Project construction work may be performed by separate trade subcontractors who will be selected utilizing an estimated 15-30 separate bid packages. However, Consultant shall base Consultant’s fee for Basic Services under this PSA on a single bid package plus the early bid package. If Owner chooses to deliver the construction using multiple prime, Consultant will be entitled to additional compensation, as described in Part 5.10.F.4.

## 5.04 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 PSA. Consultant shall not assign or transfer any interest in this PSA nor the performance of any of Consultant’s obligations hereunder, without the prior written consent of Owner, and any attempt to so assign this PSA, or any rights, duties or obligations arising hereunder, shall be void and of no effect.



### 5.05 Consultant's Use of Subconsultants.

- A. Consultant and Owner agree that Consultant's unique talents, knowledge and experience form a basis for this PSA and that the services to be performed by Consultant under this PSA are unique in character to Consultant. Therefore, Consultant shall not subcontract, assign or delegate any portion of this PSA or any duties or obligations hereunder unless approved by Owner in a written instrument executed and approved by the Owner in writing. Neither party shall, on the basis of this PSA, contract on behalf of or in the name of the other party. Any agreement that violates this Paragraph shall confer no rights on any party and shall be null and void.
- B. Consultant shall use the Subconsultants identified in this PSA, Exhibit B, and shall not substitute Subconsultants unless approved by written instrument executed and approved by the Owner in writing.
- C. To the extent Consultant is permitted by Owner in writing to subcontract, assign or subcontract any portion of this PSA or any duties or obligations hereunder, Consultant shall comply with all applicable prompt payment laws and regulations (including, without limitation, California Civil Code, Section 3321). Consultant shall remain fully liable and responsible for all acts and omissions of its Subconsultants in connection with the Services or the Project, as if it engaged it the acts and omissions directly.

### 5.06 Criteria Governing Consultant's Services on Project.

- A. The Project shall be developed in conformance with the following:
  - 1. NOT USED.
  - 2. JCA previously defined; a copy of which has been provided to Consultant.
  - 3. PDCA previously defined; a copy of which has been provided to Consultant.
- B. NOT USED.
- C. Compliance with Laws: Consultant shall comply with the standard of care applicable to similarly credentialed professionals in construction management of adult detention facilities, regarding complying with all requirements of all applicable laws as if set forth in this PSA, including without limitation California Codes of Regulations (CCR) Titles 8, 14, 15, 19 and 24.
  - 1. NOT USED.
  - 2. Assist Owner in ensuring that Architect's submittals for the State are coordinated fully with BSCC, CDCR, SPWB, the State Fire Marshal and any other authority with jurisdiction, to secure timely review and approval of Project submittals by others including, but not limited to:
    - a. Determining the estimated time from submission to applicable State agencies of plans and specifications to approval of same, including time required for initial review of plans and specifications, and "agendizing" or docketing for approval by Boards members at Board Hearings, and incorporating same into Project schedule.
    - b. Assisting Owner with securing from BSCC budget modifications and related pre-approvals, where appropriate to minimize Project delays caused by such changes.
    - c. Securing early review and approval by applicable State agencies of deferred approval items, including advising Owner of the need to require immediate submission after construction contract award of all necessary submittals for such items, including specifications to this effect in final design documents, and review of proposed contract documents to assure presence of necessary enforcement provisions.
  - 3. Coordinate and cooperate fully with applicable State agencies in its required observation of construction.

4. NOT USED.
5. Advise on:
  - a. Selection of resident inspector and testing laboratories.
  - b. Preparing addenda and change orders as required by conditions on the Project.
6. Performing general observation of the work of construction.
7. Assist Owner in Architect's fulfillment of the requirements imposed upon Architect under Title 24 including, but not limited to, observation and personal contact with the Project, Subconsultants, submitting information to BSCC, CDCR and the State Fire Marshal, and general direction of the work of the Project Inspector (as contemplated by Title 24).
8. Consultant shall review the Architect's list of testing of materials consistent with the needs of the Project, Architect's specific instructions to the testing agency prior to the start of construction, and Architect's notification to BSCC as to the disposition of materials noted on laboratory reports as not conforming to the approved specifications.
9. Consultant shall assist Owner engage Project Inspector(s) as required by the BSCC and Title 24, which Project Inspectors will have been approved by the Architect. Consultant shall submit Project Inspector(s) to BSCC as required. Said Project Inspector(s) shall be under the direction of Consultant.
- D. State Communications: During the Bidding and Construction Phase, assist in securing necessary approvals from applicable State agencies, and assist with and coordinate any necessary approvals with other authorities having jurisdiction.
- E. Prior to the beginning of each design phase, identify all Owner decisions required to maintain the Master Schedule. Provide Owner with at least 15 working days-notice of all decisions required to maintain the Master Schedule.
- F. The Project will be developed and designed in close cooperation with the County's General Services and Sheriff's Office and their consultants. Consultant acknowledges its obligation to work with, coordinate with, interface with, exchange ideas with, and otherwise cooperate and collaborate with the General Services and Sheriff's Offices, their independent consultants, including personnel required for transition planning for Project facility, and operational matters throughout development and design of the Project.
- G. NOT USED.
- H. NOT USED.
- I. NOT USED.

#### **5.07 Consultant's General Responsibilities.**

The following General Responsibilities shall apply to all Services under this PSA performed by Consultant personnel and Consultant's agents.

- A. Standard of Care.
  1. Consultant shall perform Services under each Project Phase 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 when performing similar services under similar conditions.
  2. Consultant shall perform Services under this PSA in accordance the terms of the JCA and PDCA agreements.
  3. Consultant shall perform Services under this PSA in compliance with applicable and most stringent written federal, state and local codes, statutes, laws, regulations and ordinances in force at the time a Project Phase is awarded.
  4. Consultant shall review Architect's Construction Documents for compliance with applicable and most stringent California and local regulations and standards, including

those of the Fire Marshal having jurisdiction over the Project, and in effect during performance of Architect's Services.

5. Consultant shall use its professional judgment and expertise to verify Architect's correct applications 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.
  6. NOT USED.
- B. Construction Quality Control Systems.
1. Consultant shall review Architect's Drawings and Technical Specifications to help ensure they clearly identify and describe all necessary quality levels and quality control procedures such as inspections, tests, Contractor's Submittals or other measures that the Contractor or subcontractors are required to perform.
  2. Consultant shall review each of Architect's Technical Specification Sections to help ensure they include the requirements for the tests, controls, performances and certifications needed to verify the specified quality level of that Section.
  3. Consultant shall review each of Architect's Technical Specification Sections to help ensure they include a subsection to identify and list required Contractor or subcontractor Submittals including but not limited to Shop Drawings, certificates of compliance, Product Data sheets, Samples, tests and test results, mix designs, required worker qualifications, off-site inspections, or all other necessary Contractor Submittals.
- C. Testing and Inspection Requirements.
1. NOT USED.
  2. Consultant shall assist Owner in hiring a Certified Testing Lab to perform all required tests.
  3. Consultant shall review all test results at the time of their generation.
- D. 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 shall comply with and incorporate the requirements of said Federal, State, or outside funding sources in the Construction Documents. As described herein, this project is predominately funded by State of California.
- E. NOT USED.
- F. Sequence of Consultant's Services
1. In general, Consultant's Services will proceed sequentially by the Phases described in [Part 5.10, "Basic Services & Deliverables"](#).
  2. Each Project Phase will establish the Consultant's Milestone Schedule, including any additional interim milestones, for completion of the Consultant's Services applicable to that Project Phase.
  3. Commencement of each Project Phase is contingent on receipt by Consultant of an Authorization to Proceed issued by OAR. Consultant shall not commence work until Consultant receives the written Authorization to Proceed from the OAR.
- G. Signing and Stamping Documents.
1. Final Construction Documents and other submittal documents required by Permitting Authorities, which are the responsibility of Consultant, shall be signed (original ink – not printed) as appropriate to the submitted documents.

2. Original ink signed documents shall be provided in the quantity required by the OAR for each Project Phase.
- H. NOT USED.
- I. Submittal of Deliverables
1. NOT USED.
  2. Consultant shall furnish to Owner, suitable for reproduction, original reproducible of Instruments of Service, and computer disks containing the Instruments of Service in the following electronic formats: Microsoft PC compatible operating system, AutoCAD 2013 or newer, Microsoft Office 2010 or newer, and Revit 2013 or newer.
  3. NOT USED.
  4. Architect's 100%-level submittals for each phase will generally undergo the following process, accept as otherwise approved by the OAR in writing:
    - a. Architect submits deliverables to Owner electronically using the DMS (see [Part 5.10.B.5](#)).
      - (1) Consultant submits its Statement of Probable Construction Cost one week later than the rest of the deliverables.
    - b. Owner and Construction Manager will review and generate comments.
    - c. The OAR will review comments; either accepting or rejecting.
    - d. Architect incorporates review comments accepted by OAR, and submits back-check versions of each submittal revised.
    - e. Owner and Construction Manager reviews back-check submittal and provides comments to be incorporated by Architect for Architect's submittal to State agencies.
    - f. As directed by OAR, Architect submits deliverables to State agencies.
    - g. State agencies review submittal and provide comments to either be, at the direction of the OAR.
      - (1) incorporated by Architect and resubmitted to State agencies; or
      - (2) incorporated by Architect in the next phase (except as provided for 100% Construction Documents phase).
- J. Printing & Reproduction.
1. Consultant shall pay for all printing and reproduction cost incurred in the performance of its Services.
  2. NOT USED.
  3. Owner will print Bid Documents for distribution to Bidders at Owner's expense.
  4. At Owner's written request, Consultant shall print or reproduce selected documents. The Consultant may invoice the Owner for Owner-requested printing as a Reimbursable direct expense.
- K. Meetings.
1. "Meetings" include "workshops" and "site-visits".
  2. In addition to meetings specifically identified in [Part 5.10, "Basic Services & Deliverables"](#), for each Project Phase, Consultant shall attend meetings as needed or required with the organizations or individuals listed as follows:
    - a. Owner's officials, staff, commissions and user groups as required for the performance of Consultant's Services pursuant to this PSA. This requirement includes meetings with Owner, applicable State agencies and user groups to

- develop, explain and refine Architectural Program and design criteria and for Consultant to present design solutions for acceptance. This also includes a pre-design kickoff meeting with the Owner's organization.
- b. Owner-sponsored advisory groups and local officials to present the Project to the public.
  - c. Governmental Agencies having jurisdiction related to the Project or any part of the Project. The Consultant shall schedule and participate in preliminary meetings with all Governmental Agencies having jurisdiction for the Project prior to the start of the Schematic Design Phase and as needed or required thereafter.
3. Unless otherwise requested by the OAR, Consultant shall prepare agendas for and take minutes of all meetings conducted by Consultant. In said meetings with facility personnel, all discussions that involve scope, a significant design element, or project cost shall be documented by Consultant in the meeting minutes. Minutes shall be distributed by Consultant, and posted on DMS (defined [Part 5.10.B](#) below) by consultant, to participants not later than 2 business days before meeting, and minutes shall be distributed not later than 5 business days after meeting.
  4. The Consultant's fee for attendance at and preparation of minutes for all meetings specifically identified in [Part 5.10, "Basic Services & Deliverables"](#), will be considered included in the overall fee identified in each Project Phase. For other meetings Owner may request Consultant to attend, Consultant will be compensated as set forth in [Part 11.03, "Additional Services"](#).
  5. On-Site Meetings: For Consultants Basic Services, all meetings which Consultant is required to attend shall be in Santa Barbara County, unless otherwise agreed by the OAR, and include Consultant's Project Manager (CMPM), unless otherwise agreed by the OAR. Meetings during pre-construction phases for which Consultant's Construction Phase Manager (CPM) shall also attend will specifically call for inclusion of the CPM. For Construction and post-construction phases, CPM is understood to attend all meetings, except for unavoidable reasons, and is therefore not specifically called out. These "On-Site Meetings" shall be considered to have a duration not exceeding one business day, unless otherwise specified in a Project Phase.
  6. Meetings which Consultant attends remotely and which are less than 1.5 hours in length and do not occur more than twice per week on average over the course of the Project shall be considered part of Consultant's Basic Services.
  7. For meetings Consultant attends remotely and which are 1.5 hours or more in length or occur more than once per week on average over the course of the Project, and which are not specified in [Part 5.10, "Basic Services and Deliverable"](#). Consultant shall be compensated as set forth in [Part 11.03, "Additional Services"](#) for number of Consultant's staff and Subconsultant's approved by the OAR in advance of the meeting.
  8. Owner's Authorized Representative will coordinate all meetings between Consultant, Owner's user groups, and the public.
- L. 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 written approval as an amendment to the PSA.
- M. NOT USED.
- N. Local Labor: Consultant shall recognize it is the Owner's intent to maximize use of local labor in the construction of the Project. Consultant's work products in all work phases, where applicable, shall provide Owner with alternatives that provide opportunity to increase use of local labor, for Owner's consideration.

#### 5.08 Coordination of Work with Owner's Other Consultants.

- A. For the Project, Owner will utilize and establish professional service agreements with several firms, including the Architect-Engineer, a Project Expert, and a Commissioning Agent. A very general guide to the division of responsibilities, which cannot be relied upon for a determination of the scope of work for any firm, is available for Consultant's general information only, and is titled, "Matrix Guide To Coordination Of Consultant Responsibilities". If the provisions of one of Owner's professional service agreements indicate the same service is to be performed by more than one consulting firm and one such consulting firm is the Consultant for this PSA, Consultant of this PSA shall be responsible for the service, unless otherwise approved in writing by the OAR, and Consultant shall notify the OAR of any duplication or conflict immediately.
- B. Consultant consents to Owner's retaining of an Architect-Engineer, Project Expert and Commissioning Agent who may perform some or all of the functions assigned to the OAR in this PSA, as delegated by Owner.

#### 5.09 Overview of Water Supply and Waste Water Requirements.

- A. Water Supply Development: The closest connection point for city water is about 8,000 feet from the site. Based on an initial engineering study of alternatives previously referenced, it appears construction of an on-site water well may be the most cost effective means for water supply. For Architect's purpose in developing a fee for Architect's PSA, Owner has instructed Architect to assume the water well option will be designed and constructed. Consultant shall do the same. Pursuant to their PSA, Architect is tasked with performing investigations to confirm the method of supplying water to the site. If this investigation results in Owner selecting a different option, impacts to their and this PSA will be provided for by modifications pursuant to Part 11. The goal will be to complete development of water supply to the site as soon as possible before the main facility construction. The scope of this PSA covers work required to develop the needed water supply for the Project using the assumed option, and this PSA may be modified based on the results of Architect's investigations. The Consultant's services required in this PSA for all work related to water supply development under the stated assumption shall be as defined in [Part 5.10.F and G](#), as applicable, and shall be included in Consultant's fee for as Basic Services under this PSA.
- B. Waste Water: The closest connection point to tie into existing sewer infrastructure is about 6,800 feet from the site. Based on an initial engineering study of alternatives previously referenced, it appears about a 6 inch force main to this point, with lift station, will be the most cost effective means for sewage. For purposes of developing their fee for their PSA, Owner has instructed Architect to assume the force main option will be designed and constructed. Consultant shall do the same. Pursuant to their PSA, Architect is tasked with confirming the alternative recommended and performing coordination with the receiving treatment plant for this method of sewage management, then performing the designing and construction documents required to construct the sewer line, as described in Part 5.10. Sewage management includes potential use of reclaimed water. If Architect's investigation results in Owner selecting a different option, impacted Project Phases in Architect's and Consultant's PSAs will be modified pursuant to Part 11. The Consultant's services required in this PSA for all work related to sewage management development under the stated assumption shall be as defined in [Part 5.10.F and G](#), as applicable, and shall be included in Consultant's fee as Basic Services under this PSA.

