

County of Santa Clara

Parks and Recreation Department

298 Garden Hill Drive
Los Gatos, California 95032-7669
(408) 355-2200 FAX 355-2290
Reservations (408) 355-2201
www.parkhere.org



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Request for Proposal (RFP) for Engineering Services for various projects in County Parks

November 9, 2009



I. SUBJECT: Request for Proposal for Engineering Services for various projects in County Parks.

The County of Santa Clara's Parks and Recreation Department (County) is soliciting proposals for engineering services including surveying, and civil engineering for grading plans, utility design, and structural design. The County's intention is to enter into a Professional Services Agreement (PSA) with the selected consulting firm (Consultant) that will serve as a master agreement for the County to obtain professional engineering services on an as needed basis. Some typical consulting services may include: structural design and engineering, electrical engineering, civil engineering, structural evaluation and retrofit of historic buildings, erosion control plans, water system design, layout and design sections for new and existing trails, design of retaining walls, geotechnical reporting, site drainage design, and other utility design. The County invites qualified firms or individuals to submit a proposal with their qualifications for consideration.

II. BACKGROUND INFORMATION AND PROJECT DESCRIPTION

The Santa Clara County parks and recreation system encompasses nearly 45,000 acres of land that offers more than 260 miles of trails, five camping facilities, three off-leash dog parks, and an array of land and water based recreational venues. Recognizing the increasing need to provide recreational and open space opportunities, the County continues to invest in essential capital improvements, which may include:

- Implementation of park improvements identified in the Board-approved Strategic Plan and facility specific Master Plans,
- Upkeep and rehabilitation of aging park infrastructure and facilities,
- Development of new park Master Plans, Trails Master Plans, Site Plans and Resource Management Plans.

III. GENERAL SCOPE OF WORK

The selected Consultant will be responsible for completing the tasks and milestones according to a negotiated time line with the County's Project Manager(s). Tasks may be added and/or redefined based on subsequent negotiations. Upon execution of the contract (PSA), Consultant will meet with County's staff to discuss clarification of the desired goals and outcomes of the contract. At the completion of the project(s), the Consultant is expected to provide various products and services that will allow the County to implement various Master Plans (MP) or Site Plans (SP), and construct designed improvements. Possible specific projects identified in the scope of work may include: Los Gatos Creek Trail widening, Coyote Creek Trail widening and/or realignment, Mt. Madonna Black Hawk Trail erosion control, historic structures stabilization, Almaden Quicksilver TMDL sediment control study implementation plans (some MP, SP or studies may not be fully completed at the time of this RFP thus they are not available to be released to the Consultant for preparation of the proposal).

Sub-consultants in landscape architecture, architecture, civil engineering and other specialized fields may be included in the Consultant's scope of work to provide the County a comprehensive Consultant team.



IV. SCHEDULE

The successful consulting firm(s) will be selected in accordance with Santa Clara County's established consultant selection procedure detailed below:

Thursday, December 17, 2009	Proposal due date
Friday, January 15, 2010	Interviews and consultant selection
February - March 2010	Contract negotiation and anticipated notice to proceed (Consultant should anticipate 4-6 weeks for contract negotiation and processing)

V. SUBMITTAL REQUIREMENTS

Firms or individuals interested in submitting proposals shall submit (6) six complete copies of the proposal, in a sealed envelope bearing the caption "**PROFESSIONAL ENGINEERING SERVICES FOR VARIOUS PROJECTS IN COUNTY PARKS**". The envelope shall be addressed to:

**County of Santa Clara
Parks and Recreation Department
298 Garden Hill Drive
Los Gatos, California 95032-7669
Attn.: Metka Valh**

Proposals may be submitted in person or by mail, but **must be received by this office by 3:00 PM on Thursday, December 17, 2009.** Postmarks, emails and facsimiles are not acceptable. Late proposals will not be considered.

All inquiries regarding the RFP should be directed to Metka Valh, in writing via email at metka.valh@prk.sccgov.org

Note: County will NOT release any maps, Master Plans (MP), Site Plans (SP) or studies for the preparation of this proposal, so please do not call County's GIS or planning staff for these documents. Consultants may however, check the www.parkhere.org for any MP, SP, or Strategic Plan updates.



VI. FORM OF PROPOSAL

1. A total of (6) six copies of the proposal are to be submitted on a double-sided letter size format (8½" by 11") in size 12-font. Any smaller font size or single sided proposals will not be considered, nor will any oversized submissions be accepted (as per Board policy 3.29 relating to use of double-sided copying).
2. Proposers wishing to respond to the RFP must supply the following information in the order listed below:
 - a. **Title page** - legal name of the proposer, address, telephone number, year firm was established (if applicable), type of organization, and date of submittal.
 - b. **Purpose** - brief statement of the proposer's philosophy, interests, and goals with regard to the project.
 - c. **Organization** - brief description of the organization including the proposed Project Principal, any proposed Project Manager and/or Sub-consultants. Include brief resumes for each individual, identifying their qualifications in Similar Projects and applicable professional registration numbers. Provide an organization chart indicating roles of all individuals involved in this project. For the purposes of this RFP, a Similar Project is one encompassing architectural, electrical, structural, and civil engineering consulting services within the last five years.
 - d. **Similar Projects** - list of Similar Projects completed by the proposer for the County of Santa Clara as a prime consultant or major Sub-consultant. Include the contract amount for each project and the current status of the project.
 - e. **Schedule** - proposed schedule for completion of tasks identified.
 - f. **Financial stability** - statement of proposer's financial stability.
 - g. **Insurance** - evidence of insurance coverage that meets County requirements (see Insurance Coverage section below).
 - h. **Primary contact** - indicate the primary contact, who will be a Project Manager and day-to-day contact for the project.
 - i. **Form** - statement of agreement with attached PSA form agreement, or recitation of edits required for proposer to execute the contract.
 - j. **Local Business** - statement as to proposer's Local Business status, as defined in Board Policy 5.3.13.
 - k. **Fee schedule** - include a proposed fee schedule and hourly rate of staff working on this project.



VII. INSURANCE REQUIREMENTS

The **selected** Consultant will be required to obtain a Certificate of Insurance, during the negotiation of the contract, as per the attached insurance requirements (Attachment B) and maintain current insurance coverage through the contract duration.

Without the above stated evidence of insurance for the additional endorsement, the contract cannot be signed and the County reserves the right to reject selected consultant.

VIII. CONSULTANT SELECTION PROCEDURE

1. The method of selection will be in general accordance with the County Policy for the Selection of Professional Consultants, approved by the County of Santa Clara, Board of Supervisors, on September 1994 and as amended most recently on March 9, 1999, including the local preference policy.
2. The Director of the Parks and Recreation Department will appoint a Selection Committee to evaluate proposals and recommend selection.
3. The Consultants from the top six ranking proposals will be invited to an interview, out of which two or three Consultants may be selected for a three-year contract of \$300-400K each. The proposals will be evaluated and will be based on the following criteria:
 - a. Consultant's demonstrated expertise in Similar Projects. Selected Consultants must be knowledgeable, licensed, and thoroughly familiar with above stated engineering services (30 pints).
 - b. Strategy for performing required scope of services (30 pints).
 - c. Experience and demonstrated competence of the proposed Project Manager and support team in Similar Projects (20 points).
 - d. Form of Proposal (items a-k under section VI above – 10 points)
 - e. Consultant's agreement with all terms of the PSA with no proposed modifications (5 points).
 - f. Local Business: Santa Clara County Board Policy for Contract and Bidding, Section 5.3.13 "Local Business" preference shall apply. A local Business applies to a firm with a lawful business with a physical address and meaningful "production capability" located within the boundary of the County of Santa Clara. The term "production capability" means sales, marketing, manufacturing, servicing or research and development capability that substantially and directly enhances the firm's or bidder's ability to perform the proposed contract. Post Office box numbers and/or residential addresses may not be used as the sole basis for establishing status as a "Local Business" (5 points).



4. The Selection Committee will review and score proposals received taking into account the local preference. The County will notify selected proposers of their interview time and date. All other proposers will be notified that County is declining further consideration of their proposal. A maximum of 45 minutes will be allowed for each oral interview.
5. The Director of the Parks and Recreation Department or designated appointee will conduct negotiations with the highest ranked Consultant. If an agreement cannot be reached with the highest ranked Consultant, County may negotiate with the second most qualified Consultant. In the event an agreement cannot be reached with the second most qualified Consultant, then County may negotiate with the third most qualified Consultant and so on until the list is exhausted. Once negotiations ceased with a proposer, this proposer will not be reconsidered for this master agreement.
6. County reserves the right to reject any and all proposals received by reason of this RFP, to request additional information concerning any proposal for purposes of clarification, to accept or negotiate any modification to any proposal following the deadline for receipt of all proposals, and to waive any irregularities if such would serve the best interests of County as determined by County.
7. Local Preference: Pursuant to Board Policy 5.3.13, the County gives local firms a preference in the procurement of services, commodities or equipment. Local firms are firms that currently have main office, or branch office, or other facility with meaningful production capability located within Santa Clara County. Local firms shall be given a preference in the selection process as follows: five (5) points (based on 100 total score) will be awarded to proposers claiming and providing written evidence that services to be rendered or commodities to be provided will be performed by a local firm.
8. County is under no obligation to enter into an agreement.
9. All costs associated with proposal preparation are the responsibility of the submitting Consultant. Submitted proposals shall remain the property of the County Parks.