#### 5.10 Basic Services & Deliverables.

- A. Unless the requirements for the Services and Deliverables described herein are specifically modified in writing in a particular Project Phase, when a particular phase of Services is specified and authorized in an individual Project Phase, Consultant shall provide its Services and Deliverables for that phase in conformance with the requirements described in this Section 5.10.
- B. Architectural Programming Phase.

1. Period of Service: Consultant shall perform to completion all services called for in the Programming Phase within the period of time set forth in Part 6.01.B, beginning at the time of Owner's issuance of authorization to proceed.
2. Meetings: Consultant shall attend the following meetings as part of Consultant's Basic Services:
  - a. Project Kick-Off, 2 hours.
  - b. Project Team Orientation on DMS, 2 hours, By Remote Video Conference.
  - c. Water Supply Development, with CPM.
  - d. One Programming Workshop, 2 days.
3. Examine Owner-provided information and the proposed Project site in terms of:
  - a. BSCC-defined Scope, Budget and Schedule.
  - b. Owner provided Project Budget and Requirements.
  - c. Functions and Priorities.
  - d. Site Conditions.
  - e. Opportunities and Constraints.
  - f. Utilities Services and Constraints.
  - g. Access for Construction.
  - h. Construction Feasibility and Phasing.
  - i. Other factors Consultant or Owner consider relevant to construction of the Project.
4. Construction Management Plan: Consultant shall prepare and submit for approval a detailed Construction Management Plan with, at a minimum, the following sections:
  - a. Directory of Participants.
  - b. Organizational Chart/Staffing Plan.
  - c. Traditional CM Tasks that Consultant Proposes be Performed by County.
  - d. Responsibility Assignment Matrix.
  - e. Master Project Schedule.
  - f. NOT USED.
  - g. Project Budget.
  - h. Projection of Cash Flow Requirements.
  - i. Project Communication System and Protocol.
  - j. Document Control System.
  - k. Document Distribution.
  - l. Quality Assurance Plan.
  - m. Project Inspector Plan.
  - n. Video Documentation of Construction.
  - o. Plan for determining Construction Bid Package and Contracting Strategy.
  - p. Permit Plan.
  - q. Partnering Plan.

Consultant's proposed staffing plan shall show the total and type of field staff Consultant believes is required, but is consistent with Consultant's January 22, 2013, submitted Response to the County's Request for Proposals dated December 21, 2012, for the project proposed, and their qualifications.

5. Document Management System (DMS): Within 10 days of award of the Programming Project Phase, Consultant shall submit, for OAR approval, a proposed DMS. Consultant shall provide any licensure fee during preconstruction, but Construction Documents will require Contractor to provide licensing fee during Construction Phase. The County reserves the right to select any outside document control system. After OAR has approved a DMS, Consultant shall establish, coordinate, and maintain the DMS until project closeout. The system shall ensure documents will be available by the entire project team, both County and non-County staff, by Internet. The DMS shall have capability to ensure that documents can be filed easily, may be retrieved quickly and easily, and that files are secure, with capability of setting different access levels for various team members. Consultant shall prepare and present an orientation of the system to the Project Team to familiarize and facilitate its ability to use the system. Project files are and will remain the property of the County. At project completion the project documentation shall be audited, organized, boxed, and transferred to the County in accordance with the County's file turnover and document archive requirements specified in Part 14 of this PSA. The system shall provide for the control of, as a minimum but not limited to:
  - a. Design Drawings and Specifications.
  - b. Cost Tracking.
  - c. Scheduling.
  - d. Records.
  - e. Contractor Daily Reports.
  - f. Correspondence.
  - g. Reports.
  - h. Change Orders.
  - i. Field Modifications.
  - j. Submittals.
  - k. Punch Lists.
  - l. Electronic Media.
  - m. Project Videos and Photographs.
6. Schedule: Prepare and maintain a master design and construction project schedule that encompasses each component of the project using Critical Path Method techniques. Owner's Architect will provide its design work schedule as input. Meet with Design and Construction team to determine critical decisions needed to maintain schedule and to coordinate phasing, if any. Define schedule for County's project team members. Ensure schedule complies with the JCA and PDCA agreements. Prepare and submit schedule reports to Owner at least monthly.
7. Design and Construction Budget: Consultant shall prepare a Project Budget based on all work and procurement required for the design and construction of the project, including costs of design, permitting, and other soft costs associated with the design and construction phases, and appropriate contingency amounts. Prepare and update cash flow requirements. Owner will provide soft costs to Consultant that Consultant is not responsible for managing, such as County project management costs and Architect design costs. Consultant shall submit the Budget to the OAR for acceptance. The Budget shall be revised as directed by Owner.



8. Cost and Progress Reports: Consultant shall prepare and distribute Project Cost and Progress Reports no less than monthly. The reports shall show all expenditures on the project in the preceding month, and summarizes all payments made through the date of the report, in line items that correspond to the Budget. The Reports shall include initial contract costs, adjustments, contingency remaining, current budget, executed change orders, pending change orders, projected costs to complete, and current total projected cost at completion. Reports shall be in a format accepted by the OAR, and shall be distributed only as directed by the OAR, but may include one or more state agencies.
9. Review of Architect's Deliverables: Review and provide written comment on Architect's completed, draft deliverables of the following:
  - a. Draft conceptual master plan of the 50-acre site.
  - b. Recommendations for proceeding with water supply development, including a proposed scope of work for engineering and design, and a construction cost estimate and timeline. Timeline shall provide for construction completion prior to bidding phase of main building.
  - c. Recommendations for proceeding with sewage management development, including any revision in scope proposed in the initial engineering study provided by Owner (see Part 3), and a construction cost estimate and timeline. Timeline shall provide for construction completion prior to bidding phase of main building.
  - d. Recommendations for any other work to be included in an early bid package. Consultant shall provide Owner with Consultant's recommendation for work to be included in an early bid package, considering the provisions of the JCA, which distinguish between on-site and off-site work.
  - e. Design Schedule.
  - f. 25% Integrated Security Plan.
  - g. Conceptual Project Budget in format specified by Owner.
10. Deliverables: Based on Owner's acceptance of Consultant's proposed products and submittal formats, Consultant shall deliver the following work products by the completion of the project Programming Phase as defined in the Project Phase:
  - a. Report and Recommendations on Architect's Deliverables.
  - b. Master Project Schedule.
  - c. Project Budget.
  - d. Cost and Progress Report.
  - e. Management Plan.
  - f. DMS system and Orientation to Team.

**C. Schematic Design Phase.**

1. Period of Service: After acceptance by Owner of the required deliverables in the Programming Phase, Consultant shall perform to completion all services called for in the Schematic Design Phase within the period of time set forth in Part 6.01.B, beginning at the time of Owner's issuance of authorization to proceed.
2. Meetings: Consultant shall attend the following meetings as part of Consultant's Basic Services:
  - a. Design Review Workshop, 2 days each – Quantity 2 (30% and 60% complete).
  - b. 100% Draft Submittal Review Comments Workshop, 2 days.

3. Design Review: For the 100% Draft Schematic Design (SD), Consultant shall review the Architect's submittals. The document review period shall be coordinated by Consultant with the Architect and shall be incorporated into Consultant's Master Project Schedule. Comments generated by all reviewers will be compiled by the Architect and transmitted to the design Team. Consultant accepts responsibility for its scope of services as described herein but is not responsible for the accuracy and adequacy of the design documents stamped or sealed by other professionals. The full set of Schematic Design documents submitted by Architect will include:
  - a. Schematic design level drawings.
  - b. Outline specifications or narratives as applicable.
  - c. Schematic Design Report, to include:
    - (1) An analysis of how the schematic design meets the Owner's program requirements, including a comparison of square footage between Schematic Design and the Space program from Programming Phase.
    - (2) Alternate approaches.
    - (3) Preliminary Service Utility Capacity estimates.
    - (4) Integrated Security Plan.
    - (5) Fire Emergency Response Matrix.
    - (6) Preliminary Basis of Design for each discipline. The mechanical discipline will include:
      - a. Preliminary energy consumption.
      - b. Preliminary energy savings matrix.
      - c. General Sequence of Operations.
    - (7) Architect's recommendation of Additional Information required.
  - d. Architect's Design Development-level submittal for water and sewer development and other construction to be in early bid package.
  - e. At a later date, Architect's Construction Documents submittal for water and sewer development and other construction to be in early bid package.
4. Consultant's review shall address at a minimum the following:
  - a. Completeness in accordance with the Architect's PSA with Owner and with the standard of care generally recognized as applying to such Consultants.
  - b. Conformance with the JCA and PDCA.
  - c. Conformance to Project Budget.
  - d. Conformance to schedule for completion of Project.
  - e. Constructability.
  - f. Biddability.
  - g. Operability.
  - h. Errors and Omissions.
  - i. Intra Bid Package Coordination.
  - j. Coordination of Owner Furnished Contractor-Installed Items.
  - k. All CSI Discipline coordination of technical criteria and special system integration and interface.
  - l. Special Systems.

- m. SWPPP.
  - n. NOT USED.
  - o. Document Coordination, Inter-Discipline and Inter-Document coordination.
  - p. Document QA/QC including Field Quality Control Steps.
  - q. CEQA / EIR Mitigation Compliance.
  - r. Energy Efficiency of Designs.
5. Operability and Maintainability Review: Consultant shall review design and construction documents for operability, optimized operating costs, maintainability, and durability, and make recommendations on alternate approaches.
  6. Cost Estimating: At 100% SD submittal, Consultant shall prepare an independent Preliminary Statement of Probable Construction Cost (SPCC). Consultant shall submit its SPCC within 2 weeks of Architect's submittal of the design documents needed for the SPCC. Consultant shall work with Owner, Architect and Project Expert to revise the design as needed to bring the SPCC within the OACC. Consultant's SPCC shall be fully reconciled with all previous estimates by Consultant and by Architect, and with the Project Budget. The estimates shall be prepared in a format and level of detail approved by the County prior to the preparation of each estimate. Consultant shall prepare a report to the County and Project Architect identifying any variances from previous estimates for the Project and Construction Budget.
  7. Local Vendor Outreach Plan: Consultant shall prepare a written plan for Owner to maximize use of local vendors and local labor, conforming to the California Public Contract Code and other applicable codes and restrictions. Owner may present this plan to the County Board of Supervisors early in the Schematic Design phase. Consultant shall prepare a PowerPoint presentation suitable for such a presentation, in a format approved by Owner.
  8. Life Cycle Cost Analyses: Consultant shall prepare life cycle cost analyses to the County on the following project components. The results of these studies shall be in report form and shall be distributed to the County:
    - a. HVAC Systems.
    - b. Water Distribution System.
  9. Consultant shall prepare an updated Master Project Schedule for design and construction of the Project, including the Architect's Schedule detailing the progression and submittal of Drawings and Project Manual in the subsequent Phases. The portion of the Project Schedule for the Construction Phase may be shown as a single activity depicting the estimated start and completion dates for each construction phase Milestone and/or bid package.
  10. Building Information Modeling (BIM).
    - a. Note: This Section on BIM will be included in both this PSA, the Architect's PSA, and the Construction Contract.
    - b. Consultant shall meet the requirements of this BIM Section in all phases of the project.
    - c. Architect's Design and Initial Hosting of BIM.
      - (1) Architect shall develop a Building Information Model (BIM) based on the architectural and structural designs throughout schematic design, design development, including development of the Design Development Phase Drawings, the final Construction Drawings, and any modifications approved by Owner.

- (2) Architect shall develop the BIM based on best practices within applicable architectural and engineering disciplines, including without limitation the applicable level of development for each element of the Project, and shall provide Owner with a report identifying such matters and areas for further (or lesser) development. Following Owner approval, Architect will develop the BIM as directed or approved by Owner.
  - (3) Architect shall host and manage the BIM during development of the Project's design. Architect's hosting and managing responsibilities shall include without limitation: (i.) collecting, coordinating, and the usability of incoming models from Project participants; (ii.) maintaining periodic record copies; (iii.) aggregating incoming models and making the BIM available for use and viewing by Project participants; (iv.) performing and assisting in performing clash detection in the model and/or with any Owner-approved modifications; (v.) issuing periodic clash detection reports; (vi.) managing access rights; and (vii.) updating the BIM to reflect current designs and revisions.
  - (4) Architect shall correct and clarify any clashes, coordination or issues resulting from the BIM within Architect's Basic Services. Coordination and design corrections and clarifications resulting from such further modeling (whether performed by Architect, Construction Manager, Contractor or subcontractors) shall be within Consultant's Basic Services.
- d. BIM Workshop and Pre-Construction Phase BIM Activities.
- (1) Architect shall meet with Owner, Owner's Construction Manager and other design team members, Contractor and all subcontractors that will be interacting with or using BIM information to develop protocols for developing, implementing, reviewing, and exchanging information through the BIM ("**BIM Workshop**"). Through the BIM Workshop, Construction Manager and Contractor or major subcontractors and Architect's design team will discuss, coordinate, test and adjust their BIM practices, to allow information to be used, to the greatest practical extent, by all parties for their respective purposes.
- e. Transfer to and Hosting of BIM by Construction Manager and/or Contractor.
- (1) Upon the completion of Final Construction Document, Architect will provide the BIM to Contractor if construction delivery is Single prime, or to the Construction Manager if delivery is Multiple Prime (to be determined by Owner as described herein elsewhere). Construction Manager will host and manage the BIM through construction and until completion of the Project for some trades, depending on subcontractor capability, or transfer it to general contractor or subcontractors, as appropriate, and as a minimum oversee the collective model through construction and until completion of the Project. Construction Manager and Contractor/subcontractors will use the BIM to assist Contractor in its work to coordinate the construction and the implementation of any design changes by Contractor and its subcontractors. Construction Manager, or Contractor/subcontractors as delegated by Construction Manager, will manage the clash detection and coordination process throughout the construction phase, through preparation of all shop drawings and submittals necessary for construction, and shall utilize BIM to record changes in record drawings.
- f. General.
- (1) Architect, Construction Manager and Contractor and each major subcontractor must be capable of utilizing the BIM to perform the functions assigned to them in paragraph 3 above.
  - (2) The BIM and any portion of the BIM is a work for hire for the benefit of Owner and will be provided to Owner as a contract deliverable that may be used by

Owner without restriction for the use on this Project. Architect and Construction Manager grants to Owner a license in perpetuity to use and reproduce the BIM and any portion of the BIM for any purpose whatsoever related to this Project. Architect, Construction Manager and Contractor and its subcontractors shall transfer to Owner copyrights or licenses necessary for Owner to use the BIM and supporting information.

- (3) The BIM is not a Construction Document or Contract Document, and does not supplement or supersede the final permitted Drawings or Specifications.

11. Deliverables: At 100% completion of the Schematic Design Phase, Consultant shall furnish to Owner the following:

- a. Comments on the full set of Schematic Design documents.
- b. Monthly Progress and Cost reports.
- c. Independent SPCC at this phase.
- d. Updated Master Project Schedule.
- e. Updated Project Budget.
- f. Local Vendor Outreach Plan.