If you have any questions regarding this RFP, please contact Metka Valh via e-mail at: metka.valh@prk.sccgov.org.

Attachments:

- Attachment A – Sample PSA form
- Attachment B – Insurance Requirements

END



PROFESSIONAL SERVICES AGREEMENT

Between

THE COUNTY OF SANTA CLARA

And

NAME OF CONSULTANT

For

_____ AND RELATED PROFESSIONAL SERVICES

For

NAME OF PROJECT

PROJECT NUMBER: SAP NUMBER

BOARD APPROVAL DATE

CONSULTANT AGREEMENT

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County of Santa Clara

CONSULTANT AGREEMENT

Attachment A
-sample-

LIST OF EXHIBITS

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CONSULTANT AGREEMENT

PROFESSIONAL SERVICES AGREEMENT

FOR

AND RELATED PROFESSIONAL SERVICES

This is an agreement between THE COUNTY OF SANTA CLARA, a political subdivision of the State of California (hereinafter "Owner" or "County"), and NAME, FORM OF ENTITY (CORP, PARTNERSHIP, LLC OR SOLE PROPRIETOR UNDER CA LAW, OR SAY AUTHORIZED TO DO BUSINESS IN CA) AND ADDRESS OF CONSULTANT (hereinafter "Consultant").

PART 1 - RECITALS

- 1.01 WHEREAS**, County required _____ and related professional services (hereinafter "Services") for Owner's various _____ Projects; and
- 1.02 WHEREAS**, County selected Consultant by means of the County's consultant selection process because Consultant represents itself as a _____ professional having the requisite qualifications and expertise in _____; and
- 1.03 WHEREAS**, considering Consultant's prior experience and expertise in this area, County desires to have Consultant provide _____ services for _____ and Consultant agrees to perform such Services;

NOW, THEREFORE, Owner and Consultant agree as follows:

PART 2 - PROJECT AGREEMENT, TERM AND MAXIMUM COMPENSATION

2.01 AGREEMENT FOR SERVICES

This Professional Services Agreement (hereinafter "PSA") is a master agreement that sets forth the terms and conditions pursuant to which Consultant, as a professional, will provide services to County in connection with _____ Projects. County will authorize Consultant to perform specific services by separate Project Agreements. Each Project Agreement will set forth: (i) a project description; (ii) scope of services and deliverables consistent with the Consultant's General Activities described in section 5.03.B; (iii) schedule for performance; (iv) maximum compensation and method of payment and invoicing; (v) authorized sub consultants and employees, if any; and (vii) County's representative Project Manager, who will provide coordination between Consultant and County and communicate relevant approvals and decisions.

2.02 MAXIMUM COMPENSATION

The sum of all Project Agreements issued pursuant to this PSA shall not exceed [state in all cap words and number] ("Maximum Compensation Limit"). If Consultant performs services or incurs expenses beyond this Maximum Compensation Limit, Consultant does so at Consultant's sole risk and expense.

2.03 TERM

This Agreement is effective upon the date of full execution by both parties, and shall remain in effect for a period of ____ years ("Term"), unless earlier terminated under Section 12 of this Agreement. All Project Agreements must be executed, but Services not necessarily completed, within the Term of this Agreement.

CONSULTANT AGREEMENT

2.04 BUDGET CONTINGENCY LANGUAGE

This Agreement is contingent upon the appropriation of sufficient funding by the County for the services covered by this Agreement. If funding is reduced or deleted by the County for the services covered by this Agreement, the County has the option to either terminate this Agreement with no liability occurring to the County or to offer an amendment to this Agreement indicating the reduced amount.

2.05 EFFECT

Any act or event affecting any particular Project Agreement, such as its completion, termination, acceptance, non-acceptance, continuation or modification, shall not affect any other Project Agreement or this PSA unless specifically provided herein or agreed in writing by the parties.

PART 3 - OWNER'S RESPONSIBILITIES

3.01 Owner Provided Information

- A. If required for a Project and specified in the Project Agreement, Owner may provide specialized studies of existing site conditions, including the presence of hazardous materials, character of soil, air, water, pollution, traffic, noise, archaeology, environmental impacts, etc.
- B. Consultant must make a written recommendation to the Owner regarding the completeness or sufficiency of any such specialized study provided to Consultant, or the need for any study or survey that the Consultant believes is required for the Project that is not included within Consultant's Services.
- C. If Owner provides GIS based data, Consultant agrees to execute the Nondisclosure Agreement, **Exhibit I**, relative to the handling, storage and disposition of such data.