**D. Design Development Phase.**

1. Period of Service: After acceptance by Owner of the required deliverables in the Schematic Design Phase, Consultant shall perform to completion all services called for in the Design Development Phase within the period of time set forth in Part 6.01.B, beginning at the time of Owner's issuance of authorization to proceed.
2. Meetings: Consultant shall attend the following meetings as part of Consultant's Basic Services:
  - a. Design Review workshop at 25% complete, 2 days.
  - b. Design Review Workshop at 50% complete, 2 days, with CPM, followed by Value Engineering Workshop, 1 day, with CPM.
  - c. Design Review Workshop at 75% complete, 2 days, followed by Value Engineering Workshop Follow-up Meeting, 4 hours, with CPM.
  - d. Draft 100% Review Comments Workshop, 2 days.
3. Design Review: For the 100% Draft Design Development (DD), Consultant shall review the Architect's submittals. The document review period shall be coordinated with the Architect and shall be incorporated into Consultant's Master Project Schedule. Comments generated by all reviewers will be compiled by the Architect and transmitted to the design Team. Consultant accepts responsibility for its scope of services as described herein but is not responsible for the accuracy and adequacy of the design documents stamped or sealed by other professionals. The full set of DD documents submitted by Architect will include:
  - a. Design Development level drawings.
  - b. Project Manual Augments.
  - c. Outline Specifications.
  - d. Design Development Phase Report, to include:
    - (1) Engineering Calculations.
    - (2) Revised Room Data Sheets.
    - (3) Revised Service Utility Capacities.
    - (4) Updated Integrated Security Plan.

- (5) Revised Fire Emergency Response Matrix.
- (6) Revised Basis of Design for each discipline. The mechanical discipline shall include updates for:
  - a. Preliminary Energy Consumption.
  - b. Energy Savings Matrix.
  - c. General Sequence of Operations.
  - d. Values for Adjustable Settings and Setpoints.
- (7) Consultant's recommendation of any Additional Information required.
  - e. Exterior Renderings.
  - f. Updated Code Analysis.
  - g. BIM Clash Detection Report.
  - h. Updated Project Schedule.
  - i. Preliminary Statement of Probable Construction Cost.
  - j. Cost Element Changes Chart.
4. Consultant's review shall address at a minimum the same considerations listed in the Schematic Design Phase services of this PSA.
5. Operability and Maintainability Review: Consultant shall review design and construction documents for conformance with County needs for operability, optimized operating costs, maintainability, and durability.
6. Cost Estimating: At 50% and 100% DD submittal, Consultant shall prepare an independent Preliminary Statement of Probable Construction Cost (SPCC) in the same manner as specified for Consultant in the SD Phase. The 50% level SPCC will be used for the Value Engineering Workshop Consultant shall conduct (see below).
7. Commissioning: Review commissioning plans to be included with the design documents.
8. Value Engineering (VE): Consultant shall conduct a formal Value Engineering Workshop on a day immediately following the Design Review Workshop at 50% DD completion, involving the Architect and other members of the design team. The intent of the Workshop is to analyze each discipline in terms of architecture, mechanical, electrical, plumbing and security in order to identify areas for potential cost savings without negatively impacting the design. Once the items are identified, their cost savings shall be estimated by Consultant, then Consultant shall participate in a meeting with the Architect and other members of the design team to, on an individual basis, accept or reject each VE item. Both the positives and negatives shall be identified by Consultant for each suggestion so as to ensure that no decision is made in a vacuum, and to assist Owner's effort to achieve economic integrity of the proposed jail. Value engineering sessions shall be conducted according to the Society of American Value Engineers (SAVE) process. Consultant shall consolidate and disseminate results of the VE Workshop.
9. Life Cycle Cost Analyses: Based on results of the VE Workshop, Consultant shall prepare and provide life cycle cost analyses to Owner on the following project components. Consultant's compensation for these analyses will be paid in addition to Consultant's Basic Services, as provided for in [Part 11.03](#). To be INCLUDED in Consultant's compensation for Basic Services are life cycle cost analyses of the following items. The results of all analyses shall be in report form and shall be distributed to the County:
  - a. Modular versus Site Constructed Cells.

- b. Lighting.
10. Consultant shall prepare an updated Master Project Schedule for design and construction of the Project, including the Architect's Schedule detailing the progression and submittal of Drawings and Project Manual in the subsequent Phases. The portion of the Project Schedule for the Construction Phase may be shown as a single activity depicting the estimated start and completion dates for each construction phase Milestone and/or bid package.
  11. Early Bid Package Procurement and Construction Management.
    - a. At a time recommended by Consultant, and that provides for completion of construction of the Early Bid Package prior to bid advertisement of the main facility construction, Consultant shall proceed with pre-qualification, advertisement and bidding of the early bid package for utility extensions to the site and for other site work previously determined to be included in an early bid package as recommended by Architect and Consultant. Architect will provide the bid package through Owner. Architect will provide bid phase services similar to Architect's bid phase services for main Project. This work may begin in the Design Development or the Construction Documents Project Phase, based on Consultant's Project Schedule recommendation and OAR's acceptance.
    - b. Consultant shall evaluate bid results and make recommendations to Owner regarding award to low bidder.
    - c. Upon Owner's award of the early bid package to a general contractor, Consultant shall perform Construction Management services as specified for Consultant in [Part 5.10.G](#) of this PSA where applicable, for completion of the early work. Architect will provide construction phase services similar to Architect's construction phase services for main Project.
  12. **Deliverables:** At 100% completion of the Design Development Phase, Consultant shall furnish to Owner the following:
    - a. Comments on the full set of Design Development documents.
    - b. Monthly Progress and Cost reports.
    - c. Independent SPCC at 50% and 100% complete for this phase.
    - d. Updated Master Project Schedule.
    - e. Updated Project Budget.
    - f. Life Cycle Cost Analyses report.
    - g. VE Workshop Results report.
    - h. Applicable pre-qualification, bid advertisement and bid results documents for Early Bid Package, beginning in this Project Phase or the next.
    - i. Construction Phase deliverables for the Early Bid Package similarly as defined in [Part 5.10.G](#) of this PSA, beginning in this Project Phase or the next.

**E. Construction Documents Phase.**

1. **Period of Service:** After acceptance by Owner of the required deliverables in the Design Development Phase, Consultant shall perform to completion all services called for in the Construction Documents Phase within the period of time set forth in [Part 6.01.B](#), beginning at the time of Owner's issuance of authorization to proceed.
2. **Meetings:** Consultant shall attend the following meetings as part of Consultant's Basic Services:

- a. Design Review Workshop at 30% complete, 2 days.
  - b. Draft 60% Submittal and Review Comments Workshop, 2 days, followed by Local Vendor Outreach and Prequalification workshop, 2 hours, with CPM.
  - c. Draft 100% Submittal and Review Comments Workshop, 2 days, with CPM.
3. Design Review: For the 60% and 100% Draft Construction Documents (CD), Consultant shall review the Architect's submittals. Consultant shall ensure the document review period is coordinated with the Architect and shall be incorporated into Consultant's Master Project Schedule. Comments generated by all reviewers will be compiled by the Architect and transmitted to the design Team. Consultant accepts responsibility for its scope of services as described herein but is not responsible for the accuracy and adequacy of the design documents stamped or sealed by other professionals. The full set of Construction Documents submitted by Architect will include:
    - a. Project Manual and Drawings for Bidding.
  4. Consultant's review shall address the same considerations as listed in the Design Development phase of this PSA.
  5. Front-end (Divisions 0 & 1) Document Review: Owner will provide to Architect and to Consultant all specialized forms and documents required for the bidding and administration of Construction Contracts, including but not limited to the Notice to Bidders, the General Conditions, Special Conditions, General Requirements, Special Requirements and Prevailing Wage Rates. Consultant shall review and become familiar with these forms and documents and verify that the Divisions 2-16 and the Drawings are coordinated with the requirements of Divisions 0 & 1. Consultant shall assist Owner with any deficiencies Consultant discovers in the front-end documents.
  6. Contractor Quality Control (CQC): Consultant shall review Architect's Construction Documents and Owner's Project Manual and determine if the CQC requirements are sufficient. Consultant shall also determine if the CQC requirements are specified in a manner that provides for Consultant to perform verification, or "Quality Assurance" of the CQC to Consultant's satisfaction, and where it does not, Consultant shall submit proposed modification to Owner.
  7. Cost Estimating: At 100% CD submittal, Consultant shall prepare an independent Preliminary Statement of Probable Construction Cost (SPCC) in the same manner as specified in the Design Development (DD) phase of this PSA.
  8. Construction Milestones: Consultant shall make recommendations to Owner concerning milestones to be included in the construction bid documents.
  9. Liquidated Damages: Consultant shall make recommendations to Owner concerning establishing liquidated damages to be included in construction bid documents for all construction milestones. The recommendations shall be in writing and provide a justification and detailed calculation sheet indicating the rationale behind the establishment of the Liquidated Damages values.
  10. Long Lead Items: Assist Owner in the identification and strategy of long lead items in an effort to meet schedule requirements.
  11. Consultant shall prepare an updated Master Project Schedule for design and construction of the Project, including the Architect's Schedule detailing the progression and submittal of Drawings and Project Manual in the subsequent Phases.
  12. Multiple Bid Package Determination: Consultant shall determine the optimum number of bid packages to be awarded by Owner. Consultant shall determine impact on Consultant's Bidding and Construction Phase fee, and impact on construction cost, and the overall project cost impact. Consultant shall determine likely impact on local vendor and local labor usage in construction. Consultant shall prepare a report demonstrating the cost and local labor and vendor impacts, assumptions used, and other



considerations used to arrive at Consultant's recommended number of bid packages. If multiple contracts are recommended, Consultant shall indicate:

- a. The time and/or cost benefit of multiple contracts.
- b. How each requirement for the Project will be assigned to the appropriate contract.
- c. How possible jurisdictional labor disputes or conflicts among Contractors will be minimized.
- d. How the interface and coordination between the Contractors will be provided.

Consultant shall submit report for presentations at the 60% complete Design Review Workshop.

13. Early Bid Package: Consultant shall continue performance of construction phase services.
14. Deliverables: At 100% completion of the Construction Document Phase, Consultant shall furnish to Owner the following:
  - a. Comments on the full set of Construction Documents.
  - b. Monthly Progress and Cost reports.
  - c. Independent SPCC at this phase.
  - d. Updated Master Project Schedule.
  - e. Updated Project Budget.
  - f. Recommended Construction Milestones.
  - g. Liquidated Damages Estimate.
  - h. Long Lead Items.
  - i. Multiple Bid Package Report.
  - j. Construction Phase deliverables for the Early Bid Package similarly as defined in [Part 5.10.G](#) of this PSA.

#### **F. Bidding Phase.**

1. Consultant shall proceed with the Bidding Phase only after:
  - a. Owner's written authorization to proceed with the Bidding Phase.
  - b. Owner acceptance of the 100% CD back-check documents.
2. Meetings: Consultant shall attend the following meetings as part of Consultant's Basic Services:
  - a. Pre-Bid Conference and Job-Walk, with CPM.
  - b. Bid Opening, with CPM.
  - c. Post-Bid Conference, with CPM.
3. Consultant shall administer the Bidding process.
4. Single Versus Multiple Prime Construction Contracts: If Consultant's Multiple Bid Packages Report from the Construction Documents Phase recommends, and Owner decides, to award multiple bid packages, Consultant will be awarded additional compensation. Consultant's fee for the Basic Services set forth herein shall be based on a Single Prime construction delivery, notwithstanding references to multiple bid packages, subcontractors or multiple prime construction in this PSA.

5. Bid Packages Management: Consultant shall complete bid packages for contractor bidding. Architect will provide all drawings and all Divisions of specifications, and assist Consultant to ensure documents are complete.
6. Prequalifying Bidders: Consultant shall assist Owner in developing lists of possible Contractors, Subcontractors, and Vendors and prequalify such entities. Consultant shall follow applicable contractor prequalification procedures and provide the following services: preparation of advertisements, preparation and distribution of questionnaires; receiving and analyzing completed questionnaires; soliciting references and qualifications, contacting references; interviewing possible bidders, bonding agents and financial institutions; and preparing recommendations for Owner. Consultant shall prepare and maintain a bidders list for each bid package. Consultant shall conduct a telephone and correspondence campaign to attempt to increase interest among qualified bidders. Consultant shall conduct a Prequalification Workshop.
7. Job Walk and Pre-Bid Conference: Consultant shall conduct a mandatory Job Walk and Pre-bid Conference for the General Construction Contract or multiple trade subcontracts. The conference shall be forums for the County, Consultant and Architect to explain the project requirements to the bidders, including information concerning schedule requirements, time and cost control requirements, access requirements, BIM requirements, and the County's administrative requirements and technical information. Consultant shall prepare minutes from the meeting and include the minutes in an Addendum.
8. Addenda: Consultant shall receive from the Architect a copy of all Addenda. Consultant shall review Addenda for clarity, consistency and coordination. Where required or appropriate as determined and directed by the Owner, Consultant shall ensure Architect or Owner has obtained BSCC and/or CDCR approval for such Addenda.
9. Bid Proposal Review and Recommendations: Consultant shall attend the bid opening. Consultant shall evaluate the bids or proposals for responsiveness and price, including alternate prices and unit prices, and shall make recommendations to Owner concerning the acceptance or rejection of bids or proposals.
10. Construction Contracts: Consultant shall assemble, deliver and coordinate execution of the Contract Documents in accordance with BSCC JCA requirements. Consultant shall assist Owner in issuing to the Contractor or Subcontractors a notice of award and the Notice to Proceed.
11. NOT USED.
12. Permits, Licenses, And Insurance: Consultant shall verify that all Contractors and Subcontractors have secured the required licenses, bonds, and insurance. Consultant shall request and receive certifications of insurance from Contractors and Subcontractors and verify that each is in accord with contract requirements. Consultant shall maintain a current project file of certificates of insurance. Such actions by Consultant will not relieve the Contractors of their responsibilities to comply with the provisions of their Contract Documents.
13. Post-Bid Conference: Consultant shall conduct a post-bid conference with the bidder(s) submitting the apparent low bid(s) to review contract award procedures and other pertinent issues.
14. Consultant shall monitor Architect's recommendation on acceptability of, then incorporate substitute materials and equipment proposed by bidders.
15. Architect will provide a conformed set of drawings and specifications, reflecting the changes made and approved by the Owner during the Bidding Phase.
16. Early Bid Package: Consultant shall complete Construction Phase deliverables for the Early Bid Package similarly as defined in [Part 5.10.G](#) of this PSA. Construction of the early work is to be completed prior to bid advertisement of the main facility.

17. Where Bids Exceed Budget: If the cumulative total of all lowest responsible, responsive bid(s) plus amounts otherwise payable to Contractor, Consultant or Owner reasonably determines that they will exceed the latest approved Estimate of Probable Total Construction Costs, (as contained within the Statement of Probable Construction Cost), Owner may, at its discretion:
  - a. Award the contracts to the lowest responsible, responsive bidders, and give written approval of an increase in Owner's budget.
  - b. Reject some or all bids and rebid the applicable contracts.
  - c. If the cumulative bid amount is or is reasonably expected to be more than 10% greater than the Architect's latest accepted Statement of Probable Construction Cost (SPCC) rendered during the Construction Documents Phase, Owner may require Architect to revise the scope of work to be performed by Consultant and trade subcontractors or its quality, or both, so as to reduce the Project Construction Cost for the work, while still meeting Owner's Project objectives and the Project Scope of Work stated in the BSCC JCA and CDCR PDCA. Owner may direct Architect, at Architect's expense, to modify the Construction Documents in order to reduce the Project Construction Costs for the work to be performed by Consultant and trade subcontractors within the OACC Project budget. If Architect's modifications are unable to achieve the JCA and PDCA-defined scope of work, as determined by the BSCC and CDCR, for the cost of the OACC budget, Architect will prepare the documents and provide the assistance necessary to achieve BSCC and CDCR approval of a scope change. Consultant shall, for additional compensation as provided for in [Part 11.03](#), re-bid the Project.
  - d. Abandon the Project and terminate this Agreement.
18. Deliverables: At 100% completion of the Bidding, Consultant shall furnish to Owner the following:
  - a. Completed Bid Package(s).
  - b. Pre-Qualified Bidders List.
  - c. Job Walk Results.
  - d. Addenda.
  - e. Bid Results Report.
  - f. Construction Contract(s).
  - g. Construction Phase deliverables for the Early Bid Package similarly as defined in [Part 5.10.G](#) of this PSA

**G. Construction Phase.**

1. Period of Service: The Construction Phase will commence with the issuance to the Construction Manager of the Notice to Proceed with Construction, and will terminate as provided in [Part 12, "Term And Termination"](#).
2. Meetings: Consultant shall attend the following meetings as part of Consultant's Basic Services:
  - a. Preconstruction Conference.
  - b. BIM Workshop.
  - c. Commissioning Scoping/Kickoff Meeting.
  - d. Weekly Construction Phase Progress Meetings.
  - e. Demonstration and Training Pre-instruction Conference.
  - f. Punch List Walk-through, 3 days.

g. Closeout Conference.