3.02 Owner's Forms

Owner will provide Consultant with a copy of the County's standard Bid Documents, including forms for the Instructions to Bidders, Bidding Requirements, Contracting Requirements, and General Requirements. Consultant shall prepare all design documents consistent with these specialized forms.

3.03 Approval & Permit Fees

Owner will pay all fees required by any jurisdiction having authority over a Project for filing and checking of any item of Service prepared by Consultant, and such fees necessary to secure approvals and permits for the Project from any Governmental Agency.

PART 4 - PROJECT AGREEMENTS (PA)

4.01 Preparation and Approval

- A. Owner will prepare each Project Agreement, generally in accordance with the sample which is attached hereto as **Exhibit C**, "Sample Project Agreement".
- B. Each Project Agreement will be executed by the Owner's Authorized Representative ("OAR"), and incorporate the terms of this PSA. The OAR is the Director of the Parks and Recreation Department.
- C. Owner hereby approves all Project Agreements executed by OAR within the limits of this PSA. OAR does not have the authority to negotiate or authorize payments or scope beyond the Maximum Compensation Limit or scope stated in this PSA.
- D. Commencement of each Project Agreement is contingent on receipt by Consultant of an Authorization to Proceed issued by Owner's Project Manager. Consultant must not

CONSULTANT AGREEMENT

commence work until Consultant receives the written Authorization to Proceed from the Owner's Project Manager.

- 4.02** Any act or event affecting any particular Project Agreement, such as its completion, termination, acceptance, non-acceptance, continuation or modification, will not affect any other Project Agreement or this PSA unless specifically provided herein or agreed in writing by the parties.

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

5.01 Consultant as Independent Contractor

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

5.02 Consultant's Use of Sub Consultants

Notwithstanding the foregoing, Consultant may use the sub consultants listed in **Exhibit B** in performing the Services under this Agreement, when authorized in a Project Agreement. Consultant shall be responsible for directing the work of authorized sub consultants, and for any compensation due to sub consultants. County assumes no responsibility whatsoever concerning such compensation. Consultant may change or add sub consultants only with the prior written approval of the County's Project Manager in a Project Agreement.

5.03 Consultant's General Responsibilities

A. Standard of Care

The following Standard of Care applies to all Services under this Agreement.

1. Consultant must perform Services in accordance with those standards of care that are generally recognized as being used by competent persons in Consultant's area of specialty in the State of California.
2. Consultant must perform Services in compliance with all applicable federal, state and local codes, statutes, and regulations, including, but not limited to, environmental, energy conservation, and disabled access requirements.
3. Consultant must use its best efforts to verify interpretations of applicable codes, statutes and regulations from the appropriate government agency(s) and authorities having jurisdiction over the Project. Such efforts will be undertaken in accordance with the acceptable standard of care for this type of Project.
4. Consultant must correct Consultant's errors and omissions in documents or materials produced pursuant to this Agreement without cost to Owner. In addition, Owner may pursue all available legal remedies to redress such errors and omission.

BELOW ONLY IF APPLICABLE:

5. All Construction Documents must comply with all regulations and standards of the Fire Marshal having jurisdiction over the Project and in effect during performance of Consultant's Services.
6. Consultant must perform Services in compliance with all mitigation measures identified in the Project's Environmental Impact Report or Mitigated Negative Declaration.

B. Services

CONSULTANT AGREEMENT

Owner will detail the Services required for a particular Project in a Project Agreement. Owner may authorize Consultant to provide any of the following services:

[INSERT RANGE OF SCOPE OF SERVICES]

5.04 Supplementary Services & Deliverables

County may establish a Supplemental Services Allowance ("SSA") in a Project Agreement for the performance of services not included within the PA's Scope of Services and Deliverables. Consultant will only commence work under the SSA following prior, written authorization of County's Project Manager, which will detail the Services, method of compensation (Fixed Fee or Time and Materials), maximum compensation limit and schedule for performance.

PART 6 - CONSULTANT'S SCHEDULE

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

PART 7 - COST CONTROL

7.01 Owner Approved Project Budget

- A. A Project Agreement may specify a Project Budget covered by that Project Agreement. The Project Budget may only be revised by Owner's prior written approval. Consultant will manage the project design to stay within the Project Budget.
- B. Consultant's evaluations of the Owner's Project Budget and statements of probable construction cost should represent the Consultant's best judgment as a design professional familiar with the construction industry and trends in prevailing wages and material escalation costs.