3. **Contract Administration:** Provide Owner's representation if Single Prime, or on-site general administration of multiple Subcontractors if Owner elects to deliver by Multiple Prime for additional fee to Consultant, by assisting the County with the County's contractual responsibility to Contractor and/or subcontractors, and monitor the same's compliance with their contractual obligation. Consultant shall provide and maintain a full-time management team on the project site, in accordance with the management plan approved by Owner in the Programming Phase, to provide contract administration. Consultant shall oversee the work of contractors and vendors engaged at the project site and coordinate the staging and activities of each. Consultant shall ensure Architect specifies Contractor to supply on-site (field) temporary office space, furniture, and supplies, for Consultant's use and one office for Owner's use, as required and approved by Owner. Four weeks prior to the start of construction, Consultant shall submit for approval a completed set of construction phase administrative procedures. The procedures shall be consistent with the requirements of this PSA, the approved Construction Management Plan, and the Contract Documents. The requirements include but are not limited to processing requests for information, shop drawings, material and equipment submittals, contract schedule adjustments, change orders, scheduling, inspection, substitution and payment requests, record documents, and closeout, as further defined below.
4. **Document Management System:** Consultant shall utilize the approved DMS system to file, distribute and manage all reports and submittals of Consultant, as wherever possible, and ensure contractors have done the same.
5. **Single Point of Contact:** As Owner's representative at the construction site, Consultant shall be included in all submissions of requests for information, submittals, Contractor schedule adjustments, substitution requests, change order requests and payment applications, etc. Consultant shall process each such item as required by this PSA or the Contract Documents.
6. **Pre-Construction Conference:** Consultant shall conduct a pre-construction conference in accordance with the Contractor's General Conditions requirements. Consultant shall prepare and ensure timely distribution of minutes of this meeting to the OAR, Architect, Contractor, and others.
7. **Progress Meetings:** Consultant shall conduct regular construction progress meetings at the project site with the Contractor. The Consultant shall also conduct regular project coordination meetings with Contractor, Owner and Project Architect as required to pursue and record progress of the project. Consultant shall attend all project meetings, and ensure that agendas and minutes are prepared and distributed to parties having an interest. Consultant shall schedule and attend any other required meetings or inspections with local, state, city, or other code authorities having jurisdiction over the project, and provide minutes and action taking reports of the results of these meetings or inspections. Consultant shall distribute minutes to all attendees, OAR and the Architect. Regularly scheduled meetings shall include, but not be limited to:
  - a. Weekly Contractor coordination meetings.
  - b. Meetings as required with Project Architect to address outstanding RFIs, submittals, design changes and Contractor change order requests so as not to disrupt work on the project.
  - c. Monthly pay requests reviews.
  - d. Start-up meetings with each Contractor and their key Subcontractors to ensure conformance to project insurance and bonding requirements, plan and specification review, site restrictions, and conformance to required workmanship standards.

8. Pre-schedule Submission Meeting: Consultant shall conduct a pre-schedule submission meeting with the Contractor to ensure that the Contractor is informed of their responsibilities regarding the development and submission of their baseline schedule.
9. Requests for Information: Consultant shall coordinate and manage the Request For Information (RFI) review and approval process. Establish a log to track the status, topic, and pertinent dates associated with obtaining a response for each RFI. Determine required response suspense date to avoid Contractor delay. This includes tracking the status of all RFI's, advising the Architect of unusual site conditions affecting RFI review, and review of RFI's for appropriateness, format, content, and general completeness prior to forwarding to Architect.
10. Construction Phase Logs and Period Reports: Consultant shall create or monitor the following reports and logs, as shown below, to record the progress of the project and distribute them as appropriate for action:
  - a. Monitor and log Daily Force, Progress and Activity Report including labor, material, equipment, staffing, weather, inspections, visitors, meetings and other events significant to progress of the Work.
  - b. Create and log Project Photos and Videos.
  - c. Monitor Consultants/Designers Field Reports and Inspections.
  - d. Monitor Contractor Quality Control Compliance.
  - e. Perform, report and log Consultant's Quality Assurance of CQC.
  - f. Monitor and log Copies of Contractor's Daily Reports.
  - g. Monitor and log Laboratory Inspection and Testing Reports.
  - h. Monitor Submittals Tracking Log.
  - i. Monitor Requests for Information (RFI) Tracking Log.
  - j. Create and monitor Field Order Log.
  - k. Create and monitor Deficient Work Tracking Log.
  - l. Create and monitor Dispute Tracking Log.
  - m. Create and monitor Potential Claims File.
  - n. Monitor Change Order Tracking Logs.
  - o. Create and monitor Owner's and Consultant's Action Items/Approvals/Permits Tracking Log.
  - p. Create and monitor OFCI Tracking Log.
11. Dispute Resolution and Claims Prevention: When probable claims arise, Consultant shall work collaboratively to gather information, form alternatives, and guide decisions that result in solutions. Consultant's field team shall attempt to resolve issues on site. If Consultant suspects a problem exists that may result in a claim, Consultant shall gather all key team members to (1) evaluate the risk, (2) explore alternatives for resolving the problem with the contractor, (3) prepare supplemental guidance for issuance to the contractor to clarify contract requirements when directed, and (4) if appropriate, initiate a change order to compensate contractor for changed conditions. Consultant shall keep a "potential claim file" to capture all correspondence, reports, meeting minutes, photos and other documents relevant to the issue.
12. Dispute/Claim Reports: During the Construction Phase, Consultant shall make all reasonable efforts to review and resolve disputes on behalf of Owner. Consultant shall maintain documentation and records on all relevant decisions and facts relating to disputes on an ongoing basis. Said records shall be maintained in an orderly manner and made available to County personnel upon request. When Contractor files a notice of

potential claim or dispute in accordance with the Contract Documents, Consultant shall as a minimum:

- a. Immediately, notify the Contractor the Notice was received.
  - b. Notify the Architect and OAR of the dispute.
  - c. Assign a dispute tracking number to the dispute and create a dispute file. The following information shall be prepared and continuously updated and maintained in the dispute file by Consultant.
  - d. Compile any formal data, pertinent data, and records such as daily Contractor reports, progress pay reports, special meeting notes, reports, and summaries.
  - e. Prepare a summary of the dispute, by issue, clearly stating the Contractor's position on each issue, providing.
    - (1) A summary sheet with a chronological listing of events and/or items such as letters to Contractor, meetings, etc., and a brief statement of content.
    - (2) Documentation of pertinent conversations with Contractor.
    - (3) All pertinent inspection reports.
    - (4) Captioned and dated photos and video recordings.
  - f. Compile additional documents such as:
    - (1) Drawings, shop drawings and Technical Specifications with the areas in question highlighted or noted by other appropriate means.
    - (2) Correspondence between the Consultant and Contractor, Consultant and Architect, and with other pertinent parties.
    - (3) Any other documentation that supports the position of the Contractor, Consultant, and Architect.
13. Claims Support: If a potential claim is not resolved by the completion of the Project or at the direction of Owner, Consultant shall prepare a formal claims report stating the Consultant's recommendation for resolution of the dispute or claim. The claims report shall be prepared in a format approved by Owner, and solely to assist Owner. Support may include receiving the claim, reviewing for merit, making recommendations to the County for settlement, building history files, attending alternative dispute resolution meetings and/or arbitration.
14. Change Orders and Substitutions.
- a. Establish and maintain a change order control system that tracks all issues that affect cost or time during the entire life of the project including all deviations from the approved architectural program. Analyze Contractor's submitted requests for adjustment to price or for substitutions, and assist Owner in negotiations. Consultant shall develop and implement procedures to ensure compliance with the Contract Documents with respect to the cost of change order work from the Contractor. Analyze Contractor's requests for time extensions and prepare findings of fact for extending or not extending time, prepare a letter to the Construction Contractor for the OAR's review and approval, and forward to the OAR for processing. Maintain a record of all contract modifications on Owner-approved forms and submit copies to the OAR with monthly report. All change orders over \$50,000 require that an estimate of cost be prepared by Consultant's on-site staff, and must include the following statement:
    - (1) "This estimate was prepared as an Independent County Estimate and has been checked for mathematical accuracy. The source(s) used for estimating pricing on this modification/Change Order is \_\_\_\_\_".

- b. The estimate shall be signed and dated by the individual who prepared the estimate. At least twice a month, Consultant shall prepare and distribute a Change Order Report. The report shall list all pending and Owner-approved change orders by number, provide a brief description of the change order, and state the cost proposed or established for the proposed change. Changes to the Agreement between the Owner and Contractor(s) shall be only by change orders executed by Owner.
15. Construction Cost Reduction Proposals (CCRP): Consultant shall review and evaluate the cost, schedule and other impacts of all Contractor submitted Construction Cost Reduction Proposals, obtain Architect's analysis and recommendations regarding the proposal, and present its written recommendations to Owner concerning acceptance or rejection of the CCRP.
16. Management of Contractor's Schedule: Consultant shall review the Contractor's and/or subcontractors schedule submissions in accordance with the Contractor's contract requirements. Consultant shall review the Contractors preliminary schedule and recommend approval to the OAR. Consultant shall provide analyses to assess the impact of proposed changes. Consultant shall review for logical sequencing, appropriate durations, buildability, reasonable resource loading and compliance with contractual milestones and contract period. The Contractor is fully responsible for scheduling the work in a manner necessary to fulfill the Contractor's contractual obligation. Review and approval of the Contractor's scheduling does not in any way relieve the Contractor of their responsibility to schedule and complete the work within the requirements of the contract.
17. Allocation of Cost to the Contractor's Construction Schedule: The Contractor's Schedule shall have the total contract price, allocated among the Contractor's scheduled activities so that the sum of the prices of the activities shall equal the total contract price. Consultant shall review the contract price allocations and verify that such allocations are made in accordance with the requirements of the Contract Documents. Consultant shall plot, monitor and report on the Contractor's monthly actual cost versus time, compared to Contractor's original projections. Progress payments to the Contractor shall be based on the Contractor's percentage of completion of the approved schedule of values and activities, and in accordance with other provisions the Contract Documents.
18. CDCR Requirements: Consultant shall develop, or translate the Contractor's approved schedule of values, into the cost categories required in CDCR's "3-Page Estimate", (see Owner provided document , "Capital Outlay and State Public Works Board (SPWB) Guidelines" referenced in [Part 3.01](#) of this PSA), as provide updates to this as required in the CDCR PDCA.
19. Contractor's Construction Schedule: Consultant shall review Contractor's preliminary, baseline, updated, revised, and recovery schedules and shall verify that the schedule is prepared in accordance with the requirements of the Contract Documents.
20. Construction Schedule Report: Consultant shall, on a monthly basis, review the progress of construction of the Contractor, evaluate the percentage complete of each construction activity as indicated in the Contractor's Construction Schedule, and review such percentages with the Contractor. This evaluation shall be included in the monthly Construction Schedule Report to be prepared by Consultant in a format approved by the OAR, and distributed to the OAR and Project Architect. The Report shall indicate the actual progress compared to scheduled progress. Consultant shall advise and make recommendations to Owner concerning the alternative courses of action that the County may take in its efforts to achieve contract compliance by the Contractor.
21. Consultant Review of Time Extension Requests: Prior to the issuance of any change order, Consultant shall advise the County as to the effect on the Master Schedule and construction cost of time extensions requested by the Contractor.
22. Recovery Schedules: After approval by Owner, Consultant may require the Contractor to prepare and submit a recovery schedule demonstrating its program and proposed plan to make up a lag in scheduled progress and to ensure completion of the Contractor's Work

within the Contract Time. Consultant shall review and propose when necessary all recover schedules.

23. Submittal and Shop Drawing Review: Consultant shall monitor the submittal and shop drawing review and approval process. This includes monitoring the status of all required submittals, review submittals for format, compliance and general completeness once submitted by the Contractor in DMS within two (2) Business Days from time of receipt by Consultant. In addition, Consultant shall work with Architect on the interpretation of Plans and Technical Specifications and will notify the OAR in writing in cases of disagreement on interpretation that cannot be resolved between the Contractor and Architect. In such notification, Consultant shall make a recommendation to Owner on the interpretation.
24. Code Compliance Inspections: Owner will hire and provide Project Inspector(s), (PI) for the project to perform code compliance inspection on behalf of the County Building Official. Consultant shall monitor the work of the PI to maximize effectiveness. Consultant shall receive and process PI's reports or cause the PI to process its reports into the DMS.
25. Testing and Specialty Inspections: Consultant shall review Architect's specified testing and specialty inspections, and advise County on recommended testing programs. Consultant shall monitor the testing and specialty inspection of the work. Consultant shall review reports and cause the PI to track the repair of non-complaint work. Consultant, in consultation with the Architect, may recommend that the Owner reject work that does not conform to the requirements of the Contract Documents. Consultant shall cause PI to verify that contractors have received Architect's response to deficient test and inspections results, and has coordinated the testing and specialty inspections with all agencies having jurisdiction over the project, including both code authorities and other agencies specified by the County. Consultant shall cause the PI to utilize the DMS for tracking notices of non-compliance.
26. Field Observations for Contract Compliance and Quality Review: Consultant shall perform field observations for compliance with the construction documents and to review CQC. Consultant shall review the Contractor's quality control plan for compliance and make recommendations to the County for approval. Consultant shall monitor the Contractor's adherence to their plan in accordance with Consultant's submitted QA plan. Consultant shall advise the OAR if the Contractor is not meeting their quality control obligation. During construction phase, observe and document, with written reports, the status, progress, quality, of work in coordination with the County's Project Architect.
  - a. Consultant may recommend the rejection of work and transmit to the OAR and Contractor a notice of nonconforming work when it is the opinion of the Consultant, PI, or Architect that the Work does not conform to the requirements of the Contract Documents. Consultant may authorize minor variations in the work from the requirements of the Contract Documents that do not involve an adjustment in the contract price or the contract time period, and which are consistent with the overall intent of the Contract Documents. Except for minor variations as stated herein, Consultant is not authorized to change, revoke, alter, enlarge, relax or release any requirements of the Contract Documents or to approve or accept any portion of the Work not performed in accordance with the Contract Documents.
  - b. Communication between Consultant and Contractor with regard to Quality Review shall not in any way be construed as releasing the Contractor from the fulfillment of any of the terms of his Contract Documents. Consultant is not responsible for, nor does Consultant control, the means and methods of construction for the project. It is understood that Consultant's action in providing Quality Review as stated herein is a service to the County, and no action taken by Consultant shall relieve the Contractor from their obligation to perform their work in strict conformity with the Contract Documents and in strict conformity with all other applicable laws, rules and regulations.
27. Consultant shall provide daily field observations of the work performed by contractors. Consultant shall review the work for compliance with the contract documents and CQC



assurance and report on those activities Consultant is responsible for monitoring as defined herein. Consultant shall provide a daily report of field observations. Consultant shall notify the OAR immediately of any non-compliant work, and shall notify contractors of deficiencies and monitor their correction.

28. Consultant shall monitor any video system provided by Contractor to monitor the construction progress.
29. Safety Program Review: Consultant shall verify that contractors have on file a safety program as required by the Contract Documents. Consultant shall not be responsible for Contractor's implementation of or compliance with its safety programs, or for initiating, maintaining, monitoring or supervising the implementation of such programs or the procedures and precautions associated therewith. Consultant shall not be responsible for the adequacy or completeness of Contractor's safety programs, procedures or precautions.
30. Consultant Safety Program: Consultant shall develop and implement an adequate safety program and provide a safe work place for its employees and the employees of its subconsultants.
31. Contractor Payment: Consultant shall review the payment applications submitted by the Contractor, Consultants, and Vendors to determine whether the amount requested accurately reflects the progress of that party's work. Consultant shall verify and monitor current status of stop notices, labor dispute assessments, liquidated damages, withholds, and retention and adjust amounts payable accordingly. The Report shall state the total contract price, payment to date, current payment requested, retainage and withholds, and actual amounts owed for the period, and the time period from invoice submission to invoice payment. Based on Consultant's observations and evaluations of each application for payment, Consultant shall recommend payment in the amounts due the respective Contractor, Consultants, and Vendors. Consultant's recommendation for payment shall constitute a representation to the County that, to the best of Consultant's knowledge, information, and belief, the work of the Contractor, Consultant or Vendor has progressed to the level of completion indicated and that payment in the amount certified is due and owing under the applicable contract.
32. Owner Invoicing of State: During the Construction Phase, Consultant shall assist Owner prepare invoicing to BSCC monthly, meeting the requirements of the JCA and PDCA. Consultant shall prepare for Owner a clear segregation of contractor and other invoicing between what is eligible for State reimbursement and what is not, as provided for in the JCA.
33. Cash Flow Analysis and Monitoring: During the Construction Phase, Consultant shall prepare an analysis of construction, and all other project related expenses, and of State reimbursement payments and any other project revenue, with data provided by Owner, to determine, monitor and plot on a time scale the historical and projected project cash flow by month.
34. Monthly Project Report: In a form approved by the OAR, Consultant shall submit a monthly progress report to the County, including information on each Consultant and Contractor's work and the general status of the entire project. Consultant will meet with the County monthly to review this report, which shall include:
  - a. Executive Summary.
  - b. Narrative of the current project status (work completed this period; status of schedule; anticipated or potential problems; and required actions by County in upcoming month).
  - c. Current versions of all other logs managed by Consultant.
  - d. Financial reports (costs to date, initial contract value, costs committed, exposure, projections to completion, cash flow).
  - e. Milestone schedule update.

- f. Photographs.
  - g. Consultant's report shall highlight any significant variance from prior reports for the project and additionally advise the Owner as to any variances between actual costs and approved budgets.
35. Prevailing Wage Monitoring and Control: Consultant shall assist the County ensure compliance with prevailing wage laws utilizing resources such as the Center for Construction Compliance.
36. Commissioning: Consultant shall monitor the Construction Contractor's implementation of the commissioning requirements, in coordination with the commissioning firm. Consultant shall verify that the commissioning firm has completed its testing and sign-off. The project will not be certified as complete until the commissioning is complete and approved by Owner.
37. Utilities: Consultant shall assist the County with preparation and submission of applications required for municipal and private utilities serving the Site. Consultant shall assist the County in coordinating with public and private utilities for all project utility services including assisting with preparation of agreements, approvals, field surveys and inspections, transmittal of documents, document reviews, and scheduling.
38. NOT USED.
39. Consultant's Record Set of Plans and Specifications: Consultant shall maintain onsite a current and independent set of plans and specifications. Consultant shall update the Record Set daily. All addenda, RFIs, material and equipment selections, change orders, bulletins, and other pertinent information shall be posted to the record set. The record set shall be used to assist the field inspectors in performing their inspection duties and to assist Consultant in verifying the Contractor's monthly and final as-built submissions for accuracy and completeness. Consultant's Record Set shall be provided to Architect at the conclusion of the Construction Phase for their use in completing the Record Documents pursuant to Architect's PSA.
40. For Change Orders resulting from Owner requests or unknown site conditions, pursuant to [Part 11.03, "Additional Services"](#) the Owner may negotiate a corresponding fee increase to the Consultant's Project Phase for Consultant preparation of supporting data, Drawings, Technical Specifications and other documentation, and provision other Services as needed to assist Owner in evaluating Contractor's proposals for Change Orders and Field Modifications.
41. Time Extension of Construction Phase.
- a. Any prolonged construction phase services past the construction completion date defined in the Construction Contract, due in whole or in part to Consultant's failure to perform its obligations under this PSA, shall be included in Basic Service.
  - b. Prolonged construction phase services not due in whole or in part to any failure of Consultant to perform under this PSA, and which exceed by less than 30 days the actual construction duration defined in the Construction Contract, or which exceed by less than 5% of the expected construction duration defined in this PSA, whichever is longer, shall be included in Basic Service.
42. Owner's Architect: During the Construction Phase the Project Architect will have significant roles in the areas listed below, for which Consultant shall coordinate with Architect, and Consultant is advised to make itself familiar with those roles using the Architect's PSA provided to Consultant.
- a. Interpretation of the Contract Documents.
    - (1) Response to RFIs.
    - (2) Claims and Disputes resolution.

- b. Testing and Inspection.
    - (1) Review of Reports.
    - (2) Recommendations to obtain compliance with Contract Documents.
  - c. Review of Contractor Submittals.
  - d. Change Orders and Field Modifications.
  - e. Owner Move-in/Training Orientation.
  - f. Milestone Acceptance and Project Closeout.
  - g. Final Observations.
  - h. Record Documents.
43. Deliverables: At 100% completion of the Construction Document Phase, Consultant shall furnish the required deliverables to Owner including, but not limited to, the following:
- a. Meeting Minutes.
  - b. Required Logs.
  - c. Required Progress Reports.
  - d. Updated Project Schedules.
  - e. Dispute Reports.
  - f. Claims Reports.
  - g. CCRPs.
  - h. Monthly Schedule of Values converted to CDCR format.
  - i. Inspection Reports.
  - j. Consultant Safety Plan.
  - k. Contractor Pay Claims.
  - l. Cash Flow Analyses.
  - m. Utility Applications.
  - n. Record Drawings.

**H. Operation/Project Close-Out Phase.**

- 1. Meetings: Consultant shall attend the following meetings as part of Consultant's Basic Services:
  - a. Punch-list follow-up, 1 day each – Quantity 2.
- 2. Completion of transition, occupancy and start of operations will require 3 months after beneficial occupancy for Owner's transition team to train staff and perform the facility shakedown. During the Operation/Project Close-Out Phase, Consultant shall perform the following services at a time requested by Owner.
- 3. Assist Commissioning firm and Architect in, start-up, testing and placing in operation special equipment and systems.
- 4. Together with OAR, assist Architect with Architect's preparation and submission of all final required deliverables under Title 24, the JCA and the PDCA for its final Project approval.
- 5. Punch List: Work with the Architect and applicable County agencies to monitor the development of a punch list of items necessary for completion. Monitor the Contractors work to address the deficiencies. Maintain punch list items on the DMS and cause the PI to track each item to resolution.

6. Substantial Completion: Assist the Architect in the determination of Substantial Completion of the Work. In consultation with the Project Architect, Consultant shall cause the PI to prepare a list of work that does not conform to the Contract Documents. This list shall be attached to the Certificate of Substantial Completion.
7. Occupancy Permit: Consultant shall assist Owner in obtaining all occupancy permits by accompanying governmental officials during inspections of the project, coordinating the preparation and submittal of documentation to agencies having jurisdiction, and coordinating final testing and other required activities.
8. Operations and Maintenance Manuals. Consultant shall receive from the Contractor operation and maintenance manuals, warranties and guarantees for materials and equipment installed in the project. Consultant shall review the materials for completeness per contract requirements and request additional information as necessary to ensure that Owner receives all necessary materials. Consultant shall cause the Contractor to create a list of all manuals so received, and record their transfer to Owner for subsequent training on facility operation. Consultant shall cause the Contractor to provide on this list a contact person and telephone number for the contractor and appropriate subcontractor for County staff to use when requesting warranty or guaranty service.
9. Staff Training in Operation and Maintenance: Monitor the contractor's start-up training program for building operations personnel. Advise the County on required manuals and other materials needed for smooth operating and maintenance. Monitor the instruction as appropriate and approved by Owner, on operation and controls of the building, including use of operating manuals. Other instructors may include Owner, Contractor, Architect and Commissioner.
10. Preventative Maintenance Programming: Develop preventive maintenance programs for the maintenance and operation of the new facility. Assist Owner in retaining appropriate cleaning, operating, security, and other non-County personnel.
11. Final Completion: Assist Owner in determining final completion. All work must be complete as defined by the contract documents. Consultant shall assist the Owner in ensuring all necessary documentation, including release of claims, has been received, all training has been completed, all warranty requirements are in place, and final billing has been received. Consultant shall assist the Owner in issuing a Certificate of Final Completion and shall provide to the County a written recommendation regarding payment to the Contractor, as provided for in the Contract Documents. Consultant shall monitor the transmittal of Record Documents to the Owner.
12. Close-Out Report: At the conclusion of the project, Consultant shall prepare final project accounting and closeout reports that meet the terms of the JCA and PDCA. Consultant shall provide report on the status of the following items being obtained, completed, and/or delivered to Owner prior to recommending final payment and release of retention to the Contactor. Report to include:
  - a. Certified Notice of Completion.
  - b. Any Remaining Punch List.
  - c. Start-Up/Commissioning.
  - d. Certificate of Occupancy.
  - e. Final Approval (State and Regulatory Agencies, Special inspections, County's inspections).
  - f. Obtain and perform appropriate review of the:
    - (1) Project Record Documents, Drawings and Specifications "As-Built".
    - (2) Other Project Documents for Owner's retention.
    - (3) Guaranties and Warranties.

- (4) Bonds and Waivers.
- (5) Spare Parts.
- (6) Operating and Maintenance Manuals.
- (7) Keying Schedule/Keys/Security Cards.

13. Deliverables: At 100% completion of the Construction Document Phase, Consultant shall furnish the required deliverables produced by Consultant and others as applicable to Owner including, but not limited to, the following:
- a. Punch Lists.
  - b. Certificate of Substantial Completion.
  - c. Certificate of Completion.
  - d. Operations and Maintenance Manuals.
  - e. Preventative Maintenance Program.
  - f. Close-Out Documents.
  - g. Spare Parts.
  - h. Close-Out Report.

I. **Warranty Phase.**

- 1. Meetings: Consultant shall attend the following meetings as part of Consultant's Basic Services:
  - a. End of Warranty review, 1 day.
- 2. Acceptance by the Owner of the Consultant-prepared Close-Out Report and inclusive documents constitutes completion of the Consultant's Basic Services for compensation purposes; however, Consultant is required to participate in an inspection of the Project one month prior to expiration of the Contractor's one-year Warranty/Guarantee period without additional compensation.
- 3. Consultant shall, when requested, render advice to assist Owner in obtaining necessary compliance by the Contractor with the terms of Contractor Warranty/Guarantees.
- 4. Other than the inspection of the Project one month prior to expiration of the Contractor's one-year Warranty/Guarantee period, should Owner request Warranty Phase Services after Consultant's completion of their Basic Services, and Services are required through no fault of Consultant, Consultant will be compensated pursuant to [Part 11.03, "Additional Services"](#).

## PART 6 - CONSULTANT'S SCHEDULE

### 6.01 Project Schedule – PDCA Milestones.

- A. The Owner's Project Schedule is established in the JCA and PDCA and may be modified only by written approval of the BSCC and CDCR. Where the PDCA uses the term "Preliminary Plans", Consultant shall equate that to the Schematic Design phase drawings and outline specifications as defined in this PSA. Where the PDCA uses the term "Working Drawings", Consultant shall equate that to the Construction Documents phase drawings and specifications defined in this PSA.
- B. Completion Milestones: Unless otherwise provided for in a Project Phase, Consultant shall complete the following Milestones by the corresponding dates shown below, assuming the PSA award date shown, and where "completion" is defined as having incorporated review comments of Owner and State agencies. Notwithstanding the Milestone dates shown, Consultant shall assume a 24-month construction duration for purposes of establishing Consultant's fee:

1. County Award's PSA	May 14, 2013
2. Architectural Program	July, 2013
3. Schematic Design	November, 2013
4. Design Development	April, 2014
5. Construction Docs	November, 2014
6. Advertise for Bids	April, 2015
7. Bid Opening	June, 2015
8. Notice to Proceed	September, 2015
9. Construction Complete	February, 2018
10. Occupancy	May, 2018

### 6.02 Coordination with Project Master Schedule and Owner Operations.

- A. Consultant shall complete or cause to be completed all services required under this Agreement in accordance with the Master Schedule and Milestone Schedule to be developed by Consultant, with input from Architect and Owner.
- B. For each phase of Service under this PSA, Consultant shall prepare and submit for Owner's acceptance a task list identifying the principal tasks (and subtasks) defining the scope of work of each phase. The main purpose of the task list shall be to promote coordination and scheduling of the Owner and third parties whose actions might impact Consultant's progress.
- C. The task list shall list all points of Owner and third party interface, for example Board docketing dates, approvals, reviews, Consultant coordination checks, design input and supplying information. The task list shall include a listing of Consultant's anticipated specific requirements for information, decisions or documents from Owner necessary for Consultant's performance of its services, and required third party approvals and preliminary meetings required to obtain agreement in principle with agencies and third parties involved in the Project.
- D. For the Project, Consultant shall prepare, submit for Owner's acceptance, and maintain a design schedule detailing Consultant's scheduled performance of the Services. The schedule shall comply and coordinate with the Master Schedule and Milestone Schedule including all updates to the Master Schedule to be maintained by Consultant.
- E. Consultant shall submit a preliminary schedule of Consultant's services for work through the Construction Documents phase within twenty (20) days of commencement of the Programming Phase (covering in summary fashion all Services of each phase of the Project), except where earlier deliverables are required, such as the DMS recommendation.
- F. For each succeeding phase of Services, Consultant shall supplement this schedule with a detailed schedule covering by task (and subtask) Consultant's work during the succeeding phase of Services. (The required schedule supplement shall be submitted as part of Consultant's deliverables at the conclusion of each phase of Services.).