PART 8 - INDEMNIFICATION & INSURANCE

Indemnification and Insurance requirements are set forth in [Exhibit E](#), "Indemnification & Insurance."

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 these 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 - RESERVED

CONSULTANT AGREEMENT

PART 11 - COMPENSATION & PAYMENT

11.01 Compensation

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

1. Maximum Compensation Limit

Owner will specify a Maximum Compensation Limit (MCL) in each Project Agreement. The MCL includes compensation for all authorized Services, reimbursable expenses and Supplemental Services Allowance. The Project Agreement will indicate whether the Services will be paid on a fixed fee or time and materials/not to exceed basis. Total payment by Owner pursuant to any Project Agreement will not exceed the MCL specified in the Project Agreement and Consultant is fully responsible for providing all Services and Deliverables required under a Project Agreement within 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. During the Term of this PSA, and not more often than once a year, the OAR may authorize modifications to Consultant's Hourly Rate Schedule if Consultant provides information as to a benchmark for the prevailing increase for similar Consulting Services in the Bay area. Authorized increases will be documented as an amendment to this PSA.
- c. Consultant may not mark-up sub consultant fees for work performed on a time and material basis.

11.02 Reimbursable Expenses

- A. When travel is authorized as a reimbursable expense in a Project Agreement, Consultant agrees to comply with the Santa Clara County travel policies and guidelines, where applicable, for all travel, lodging and meal reimbursements arising from the performance of this Agreement. Detailed travel policy requirements and limitations can be found in the [County's Travel Policy Desk Reference Manual](#).
- B. When authorized in the Project Agreement, Owner will reimburse Consultant, at cost, for reasonable expenses incurred in the performance of the Services. Ordinary office expenses such as telephone, fax, standard size copies and standard USPS postage are included in Consultant's hourly rates or Fixed Fee. Only extraordinary expenditures, such as special print sizes and overnight mail or delivery pursuant to Owner's advance written approval or as specified in the Project Agreement, are payable as reimbursable expenses within the Maximum Compensation Limit of any Project Agreement.

11.03 Payment

A. Payment Requests

Owner will endeavor 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 D](#), "Sample Invoice," not more than once each month. Consultant must provide detailed back up information to support each payment request, including, when applicable, receipts for reimbursable expenses; in the case of time and materials payment, the personnel/hours worked and description of tasks performed or services provided; or, in the case of fixed fee, a description

CONSULTANT AGREEMENT

of percentage of work complete and submittals provided, if any. Owner may reasonably request additional information supporting a pending payment request prior to the OAR's approval of same.

C. Progress Payments

Owner may, at its discretion, adjust any progress payment so that it corresponds with the percentage of completion as reasonably determined by Owner.

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

11.04 Release of All Claims

Prior to final payment under any Project Agreement, Consultant must execute and deliver to Owner a release of all claims arising under the Project Agreement, other than such claims, if any, as may be specifically excepted from the release for the reasons and in the amounts stated in the release.

11.05 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 Agreement.

B. Owner has no liability for payment of, and has sole discretion to pay or decline payment of, any billings submitted after the expiration of this ninety (90) day period.

11.06 Consultant's Accounting Records

A. Accounting System & Records Retention

Consultant must maintain an accounting system in accordance with current standards of accounting and financial reporting for the purpose of supporting payments for Services authorized under this PSA. Consultant must retain such records for three (3) years from expiration or termination of this PSA, or until all claims, if any, have been disposed of, whichever period is longer.

B. Owner's Auditing Rights

Upon service of a written Notice to Consultant, Owner, and persons authorized by Owner, have the right at any reasonable time and place to examine, audit, and make copies of books, records, documents, accounting procedures and practices affecting the performance or administration of this PSA, or affecting any changes or modifications to this PSA.

C. Applicability to Subcontracts

Consultant must incorporate the above-stated accounting and audit requirements into all subcontracts exceeding Ten Thousand Dollars (\$10,000) in value pursuant to this PSA or any modification thereof.

PART 12 - TERM & TERMINATION

12.01 Owner's Rights

A. Termination for Convenience

1. Owner's Authorized Representative may, by written notice to Consultant, terminate all or part of this PSA or any Project Agreement at any time for Owner's convenience. Upon receipt of such notice, Consultant must immediately cease all work as specified in the notice.

CONSULTANT AGREEMENT

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

12.02 Consultant's Compensation Upon Termination

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

12.03 Delivery of Documents

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

PART 13 - MISCELLANEOUS PROVISIONS

13.01 Force Majeure

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

13.02 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.