- G. Consultant's schedule shall be updated monthly, and shall meet the following requirements:
  - 1. **State Requirements:** Consultant's schedule shall outline dates and time periods for the delivery of Consultant's services, requirements for information from Owner for the performance of its services, and required third party approvals and preliminary meetings required to obtain agreement in principal with County's Sheriff's office and its subconsultants, the JCA and PDCA, State Fire Marshall, and any other agencies involved in the Project.
  - 2. The schedule shall include appropriate Owner, BSCC, CDCR and State Fire Marshal design review durations for each contract package, including those durations provided in the CDCR's "Capital Outlay and SPWB Guidelines" page 16 and 17. Except as specified in the Project Phase, minimum durations provided for Owner review (including Owner's agents) shall be two (2) weeks for Schematic Phase, Design Development Phase, and 50% Construction Document phase, and three (3) weeks for 100% Construction Documents phase.
  - 3. **CEQA Requirements:** The schedule shall consider and incorporate CEQA mitigation measures identified in the EIR that impact the Project construction schedule, such as avoidance of grading work during certain times of year, and establishment of silt fences to limit wildlife from the work area.
  - 4. The schedule shall be in a computer software format compatible with Owner's existing computer software format, which is Microsoft Project.
- H. Consultant shall adjust and cause its Subconsultants to adjust activities, personnel levels, and the sequence, duration and relationship of services to be performed in a manner that will comply with the accepted schedules.
- I. For the Project, Consultant shall include in Consultant's monthly progress report written recommendations regarding ongoing construction work, including fulfillment of Owner's objective to secure a completed Project with the lowest reasonable construction costs, Project scheduling, and any and all design changes affecting size or cost of the Project.

#### **6.03 Each Project Phase Shall Contain a Consultant's Schedule.**

- A. Consultant will perform all Services and Deliverables within the time and project schedule stated in the Project Phase, including milestones and interim milestones, if any. Time is of the essence in this PSA.
- B. Consultant shall provide and maintain Project staffing levels as necessary to perform the Services within the time provided in the Master Project Schedule.

### **PART 7 - COST CONTROL**

#### **7.01 Owner Approved Construction Cost (OACC).**

- A. The OACC is defined as the budgeted construction cost at the point of construction contract bid opening. Consultant shall treat the OACC so identified as the Owner's required construction cost for the Project. In performing its Services under this Agreement, Consultant shall include within the OACC design contingency amounts as follows: 15% during schematic design; 10% during design development; and 5% during construction documents.
- B. Each Project Phase will specify the OACC for the Project or Project part covered by that Project Phase. The OACC will include any bid alternates as defined by the OAR. The Owner Approved Construction Cost shall not be revised without Owner's prior written approval.
- C. The OACC shall not exceed construction costs defined in the JCA or PDCA, or their duly executed amendments.

#### **7.02 Formatting and Comparing Estimates**

- A. All required Statements of Probable Construction Cost (SPCC) by Consultant shall be prepared per Owner's direction, in a format or formats approved by the OAR. The identical format(s) shall be used consistently throughout the Project in order to facilitate tracking the

costs of various Project components. In addition, Consultant shall provide a cost estimate summary sheet in CSI format for all Construction Document Phase submissions of Statements of Probable Construction Cost.

- B. NOT USED.
- C. If the SPCCs estimated by Consultant and Architect differ by more than the contingency amounts shown in paragraph 7.01.A above, then the two estimators shall reconcile their material quantities and unit prices. If more than 50% of the discrepancy is due to differences in material quantities or anything other than unit prices, Consultant shall either resolve discrepancy to the satisfaction of both Consultant and Architect, or present to OAR information supporting Consultant's version of the estimate.
  - 1. If attendance at meetings with the independent estimator to reconcile Consultant's estimate is necessary, Consultant will be compensated according to their hourly rate schedule, unless the reason for a majority of the discrepancy is due to Consultant's error and/or omission in breach of applicable professional standards.
  - 2. In the event that the Architect's estimate and Consultant's estimate cannot be reconciled, Architect's estimate will prevail as the Estimated Project Construction Cost prior to the Construction Phase.
- D. Consultant shall include an estimate summary of all buildings when there is more than one building. The summary includes all building cost to five feet outside the building. Site work estimates shall be to within five feet outside the building and represented on a separate summary page. The summary shall list the building or site work, its size, cost per square foot and total cost.
- E. If the Project involves multiple bid packages, Consultant shall prepare separate estimates for each bid package.
- F. Owner acknowledges that Consultant cannot control changes or conditions in labor, materials, bidding, and negotiation markets and cannot warrant that actual bids or construction costs will not vary from Consultant's estimate(s).

### **7.03 Consultant's Responsibility Regarding the OACC**

- A. Owner asserts that the total Construction Cost of the Project shall not exceed the Owner Approved Construction Cost set forth in the applicable Project Phase.
- B. NOT USED.
- C. Consultant shall reconcile each Statements of Probable Construction Cost to previous Statement of Probable Construction Cost. If any deviation occurs between estimates that affect the construction costs by more than 5% for any component (a component is defined as a building or the site development portion of the project budget), a reconciliation of where the difference occurred shall be submitted with the estimate. A written description of why the change took place is required.
- D. Evaluations of the Owner's Project Budget and Statements of Probable Construction Cost prepared by the Consultant represent the Consultant's best judgment as a design professional familiar with the construction industry.
- E. Consultant shall identify and recommend for reasonable additive and/or deductive Bid Items as mutually determined by OAR, Architect and Consultant to ensure reconciliation between Statements of Probable Construction Cost and the OACC.

### **7.04 Review of Project to Reduce Potential Cost**

- A. If any estimate of the SPCC at any level, or at any phase of the project, exceeds the then-current OACC, Consultant shall immediately notify Owner in writing. Thereafter, Owner, Consultant and Architect will discuss the revisions or steps necessary for Architect to bring the current Statement of Probable Construction Cost to within the OACC.



### 7.05 Consultant's Obligation to Modify Bid Documents

- A. If, upon bidding the Project for construction, the lowest responsive Bid submitted by a responsible Bidder exceeds the OACC, Owner may elect to:
  - 1. Re-Bid the Project; or
  - 2. Increase the OACC; or
  - 3. Terminate the Project or a part thereof; or
  - 4. Revise the Project to reduce the construction cost.
- B. If the lowest responsive Bid submitted by a responsible Bidder exceeds the OACC by more than ten percent (10%) including all Bid Alternate items previously defined as part of the OACC, as provided in [Parts 7.01 and 7.03](#), the Owner's Architect will, upon Owner's request and without additional cost to Owner, modify the Bid Documents as necessary to reduce the probable Construction Cost to less than the OACC.

### 7.06 Addendum Estimates

- A. The Consultant shall prepare and submit Addendum Estimates, independent of Architect's, for all Addenda changes that may result in added construction costs in excess of \$5,000 after release of Bid Documents but prior to Bid opening.
- B. NOT USED.
- C. NOT USED.
- D. All estimates shall be submitted to the OAR for acceptance prior to Bid opening.

## PART 8 - INDEMNIFICATION & INSURANCE

- A. Indemnification and Insurance requirements are set forth in [Exhibit F](#), "Indemnification & Insurance."
- B. Prior to execution of this PSA, Consultant shall furnish to Owner Certificates of Insurance showing satisfactory proof that it maintains the insurance required by this PSA as set forth in [Exhibit F](#), which is attached and made a part of this PSA. Consultant shall maintain all required insurance throughout the term of this PSA and as otherwise provided in [Exhibit F](#). In the event Consultant fails to maintain any required insurance, and notwithstanding Part 11 below, Owner may (but is not obligated to) purchase such insurance and deduct or retain premium amounts from any sums due Consultant under this PSA (or Consultant shall promptly reimburse Owner for such expense).

## PART 9 - 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 8, "Indemnification & Insurance"](#), applies only in the indemnification context in [Part 8, "Indemnification & Insurance"](#).

## PART 10 - HAZARDOUS MATERIALS

### 10.01 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.

## 10.02 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 Subconsultants.

## PART 11 - COMPENSATION & PAYMENT

### 11.01 Compensation

- A. Payments will be made as set forth herein and as authorized in each Project Phase.
  1. Maximum Compensation Limit:
    - a. Each Project Phase will specify a Maximum Compensation Limit (MCL) by Owner to Consultant for that Project Phase. The MCL includes all authorized Services and authorized Reimbursable expenses. Total payment by Owner pursuant to any Project Phase will not exceed the MCL specified in the Project Phase, and Consultant shall provide all Services and Deliverables set forth in each Project Phase, 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 to include out-years beyond the rates identified in Exhibit A will be negotiated by the parties using as a benchmark the prevailing increase for similar Consulting Services in the Central Coast area and are subject to approval as an amendment to the PSA by the OAR.
    - c. Non-Fixed fee Services provided by Subconsultants are subject to approval by the OAR and documented in a Project Phase. Administrative mark-up by Consultant on Subconsultant invoices is not permitted.
    - d. Where the class of persons authorized to provide specific Services is not designated in a Project Phase, Services shall be provided by a qualified person who is in a class that has the lowest rate of payment among those classes that contain persons who are qualified to provide the Services.
  3. Consultant's Milestone Schedule: Each Project Phase shall contain a Consultant's Milestone Schedule prepared in accordance with [Part 6, "Consultant's Schedule"](#).
  4. Changes: If, during the term of a Project Phase, circumstances constituting a material change in scope as described in [Part 4.02, "Changes In Scope"](#), arise, Consultant will be entitled to compensation therefore, within the Total Payment Limit for that Project Phase. If such changes mean that the scope of the Project Phase cannot be completed as originally envisioned, then Consultant shall immediately inform the OAR and assist OAR 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 the Project Phase. If such changes mean the full services of the PSA cannot be completed within the Maximum Compensation Limit of the PSA, payment to Consultant for such changes cannot be made without a modification to the PSA. Such modification can be made only by the County Board of Supervisors.
  5. Prevailing Wages: Consultant acknowledges that some of the work performed on site to support the Services under this PSA may be "public works" within the meaning of California Labor Code Section 1720 and that the requirements of Section 1771, et. seq. apply to such public works. To the extent applicable, Consultant has included (and will

include) consideration for this obligation in calculating compensation and cost estimates under this PSA, and Consultant shall comply with any such applicable prevailing wage law requirements at its sole expense.

### 11.02 Reimbursable Expenses

- A. When travel is authorized as a reimbursable expense in a Project Phase, Consultant agrees it will be reimbursed at rates not exceeding the Federal rates for per diem and mileage, not exceeding airfare costs for coach class, and not exceeding car rental costs for medium size autos. Consultant shall provide receipts in a manner that conform to Federal requirements. All invoices must show travel expenses separately. The JCA considers travel costs ineligible for State reimbursement.
- B. When authorized in the Project Phase, 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 of any Project Phase:
  1. Extra-ordinary "office" expenditures specifically related to executing the scope of work in Project Phases, including overnight mailing such as Federal Express, and additional copies of Deliverable Documents, requested by OAR over and above those required by the terms of the Project Phase; and mileage reimbursement to attend meetings beyond those specified in the scope of Project Phases. Any individual expense in excess of \$10.00 shall be supported by a copy of the receipt.
  2. Other reimbursable expenses specifically identified in a Project Phase.

### 11.03 Additional Services

- A. Performance: Services required to be performed by Consultant upon request by Owner, which are described hereinafter as Additional Services, must be authorized by Owner in writing prior to performance.
- B. Compensation for Additional Services: Consultant shall be compensated for Additional Services as set forth in Exhibit A unless the parties agree on lump sum compensation for particular work activities.
- C. Services: The following services shall be considered Additional Services:
  1. Making revisions in reports, drawings, or other documents, if:
    - a. Such revisions are not necessary because of a deficiency in Consultant's work, and
    - b. Such revisions are inconsistent with written approvals or instructions previously given by Owner, or are required by the enactment or revision of codes, laws or regulations subsequent to the preparation of such documents, or are due to other causes not solely within the control of Consultant.
  2. Changes in scope, such as revisions of approved reports or design documents. Changes in schedule can be a change in scope only if Consultant has fully performed its scheduling and coordination responsibilities herein required and the changes in schedule are in addition to these responsibilities.
  3. Required out-of town travel beyond limits specified in Exhibit A.
  4. Assistance in connection with bid protests and rebidding when such assistance is required by matters unrelated to Consultant's deficient performance.
  5. Property surveys or field surveys for design purposes, engineering surveys, and staking, to the extent not required by other provisions of this PSA.
  6. Preparing to serve or serving on behalf of Owner as an expert witness (but not as a percipient witness) in connection with any arbitration, administrative or other proceeding or legal proceeding.

7. Preparation of applications and supporting documents for governmental grants and permits. However, participating in consultations and evaluation of the effect of associated requirements on the design requirements of the Project is within Consultant's Basic Services scope.
  8. Services to verify the accuracy of geotechnical information.
  9. NOT USED.
  10. All work or services required as a result of any failure by Consultant to perform its obligations under this PSA shall be performed by Consultant at no additional cost as part of Basic Services and shall not be deemed Additional Services.
  11. Providing additional insurance coverage requested by Owner beyond that specified in the Agreement, except that no markup will be allowed. Consultant shall promptly comply with such request.
- D. Supplementary Services & Deliverables: Owner may establish a Supplemental Services Allowance (SSA) in a Project Phase for the performance of contingent services not specifically identified within the Project Phase's Scope of Services and Deliverables, but of services similar in scope specified in the Project Phase, and compensation for which is included in the MCL of the Project Phase. Consultant will only commence work pursuant to the SSA following prior, written authorization of Owner's Authorized Representative.

#### 11.04 Payment

- A. Payment Requests: Owner will make all reasonable efforts to make payments within thirty (30) Days after the OAR's approval of the Consultant's correct Payment Request.
- B. Invoices: Consultant will submit Payment Requests on the forms shown in [Exhibit E](#), "Sample Invoice," not more than once each month.
- C. Progress Payments: Owner may, at its discretion, adjust any progress payment so that it corresponds with the percentage of completion as reasonably determined by Owner.
- D. Neither Consultant, nor authorized subconsultants, may provide services to the Construction Contractor or any Subcontractor pursuant to separate agreement for any part of the Project.

#### 11.05 Release of All Claims

- A. Prior to final payment under any Project Phase, Consultant shall execute and deliver to Owner a release of all claims arising under the Project Phase, 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.

#### 11.06 Timely Billings

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

#### 11.07 Consultant's Accounting Records

- A. Accounting System & Records Retention: Consultant shall maintain an accounting system in accordance with generally accepted accounting practices and financial reporting, and in compliance with the requirements of the JCA and PDCA documents, for the purpose of supporting payments for Services authorized under this PSA. Consultant shall retain and make accounting records available in accordance with [Part 14-9 "Records, Audit and Review"](#).

- B. Applicability to Subcontracts: Consultant shall 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.

**11.08 Maximum Payment to Consultant**

- A. Excluding Additional Services performed only by a modification to this PSA, the Maximum Payment to Consultant for all services under this PSA, and when combining all Project Phases, shall not exceed **\$2,270,000**. The Maximum Payment shall not exceed progress on the Project Services described in this PSA to be performed by Consultant and the percentage allowances under the following paragraph.

**11.09 Maximum Payment to Consultant by Phase**

- A. For each of the following phases, Consultant will be eligible for 80% of the pay percentages shown below upon first submittal of the full set of deliverables, and the balance upon incorporation of State agency comments where State agency requires resubmittal, or when State agency notifies OAR that it has no such comments.

<b>B. <u>PHASE</u></b>	<b><u>NOT-TO-EXCEED PA AMOUNT</u></b>
1. Programming	\$49,792
2. Schematic Design	\$89,036
3. Design Development	\$171,625
4. Construction Documents	\$184,815
5. Bidding	\$58,780
6. Construction	\$1,674,067
7. Operation/Project Close-Out	\$39,185
8. Warranty	\$2,700

**TOTAL BASIC SERVICES MAXIMUM COMPENSATION LIMIT: \$2,270,000**

**PART 12 - TERM & TERMINATION**

**12.1 Owner's Rights**

- A. Termination for Convenience
  - 1. Owner's Authorized Representative may, by written notice to Consultant, terminate all or part of this PSA or any Project Phase at any time for Owner's convenience. Upon receipt of such notice, Consultant shall immediately cease all work as specified in the notice.
  - 2. If this PSA or any Project Phase is so terminated, Consultant will be compensated as set forth below.
- B. Termination for Breach:
  - 1. If Consultant violates any of the material covenants or agreements of this PSA or a Project Phase, or if Consultant fails to fulfill in a timely and proper manner its obligations pursuant to this PSA or any Project Phase, and does not cure such failure or violation within thirty (30) days, or undertake and diligently continue efforts to cure if a complete cure is not feasible within 30 days, or such shorter period than 30 days as the Owner may determine is necessary and appropriate, after receipt of written notice from Owner's Authorized Representative specifying such failure or violation, Owner may terminate this PSA and any or all uncompleted Project Phases.
  - 2. Owner will provide Consultant with written notice as to the effective date of termination, and Consultant is not entitled to compensation for Services or expenses beyond the specified termination date.
  - 3. If, after notice of termination for breach of this PSA or any Project Phase, it is determined that Consultant did not breach this PSA or the Project Phase, 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, or this PSA.

#### **12.2 Consultant's Compensation Upon Termination**

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

#### **12.3 Delivery of Documents**

Upon any termination of this PSA or any Project Phase, Consultant shall furnish Owner all documents and Instruments of Service prepared pursuant to this PSA or such Project Phase(s), whether complete or incomplete, and shall not be liable for any further use of any documents or Instruments of Services that are not completed and sealed by the Consultant when delivered to the Owner. Consultant may retain a copy for its records.

#### **12.4 Suspension of Services**

- A. Owner may, without cause, order Consultant to suspend, delay or interrupt Services pursuant to this PSA, in whole or in part, for such periods of time as Owner may determine in its sole discretion. Owner shall deliver to Consultant written notice of the extent of the suspension at least seven (7) calendar days before the commencement thereof. Suspension shall be treated as an Excusable Delay and Consultant shall be compensated for such delay to the extent provided under this Agreement.
- B. Notwithstanding anything to the contrary contained in this Paragraph, no compensation shall be made to the extent that performance is, was or would have been so suspended, delayed or interrupted by a cause for which Consultant is responsible.

### **PART 13 - DISPUTE RESOLUTION**

#### **13.1 Consultant's Questions & Concerns**

- A. Questions regarding the terms, conditions and Services of this PSA or any Project Phase will be decided by the Owner who will furnish the decisions to Consultant in writing within thirty (30) Days after receiving a written request from Consultant.
- B. Disputes between Consultant and Owner will be resolved by arbitration after the project. Consultant shall perform disputed services according to Owner's direction so as not to delay the project schedule.

#### **13.2 Dispute Resolution**

- A. Alternate Dispute Resolution (ADR): Owner intends to use ADR techniques including Partnering and Mediation during Construction at a time that will not impact the project schedule.

- 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.

### 13.3 Negotiations Before and During Dispute Resolution

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

### 13.4 NOT USED

## PART 14 - MISCELLANEOUS PROVISIONS

### 14.1 Capitalization and Formatting.

- A. Terms capitalized in this PSA and subsequent Project Phase include those that are Specifically defined, or
  1. Titles of Parts or paragraphs, or
  2. Titles of reports or Deliverables, or
  3. 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. The captions of the Parts and paragraphs are for convenience only and will not be deemed relevant in resolving any question of interpretation or construction of any such Part or paragraph.

### 14.2 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.

### 14.3 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.

### 14.4 Exclusion of Contractor's Means & Methods

- A. Consultant has not been retained or compensated to provide design and construction review services relating to the Contractor's safety precautions or to means, methods, techniques, sequences, or procedure required for the Contractor to perform its Work except as required by [Labor Code §6705](#). Omitted services include but are not limited to:
  1. Shoring.
  2. Scaffolding.
  3. Underpinning.
  4. Temporary erection methods and temporary bracing.
- B. Pursuant to Labor Code §6705, no contract for public works involving an estimated expenditure in excess of twenty-five thousand dollars (\$25,000), for the excavation of any trench or trenches five feet or more in depth, shall be awarded unless it contains a clause requiring submission by the contractor and acceptance by the awarding body or by a registered civil or structural engineer, employed by the awarding body, to whom authority to accept has been delegated, in advance of excavation, of a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation of such trench or trenches. Without in anyway

lessening or assuming the Contractor's responsibility for the adequacy of such submission's, Consultant is responsible for reviewing submissions provided by the Contractor pursuant to Labor Code Labor Code §6705.

#### **14.5 Timely Approvals**

- A. Whenever the approval of Owner or Consultant is required pursuant to this PSA or any Project Phase, such approval shall not be unreasonably withheld or delayed. Time is of the essence in the performance of each term of this PSA.

#### **14.6 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 shall provide Owner with such Instruments of Service and materials at appropriate times during this PSA, and on termination or suspension of this PSA or any Project Phase. 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.

#### **14.7 Reliance**

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

#### **14.8 Proprietary or Confidential Information of Owner; Publicity**

- A. Consultant acknowledges and agrees that, in the performance of the Services under this PSA or in the contemplation thereof, Consultant may have access to private or confidential information that may be owned or controlled by Owner and that such information may contain



proprietary or confidential details, the disclosure of which to third parties may be damaging to Owner. Consultant agrees that all private, confidential, or proprietary information disclosed by Owner to or discovered by Consultant in the performance of its Services shall be held in strict confidence and used only in performance of the PSA. Consultant shall exercise the same standard of care to protect such information as a reasonably prudent Consultant would use to protect its own proprietary data, and shall not accept employment adverse to the Owner's interests where such confidential information could be used adversely to the Owner's interests. Consultant shall notify the Owner immediately in writing if it is requested to disclose any information made known to or discovered by Consultant during the performance of or in connection with the Services pursuant to this PSA.

- B. Any publicity or press releases with respect to the Services shall be under the Owner's sole discretion and control. Consultant shall not discuss the Services, the Project, or matters pertaining thereto, with the public press, representatives of the public media, public bodies or representatives of public bodies, without Owner's prior written consent. Consultant shall have the right, however, without Owner's further consent, to include representations of Services among Consultant's promotional and professional material, and to communicate with persons or public bodies where necessary to perform under this PSA. Consultant acknowledges that Project is the construction of a secure jail facility, and that plans of the facility are confidential. Consultant shall not release copies of plans or other documents related to project without express written consent of Owner.
- C. The provisions of this Section 14-08 shall remain fully effective indefinitely after termination of Services to the Owner hereunder.

#### **14.9 Records, Audit and Review.**

- A. Consultant shall keep such business records pursuant to this Agreement as would be kept by a reasonably prudent practitioner of Consultant's profession and shall maintain such records for the Record Maintenance Period specified in [Part 5.01.B.2](#). As an alternative to retaining such records, Consultant may deliver all such records to OAR within a reasonable time after termination of this Agreement. All accounting records shall be kept in accordance with generally accepted accounting principles. COUNTY shall have the right to audit and review all such documents and records at any time during Consultant's regular business hours or upon reasonable notice.
  - 1. Records Required. The records required to be maintained by Consultant shall include, but not be limited to: all drawings, specifications, calculations, cost estimates, quantity takeoffs, statements of construction costs and completion dates, schedules and all correspondence, internal memoranda, papers, writings, electronic media and documents of any sort prepared by or furnished to Consultant during the course of performing the Services and providing services with respect to Project.
  - 2. Business Records. Business Records are generally defined to include full and adequate records in accordance with Owner requirements showing actual costs incurred by Consultant in its performance of this PSA. Contractor shall make available to Owner during business hours, business records including accurate ledgers, books of accounts, invoices, vouchers, cancelled checks, time cards and accounting and other books, records and documents evidencing or relating to all expenditures and disbursements charged to Owner or relative to Consultant's activities under this PSA
- B. Retention of Records.
  - 1. Consultant shall maintain all items described in this Section in an accessible location and condition for the period stated above.
  - 2. Consultant shall not destroy any Project records until after advising Owner and allowing Owner a reasonable opportunity to accept and store the records.
- C. Production and Audit of records.
  - 1. Consultant shall, within forty-eight (48) hours written notice, permit authorized State agencies with jurisdiction, Owner, and Owner's authorized agents, officers, and

employees, to audit, examine and make copies, excerpts and transcripts from such items, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this PSA, whether funded in whole or in part under this PSA.

2. If such items are not kept and maintained by Consultant within a radius of fifty (50) miles from Owner's offices at Santa Barbara, California, Consultant shall, upon Owner's request and at Consultant's sole cost and expense, make such items available to Owner, and Owner's authorized agents, officers, and employees, for inspection at a location within said fifty (50) mile radius, or Consultant shall pay Owner its reasonable and necessary costs incurred in inspecting Consultant's books and records including, but not limited to, travel, lodging and subsistence costs.
  3. The State of California and any other governmental agency having an interest in the subject of this PSA shall have the same rights conferred upon Owner by this Section.
- D. The rights and obligations established pursuant to this Section shall be specifically enforceable and survive termination of this PSA.

#### **14.10 Discrimination, Equal Employment Opportunity and Business Practices.**

- A. Consultant shall not discriminate against any employee or applicant for employment, nor against any Subconsultant or applicant for a subcontract, because of race, color, religious creed, age, sex, actual or perceived sexual orientation, national origin, disability as defined by the ADA (as defined below) or veteran's status. To the extent applicable, Consultant shall comply with all federal, state and local laws (including, without limitation, Owner ordinances, rules and regulations) regarding non-discrimination, equal employment opportunity, affirmative action and occupational-safety-health concerns, shall comply with all applicable rules and regulations thereunder, and shall comply with same as each may be amended from time to time.

#### **B. County Ordinance on Unlawful Discrimination**

1. The County of Santa Barbara reserves the right to terminate forthwith each and every written contract and agreement (except purchase orders) respecting real property, goods and/or services entered into by the County of Santa Barbara including but not limited to concessions, franchises, construction agreements, leases, whether now in effect or hereinafter made if the county finds that the consultant is discriminating or has discriminated against any person in violation of any applicable state or federal laws, rules or regulations which may now or hereafter specifically prohibit such discrimination on such grounds as race, religion, sex, color, national origin, physical or mental disability, Vietnam era veteran/disabled, age, medical condition, marital status, ancestry, sexual orientation, or other legally protected status. This right of termination extends to contracts entered into by the County of Santa Barbara or by its joint powers, agencies or agents so long as the county obtains the consent of those parties.
2. Such finding may only be made after consultant has had a full and fair hearing on notice of thirty days before an impartial hearing officer at which hearing consultant may introduce evidence, produce witnesses and have the opportunity to cross-examine witnesses produced by the county. Further, any finding of discrimination must be fully supported by the facts developed at such hearing and set forth in a written opinion; and in addition, consultant may move in the appropriate court of law for damages and/or to compel specific performance of a consultant or agreement if any of the above procedures are not afforded to the consultant. If consultant is not found to have engaged in unlawful discriminatory practices, county shall pay all costs and expenses of such hearing, including reasonable attorneys' fees, to consultant in accordance with current Santa Barbara County Superior Court schedule of attorneys' fees for civil trials. If consultant is found to have engaged in such unlawful discriminatory employment practices, consultant shall pay all such costs, expenses and attorneys' fees.

3. Whether or not a contract or agreement is still in existence at the time of final determination of such unlawful discrimination, the consultant shall forthwith reimburse the county for all damages directly stemming from such discrimination; however, those damages shall not exceed and are not reimbursable in an amount which exceeds amounts paid to consultant under the terms of the contract or agreement.
4. Nothing in this Section shall directly or by interpretation give a private cause of action to any third party (not a signatory to the contract or agreement) including employees past or present, or applicants for employment to consultant, it being the sole purpose of this clause to administratively assure compliance with the nondiscrimination clauses contained herein.
5. With respect to employment discrimination, employment practices shall include, but are not limited to, employment, promotion, demotion, transfer, recruitment and advertising for recruitment, layoff or other termination, rate of pay, employee benefits and all other forms of compensation or selection for training and apprenticeship and probationary periods.
6. Consultant shall permit access at all reasonable times and places to all of its records of employment, advertising, application forms, tests and all other pertinent employment data and records, to the County of Santa Barbara, its officers, employees and agents for the purpose of investigation to ascertain if any unlawful discrimination as described herein has occurred or is being practiced, provided that such records are relevant to a complaint of an unlawful discriminatory practice which has been forwarded to consultant reasonably prior to the time consultant is asked to make such records available. In addition, all such records shall be deemed "Confidential" by the officers, employees and agents of the county. No records or copies of such records may be removed from the premises of consultant, and no disclosure, oral or written, of such record may be made to third parties except as provided within the agreement. Provided, however, that in the event of a hearing to determine whether or not consultant is engaging in unlawful discrimination in employment practices as defined herein, the board of supervisors of Santa Barbara County may issue subpoenas to require that certified copies of such records be made available to the hearing.
7. Failure to fully comply with any of these provisions shall be deemed to be a material breach of any contract or agreement with the County of Santa Barbara. All persons contracting with or who have contracts for goods or services with the county shall be notified that this Section applies to their contract or agreement with the County of Santa Barbara.

#### **14.11 Drug-Free Workplace Policy.**

- A. Consultant acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on Owner premises. Consultant agrees that any violation of this prohibition by Consultant, its employees, agents or assigns shall be deemed a material breach of this PSA.

#### **14.12 Compliance with Americans with Disabilities and Rehabilitation Act.**

- A. Consultant acknowledges that, pursuant to the Americans with Disabilities Act ("**ADA**"), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Consultant shall provide the Services specified in this PSA in a manner that complies with the standard of care established under this PSA regarding the ADA and any and all other applicable federal, state and local disability rights legislation. Consultant agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this PSA and further agrees that any violation of this prohibition on the part of Consultant, its employees, agents or assigns shall constitute a material breach of this PSA. Consultant shall comply with § 504 of the Rehabilitation Act of 1973, which provides that no otherwise qualified handicapped individual shall, solely by reason of a disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination in the performance of this PSA.

#### 14.13 NOT USED.

#### 14.14 Agreement Made in California; Venue

- A. This PSA shall be deemed to have been executed in the City of Santa Barbara, County of Santa Barbara. The formation, interpretation and performance of this PSA shall be governed by the laws of the State of California, excluding its conflict of laws rules. The exclusive venue for all disputes or litigation arising out of this PSA shall be in the Superior Court of the County of Santa Barbara unless the parties agree otherwise in a written amendment to this PSA.
- B. The parties shall execute **two** originals of this PSA, both of which shall be deemed originals.

### PART 15 - NOTICES

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

### PART 16 - LIMITS and MODIFICATIONS OF AGREEMENT

- 16.01 This PSA between the parties hereto regarding the subject matter of this PSA shall constitute the exclusive statement of the terms of the parties' agreement. The PSA, and any written modification to the PSA, shall supersede any and all prior negotiations, representations or agreements, either written or oral, express or implied, that relate in any way to the subject matter of this PSA or written modification, and the parties represent and agree that they are entering into this PSA and any subsequent written modification in sole reliance upon the information set forth in the PSA or written modification and the parties are not and will not rely on any other information. All prior negotiations, representations or agreements, either written or oral, express or implied, that relate in any way to the subject matter of this Agreement, shall not be admissible or referred to hereafter in the interpretation or enforcement of this PSA.
- 16.02 To the extent this PSA conflicts with the terms of any proposal, invoice, or other document submitted to or by either party, the terms of this PSA shall control.
- 16.03 This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved by a fully authorized representative of both Owner and Consultant expressing such an intention in the case of a modification or by the party waiving in the case of a waiver.
- 16.04 Consultant, in any price proposals for changes in the scope of services that increase the PSA amount, or for any additional services, shall break out and list its costs and use percentage markups. Consultant shall require its Subconsultants (if any) to do the same, and the Subconsultants' price proposals shall accompany Consultant's price proposals.
- 16.05 Consultant and its Subconsultants shall, upon request by Owner, permit inspection of all original unaltered PSA bid estimates, subcontract agreements, purchase orders relating to any change, and documents substantiating all costs associated with all cost proposals.
- 16.06 Changes in the scope of services made pursuant to this Paragraph and extensions of the Term of the PSA necessary by reason thereof shall not in any way release Consultant's representations and agreements pursuant to this PSA.
- 16.07 Whenever the words "as directed", "as required", "as permitted", or words of like effect are used, it shall be understood as the direction, requirement, or permission of Owner. The words "approval", "acceptable", "satisfactory", or words of like import, shall mean approved by, or acceptable to, or satisfactory to Owner, unless otherwise indicated by the context.