A. All materials prepared by Consultant pursuant to this Agreement are the property of Owner. Consultant must provide Owner with such materials at appropriate times during this PSA, and on termination or suspension of this PSA or any Project Agreement. Consultant may retain a copy for its records. Consultant conveys, assigns and transfers the intellectual property rights it has to such materials to Owner.

B. In the event Owner re-uses such materials prepared pursuant to this PSA, in total or in part, on this Project site or any other site, or completes any incomplete portion for which Owner, 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.

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."](#)

A. This PSA and all fully executed Project Agreements constitute the entire and integrated agreement between Owner and Consultant and supersede all prior negotiations, representations, or agreements, either written or oral, preceding this PSA or any Project Agreement.

B. This PSA including Project Agreements may be amended only by written agreement signed by Owner and Consultant or as otherwise authorized herein.

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County of Santa Clara

Attachment A
-sample-

CONSULTANT AGREEMENT

PART 16 - EXHIBITS

- A. The following listed Exhibits referred to herein are incorporated in this PSA as though set forth in full:
1. [Exhibit A](#), "Consultant's Hourly Rate Schedule"
 2. [Exhibit B](#), "Approved Subconsultants"
 3. [Exhibit C](#), "Sample Project Agreement"
 4. Exhibit D, "Sample Invoice Format"
 5. Exhibit E, "Indemnification & Insurance Requirements"
 6. Exhibit F, "Notices"
 7. Exhibit G, "Contract Provisions to Implement Board of Supervisors Resolution on Contracting Principles"
 8. Exhibit I, "Nondisclosure Agreement"

IN WITNESS WHEREOF, the parties hereto have entered into this Professional Services Agreement on

CONSULTANT:

(Name), Principal in Charge
(Name of Firm)

California License Number

COUNTY OF SANTA CLARA:

Liz Kniss
President Board of Supervisors

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

ATTEST:

APPROVED AS TO FORM AND LEGALITY:

KATHERINE HARASZ
Deputy County Counsel

MARIA MARINOS, Clerk
Board of Supervisors,
County of Santa Clara

CONSULTANT AGREEMENT

EXHIBIT A

CONSULTANT'S HOURLY RATES

The following rates include all overhead, administrative costs, and profit, and will be used in arriving at fees for hourly-rate Services authorized by a Project Agreement. Modifications to Consultant's Hourly Rate Schedule may only be made as described in Section 11.01 of the Agreement.

CONSULTANT FIRM NAME:

<u>Consultant/Job Title</u>	<u>Billable Hourly Rate (Calendar Year \$)</u>	
	<u>2008</u>	<u>2009</u>
Firm Principal (Principal-in-charge)*		
Project Director		
Senior Project Manager		
Senior Designer/Architect		
Project Manager		
Senior Project Architect		
Job Captain/Designer		
Senior Technical		
Project Architect		
Specifications Writer		
Intermediate Designer		
Junior Designer		
Senior Project Support		
Project Support		

* The Services of the Principal-in-charge will be 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

CONSULTANT AGREEMENT

EXHIBIT B

APPROVED SUBCONSULTANTS

- A. Consultant may employ sub-consultants that Consultant deems appropriate to the complexity and nature of the Project. Such sub-consultants must be licensed or certified, as appropriate, in the State of California for their particular area of expertise. Consultant is solely responsible for managing and coordinating the work of sub-consultants, and for compensating the sub-consultant for Services provided. Following are approved sub-consultants for work under this PSA, unless otherwise specified in a Project Agreement:
- B. Consultant may not replace a sub-consultant without Owner's prior written approval. If Consultant's designated Project Manager, or any designated key staff person or sub-consultant, fails to perform to the satisfaction of Owner, Consultant will have fifteen (15) days from Owner's written notice to remove and replace that person with an replacement acceptable to Owner.

END EXHIBIT B

CONSULTANT AGREEMENT

EXHIBIT C

SAMPLE PROJECT AGREEMENT

PROJECT AGREEMENT NO.? TO PSA BETWEEN THE COUNTY OF SANTA CLARA AND <i>(Consultant's Name)</i> FOR (PSA FULL Name Exactly As It Appears On Page 1 of PSA)
PROJECT TITLE: <i>(Project Title)</i>
PROJECT AGREEMENT TITLE: <i>(Project Agreement Title)</i>

Account Assignment	G/L Account	Cost Center	WBS	Amount
I				\$

WHEREAS, on *(Insert PSA date)* the County of Santa Clara, California ("Owner"), and *(Consultant's Name)* ("Consultant") entered into a Professional Services Agreement ("PSA"), which expires on *(Date)*, for Consultant to provide *(write PSA' FULL name exactly as it appears on page 1 of PSA)*; and,

WHEREAS, the PSA requires that Consultant's Services will be provided pursuant to individual Project Agreements to be executed by the parties.

NOW, THEREFORE, the parties agree as follows:

1. PURPOSE:

- 1.1 This is Project Agreement No. pursuant to the PSA.
- 1.2 Consultant will perform the services described in Attachment 1, Consultant's Services and Deliverables.
- 1.3 All the definitions, terms and conditions of the PSA are incorporated into this Project Agreement unless specifically modified herein.

2. OWNER'S PROJECT MANAGER: The Owner's Project Manager is *(Project Mgr's Name.)*. All communications concerning the Project shall be through the Project Manager.

3. SCHEDULE AND EXPIRATION DATE: Services and Deliverables shall be provided according to Attachment 2, Consultant's Schedule. Consultant's Schedule may only be modified with Owner's written approval.

CONSULTANT AGREEMENT

4. **MAXIMUM COMPENSATION LIMIT:** The maximum compensation limit for services pursuant to this Project Agreement shall be as stated in Attachment 3, Consultant's Compensation. Consultant is fully responsible for not exceeding this limit.
5. **THE OWNER'S PROJECT BUDGET:** The Budget for this Project is (\$ Dollar Amount or Not Applicable).
6. **ATTACHMENTS:**

The following listed Attachments referred to and check marked herein are incorporated in this Project Agreement as though set forth in full.

- ☐ Attachment 1: Consultant's Services and Deliverables
- ☐ Attachment 2: Consultant's Schedule
- ☐ Attachment 3: Consultant's Compensation
- ☐ Attachment 4: Listing of Subconsultants

IN WITNESS WHEREOF, this Project Agreement is effective as of the date it is fully executed.

(Type Firm's Name), **CONSULTANT:**

By: _____
(Type Name of Person) **Date**

Title: _____

COUNTY OF SANTA CLARA:

(Type Project Manager Name), **Project Manager** **Date**

COUNTY OF SANTA CLARA:

Lisa Killough, Director **Date**
Owner's Authorized Representative

Sylvia Gallegos **Date**
Deputy County Executive

APPROVED AS TO FORM AND LEGALITY:

Katherine Harasz, Deputy County Counsel

CONSULTANT AGREEMENT

SAMPLE ATTACHMENTS 1,2,3, & 4 TO SAMPLE PROJECT AGREEMENT

ATTACHMENT 1

to

PROJECT AGREEMENT NO. ____

CONSULTANT'S SERVICES AND DELIVERABLES

I. Project Description

II. Basic Services & Deliverables

III. Supplementary Services (if applicable)

Owner may authorize Consultant to perform Services supplemental to the Basic Services and Deliverables described above by prior written authorization. Owner's authorization will include a description of the Services to be provided, the method of compensation (fixed fee or time and materials), maximum compensation limit and schedule for performance of the Supplementary Services.

End of Attachment 1

CONSULTANT AGREEMENT

ATTACHMENT 2
to
PROJECT AGREEMENT NO. _

CONSULTANT'S SCHEDULE

Consultant will complete the Basic Services described in Attachment No. 1 by _____.
Consultant will complete the tasks or submit the deliverable described below within the time stated:

[REFERENCE TASK OR DELIVERABLE EXACTLY AS SHOWN IN ATTACHMENT 1]

End of Attachment 2

CONSULTANT AGREEMENT

ATTACHMENT 3
to
PROJECT AGREEMENT No. ??
CONSULTANT'S COMPENSATION

1. Compensation Summary

Consultant's lump sum fee for Basic Services and Deliverables described in Section II of Attachment 1, which includes payment for all materials, equipment and services required to complete performance shall be: \$???

2. Progress Payments:

- a. All payments to this Project Agreement will be based on a "Progress Payments". Progress Payments will be made monthly and based on a percentage of work completed during the billing period as per hourly rate outlined in Exhibit C of the PSA.
- b. Reserved.
- c. Only invoices identifying personnel listed in Exhibit C or D to the PSA will be accepted by Owner for payment.
- d. Consultant must submit appropriate documentation and information to support each invoice, including a description of Services performed during the period, completed milestones or deliverables.