### PART 17 - EXHIBITS

- 17.01 The following listed Exhibits referred to herein are incorporated in this PSA as though set forth in full:
  - A. [Exhibit A](#), "Consultant's Hourly Rate Schedule"
  - B. [Exhibit B](#), "Consultant's Staff & Subconsultants"

- C. [Exhibit C, "Compensation for Project Phase"](#)
- D. [Exhibit D, "General Design Checklist"](#)
- E. [Exhibit E, "Sample Invoice Format"](#)
- F. [Exhibit F, "Indemnification And Insurance Requirements"](#)
- G. [Exhibit G, "Notices"](#)
- H. [Exhibit H, "Jail Construction Agreement Between Board of State and Community Corrections and County of Santa Barbara"](#)
- I. [Exhibit I, "Project Construction and Delivery Agreement Between California Department of Corrections and Rehabilitation and County of Santa Barbara"](#)

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PART 18 - SIGNATURES

Agreement for CONSTRUCTION MANAGEMENT AND RELATED PROFESSIONAL SERVICES

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

COUNTY OF SANTA BARBARA

By: [Signature]  
Chair, Board of Supervisors

Date: 5-14-13

ATTEST:  
CHANDRA L. WALLAR  
CLERK OF THE BOARD

By: [Signature]  
Deputy

CONSULTANT: Kitchell/CEM, Inc.

By: [Signature] 4/29/2013  
Russell A. Fox  
President/Principal-In-Charge

APPROVED AS TO FORM:  
DENNIS A. MARSHALL  
COUNTY COUNSEL

By: [Signature]  
Deputy County Counsel

APPROVED AS TO ACCOUNTING FORM:  
ROBERT W GEIS, CPA  
AUDITOR-CONTROLLER

By: [Signature]  
Deputy  
Deputy Auditor-Controller  
Gregory Eric Levin  
Advanced and Specialty Accounting

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

By: [Signature]  
Risk Manager

END OF PART 18  
END OF AGREEMENT

**EXHIBIT A**

**PAYMENTS TO CONSULTANT**

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 Consultant's principal office location, and are subject to approval as an administrative modification to the PSA by the OAR.

CONSULTANT FIRM NAME: **Kitchell/CEM, Inc.**

Billable Hourly Rate (\$)

Consultant/Job Title*	Year 1	Year 2	Year 3	Year 4	Year 5
Principle-in-Charge	No charge	No charge	No charge	No charge	No charge
Project Executive	185	185	185	191	197
Senior Project Manager	160	160	160	165	170
Senior Construction Manager	180	180	180	185	191
Correctional Facility Specialist	195	195	195	201	207

\* The Services of the Principal-in-charge and Project Executive are considered part of Consultant's overhead cost. The rate indicated will only be used when there is a specific written request from Owner for the Services of the Principal-in-charge for a specifically defined task.

**END EXHIBIT A**

## **EXHIBIT B**

### **CONSULTANT'S STAFF & SUBCONSULTANTS**

- A. Consultant declares that the Project Executive shall be **Mr. Randy Rominger**, the Consultant's Project Manager shall be **Mr. George Dyke**, the Project Construction Phase Manager shall be **Mr. Mitch Tornell**, and the Correctional Facility Specialist shall be **Mr. Dave Kirn**.
- B. Consultant will employ Subconsultants it deems appropriate to the complexity and nature of the required Services and said Subconsultants shall, if their specialty is licensable, be licensed by the State of California to perform their specific Services. Consultant shall obtain Owner's approval of all Subconsultants. Upon Owner's request Consultant shall 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 shall submit the name of a qualified replacement for OAR's approval.

**END EXHIBIT B**





County of Santa Barbara  
General Services  
**Capital Projects Division**

**EXHIBIT C**

**COMPENSATION OF PROJECT PHASES**

<b>PSA BETWEEN THE COUNTY OF SANTA BARBARA AND Kitchell/CEM, Inc. FOR Construction Management and Related Professional Services</b>
<b>PROJECT TITLE:</b> Northern Branch Jail Project

*This Table For Owner's Use Only*

<i>Item</i>	<i>Fund</i>	<i>Dept No</i>	<i>Acct #</i>	<i>Program</i>	<i>OrgUnit</i>	<i>Activity</i>	<i>Amount</i>
<b>Construction Management</b>	0032	980	7460	4000	0001	3400	\$2,238,500
<b>Construction Management Travel</b>	0032	980	7460	4000	0005	3401	\$31,500

**COMPENSATION**

Project Phase	Basic Services	Other Cost Item	Supplementary Services	Travel and Expenses	Maximum Compensation Limit for Project Phase
Programming	\$46,792			\$3,000	\$49,792
Schematic Design	\$86,036			\$3,000	\$89,036
Design Delevopment	\$166,625			\$5,000	\$171,625
Construction Documents	\$181,815			\$3,000	\$184,815
Bidding	\$54,780			\$4,000	\$58,780
Construction	\$1,662,067			\$12,000	\$1,674,067
Operations/Close-Out	\$38,185			\$1,000	\$39,185
Warranty	\$2,200			\$500	\$2,700
<b>Maximum Compensation Limit on PSA:</b>					<b>\$2,270,000</b>

Consultant shall submit appropriate documentation and information to support each invoice, including a narrative description of services performed during the period; completed milestones and deliverables. Consultant shall break-out cost items by line items identified in the Compensation Summary table, and label each category the same title. See Exhibit E for example.

**END EXHIBIT C**



County of Santa Barbara  
General Services  
**Capital Projects Division**

**EXHIBIT D**

**GENERAL DESIGN CHECKLIST**

Note to Consultant: This Checklist is a requirement for Architect's 100% CD submittal, and is provided in PSA for Consultant's reference in review of Architect's work in accordance with the requirement of this PSA.

Incorporated in the design	Not Applicable	Item
<b>General Information</b>		
		There are no references to the terms "beneficial occupancy," or "substantial completion." The correct term is "Milestone Completion.  The County Board of Supervisors Acceptance of the Work of the Project establishes the warranty period for the project and triggers the release of Retention.
		CEQA Mitigation Measures are identified
		Document Coordination Check certification is provided
		List of Confined Spaces is provided
		Drawing "border" standards are provided in the Project Manual (note, these are CAD files)
		Project Manual Cover page is as provided in the Project Manual
		Sustainable design features have been incorporated, to the greatest degree possible
		Consultant has reviewed CD's for use of exculpatory language
		Site condition information is properly described to the Contractor
<b>Organization of Specifications</b>		
		"Submittals" paragraph in each technical Section identifies any special Contractor qualifications that need to be verified through a submittal.
		The County does not "approve" submittals; it only "accepts" them.
		"Execution" section identifies all Quality Control testing and inspection that must be performed
<b>Contractor Requirements Under State Agreements</b>		
		Specifications require contractor to comply with the applicable terms and conditions of the BSCC JCA and the CDCR PDCA, including all Attachments and Exhibits to those agreements. Such terms and

Incorporated in the design	Not Applicable	Item
		conditions include, without limitations: <ul style="list-style-type: none"> <li>• Contractor advisement of State Financing</li> <li>• Bonding</li> <li>• State agency access to construction site</li> <li>• Insurance and Indemnity</li> <li>• Record retention</li> <li>• Valley Fever notification</li> </ul>
<b>Contractor Quality Control</b>		
		Unless this is an OSHPD project ** (including health centers) the technical specifications shall not reference the Consultant or Owner performing "inspections." All inspections are performed by either the CQC Manager, CQC Special inspectors, or Contractor's test lab.
		For those specification Sections that require CBC Chapter 17 inspections (concrete and steel, mostly), the Consultant shall insert the specific wording defined in the Project Manual into the Quality Control paragraph in the applicable Section.
		Specifications and Plans reflect that the Testing lab is hired by the Contractor, not the Owner.
		Consultant has identified in the contract documents all specific tests to be performed by the Contractor;
		Specifications reference that only the Contractor performs Quality Control. ** (see above for exception)
		Consultant has assisted the OAR in developing a list of Special Inspectors for the Special Inspector table in Section 01450.
		The specifications and plans indicate that the Contractor's CQC organization performs all CBC Chapter 17 Special Inspection.** (see above for exception)
<b>Submittal Review Time</b>		
		In the technical Sections Consultant identifies all submittals that may require longer than a 21-day review time. This information is also communicated to the OAR.
<b>Warranties and Guaranties</b>		
		The Consultant has reviewed all technical sections to ensure any statement about warranty start date is consistent with Owner's Division 0 requirements.
<b>Operation and Maintenance Manuals</b>		
		The Consultant has provided assistance in identifying systems and system components that require O&M manuals, and this information is included in Section 01782.
		No additional/separate O&M requirements need be identified in the contract documents, beyond what is in Section 01782.
<b>Training</b>		
		The Consultant has provided assistance in editing the list of training requirements that go in to Section 01820 .
		No additional/separate training requirements need be identified in

Incorporated in the design	Not Applicable	Item
		the contract documents.
<b>Commissioning</b>		
		The Consultant has provided assistance in identifying systems and system components that require commissioning.
		The Consultant may identify in the contract documents specific equipment tests that must be performed; however, the Consultant must include the wording (in the appropriate specification paragraph) that the Contractor shall commission equipment pursuant to Section 01810.
<b>References to A-E role during Construction Administration</b>		
		The Consultant must review the Contract documents and ensure these type references have been changed to Owner actions.
<b>Single-Sourcing of Products</b>		
		The Consultant has discussed the inclusion of single-source/sole-source products with the OAR before including in the contract documents.
		All sole source products must be identified in the Notice to Bidders. The Consultant is responsible for identifying these to the OAR.
		Unless the Consultant provides justification that meets the criteria established in PCC 3400, if specifying a product by brand name, at least two brand names must be identified. If preparing a performance specification, then the Consultant certifies that at least two products meet the specification requirements.
		In the case of finishes like carpet or wall paper or flooring, Owner will settle for “similar” patterns, not exact. In other words, if the client has selected a specific pattern or color during the design process (which may not even be available by the time the projects goes in to construction) the Consultant should identify at least two vendors that make similar patterns.
		The phrase “or equal” may only be used under the following circumstances: <ul style="list-style-type: none"> <li>1. At least two other acceptable products have already been specified by brand name, and we want to consider other potential products; or</li> <li>2. The County is not deliberately attempting to limit the number of acceptable products that may be used. See the checklists in the various Sections of this Guide, such as HVAC.</li> </ul>
		The Consultant shall not use the term “basis of design” in the Contract documents for any other purpose other than that described below in <b>Mechanical and Electrical Systems—Sole Source Issues</b> .
<b>Mechanical and Electrical Systems—Sole Source Issues</b>		

Incorporated in the design	Not Applicable	Item
		<p>In the event a product/equipment must “interact” with structural systems then the Structural Engineer has designed for the largest “practical, potential” weight of the product/equipment.</p> <p>If the structural “upgrade” costs to accommodate potential equipment are not “nominal,” then the Engineer must bring this information to the attention of the OAR. A solution will be provided by the OAR.</p>
		<p>For <i>power-draw and connecting piping issues</i>, A-E should place the following note on the equipment schedule drawing(s):</p> <p>“Manufacturers make and model numbers shown on these drawings are the “basis of design” for this project. Contractor shall refer to specification sections for other manufacturers of acceptable alternate products. If a product that differs from the “basis of design” is proposed, Contractor is responsible for providing proper infrastructure, including electrical feeds and plumbing connections, etc., at no additional cost to the Owner. This information must also be provided to the Owner in the form of shop drawings and other appropriate submittals.”</p>
		<p>The Consultant shall not use the term “basis of design” in the Contract documents for any other purpose other than that described above.</p>
<b>Permits from Regulatory Agencies</b>		
		<p>The Consultant has provided to the OAR a list of permits associated with the construction Work required by Regulatory Agencies.</p>
<b>Deferred Submittals and Permits from the Project Inspector of Record</b>		
		<p>Contractor Design-build systems (structural) such as curtain walls, steel frames, etc. contain this statement in the Submittals paragraph:</p> <p>“The Contractor-supplied design submittals of this Section require a sign-off pursuant to Section 01830 Inspection by the Inspector of Record. The Contractor shall make submittals pursuant to paragraph 1.04 .C of Section 01830.”</p>
<b>Outside References</b>		
		<p>Consultant has provided a binder with outside references.</p>
<b>Extended Warranties</b>		
		<p>The Consultant shall provide, as part of the 100% CD submittal, a list of all products, identified by technical Section and paragraph, requiring an extended warranty.</p>

\_\_\_\_\_  
Print name of Consultant Project Manager

\_\_\_\_\_  
Signature of Consultant Project Manager

\_\_\_\_\_  
Date Signed

**END EXHIBIT D**

**EXHIBIT E**

**SAMPLE INVOICE FORMAT**

A specific invoicing template will be provided to Consultant after award of this PSA, and shall be used for all invoicing on this PSA. The invoice will meet requirements of the JCA, and contain the following elements:

- Item description
- Item fee
- % Work Complete for the period
- Amount invoiced for the period
- Amount previously invoiced
- Amount invoiced to date
- % Work Complete on project

**END EXHIBIT E**

## EXHIBIT F

### 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 all acts, errors or omissions to act of CONSULTANT or its officers, agents, or employees 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 defend, indemnify, and hold OWNER, its officers and employees, and agents harmless from and against any and all claims, demands, damages, costs, expenses (including reasonable 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 agents or 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.

**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.

**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 shall 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.

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 five million dollars (\$5,000,000) per occurrence and a five million dollar (\$5,000,000) general aggregate limit.

C. Professional Liability Insurance – CONSULTANT shall carry Professional Liability Insurance of not less than five million dollars (\$5,000,000) per claim and a five million dollars (\$5,000,000) general aggregate limit. If insurance coverage is provided on a "claims made" policy, the "retroactive date" shall be shown and shall 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 five (5) 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.

D. 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 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 F**

**EXHIBIT G**

**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: Grady W. Williams, PE

**b. Consultant:**

Kitchell/CEM, Inc.  
612 Clarion Court  
San Luis Obispo, CA 93401

Attention: Randy Rominger

**END EXHIBIT G**

**EXHIBIT H**

JAIL CONSTRUCTION AGREEMENT BETWEEN BOARD OF STATE AND COMMUNITY  
CORRECTIONS AND COUNTY OF SANTA BARBARA

**END EXHIBIT H**

**EXHIBIT I**

PROJECT CONSTRUCTION AND DELIVERY AGREEMENT BETWEEN CALIFORNIA DEPARTMENT OF  
CORRECTIONS AND REHABILITATION AND COUNTY OF SANTA BARBARA

**END EXHIBIT I**