ATTACHMENT 3
CONSULTANT'S COMPENSATION

COMPENSATION SUMMARY

County will compensate Consultant for Basic Services provided in accordance with this Agreement as follows:

- a. Basic Services and Deliverables

[INSERT SCHEDULE OF VALUES FOR FIXED FEE OR NTE AMOUNTS FOR EACH PHASE OF WORK]

CONSULTANT AGREEMENT

SUBTOTAL: Fixed Fee [or NTE on time & materials] for Basic Services	\$0
---	-----

b. Supplemental Services Allowance

	\$

c. Allowance for Reimbursable Expenses

Maximum Compensation Limit

End of Attachment 3

CONSULTANT AGREEMENT

SAMPLE ATTACHMENT 4
to
PROJECT AGREEMENT NO.____

LISTING OF APPROVED SUBCONSULTANT'S and SUBCONSULTANT'S HOURLY RATES
FOR NON-FIXED FEE SERVICES

(Describe Subconsultants in detail)

End of Attachment 4

END EXHIBIT C

County of Santa Clara

Attachment A
-sample-

CONSULTANT AGREEMENT

EXHIBIT D

SAMPLE INVOICE FORMAT

County of Santa Clara

Attachment A
-sample-

CONSULTANT AGREEMENT

END EXHIBIT D

County of Santa Clara

CONSULTANT AGREEMENT

Attachment A
-sample-

EXHIBIT E

INDEMNIFICATION & INSURANCE REQUIREMENTS

INSERT CURRENT FORM FROM ESA WEB SITE

END EXHIBIT E

County of Santa Clara

Attachment A
-sample-

CONSULTANT AGREEMENT

EXHIBIT F

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 Clara

San Jose, CA

Attention: Project Manager

- b. **Consultant:**

END EXHIBIT F

CONSULTANT AGREEMENT

EXHIBIT G

**CONTRACT PROVISIONS TO IMPLEMENT THE TERMS OF THE
BOARD OF SUPERVISORS' RESOLUTION ON CONTRACTING PRINCIPLES
(Type I Contract)**

This is a Type I service contract, subject to the Resolution on Contracting Principles adopted by the Board of Supervisors on October 28, 1997. Accordingly, Contractor shall comply with all of the following:

- a. Contractor shall, during the term of this contract, comply with all applicable federal, state and local rules, regulations and laws.
- b. Contractor shall maintain financial records adequate to show that County funds paid under the contract were used for purposes consistent with the terms of the contract. These records shall be maintained during the term of this contract and for a period of three (3) years from termination of this contract or until all claims, if any, have been resolved, whichever period is longer, or longer if otherwise required under any other provisions of this contract.

The failure of Contractor to comply with this Section or any portion thereof may be considered a material breach of this contract and may, at the option of the County, constitute grounds for termination and/or non-renewal of the contract. Contractor shall be provided reasonable notice of any intended termination or non-renewal on the grounds of noncompliance with this Section, and the opportunity to respond and discuss the County's intended action.

**DECLARATION OF CONSULTANT
(Type I Contract)**

This is a Type I service contract under the Board of Supervisors' Resolution on Contracting Principles.

Type I Category: Section II, C 8 "Contract with professionals"

Explanation: This is a contract for professional [REDACTED] services.

County of Santa Clara

Attachment A
-sample-

CONSULTANT AGREEMENT

The following section must be completed by contractor:

This contractor currently has other County of Santa Clara contracts for the same or similar services:

_____ Yes _____ No

If Yes is checked, please list and describe contracts, types and dollar amounts below:

Contract Description	County Department Client	Dollar Amount

I am authorized to complete this form on behalf of _____ contained herein is complete and accurate.

Signature: _____

Name: _____

Title: _____

Date: _____

END EXHIBIT H

INSURANCE REQUIREMENTS FOR
ARCHITECTS, LANDSCAPE ARCHITECTS, ENGINEERS & SURVEY SERVICES
CONTRACTS

Indemnity

To the fullest extent permitted by law (including, without limitation, California Civil Code Section 2782.8), Consultant shall indemnify, defend and hold harmless the County of Santa Clara (hereinafter "County"), its officers, agents and employees, from any claim, liability, loss, injury or damage (collectively, "Litigation") arising out of, or in connection with, performance of this Agreement due to the negligence, recklessness, or willful misconduct of Consultant and/or its agents, employees or sub-consultants, excepting only to the extent such loss, injury or damage is caused by the negligence, recklessness or willful misconduct of personnel employed by the County. The Consultant shall reimburse the County for all costs, attorneys' fees, expenses and liabilities incurred with respect to any Litigation in which the Consultant is obligated to indemnify, defend and hold harmless the County under this Agreement.

Insurance

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

A. Evidence of Coverage

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

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

B. Qualifying Insurers

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

C. Notice of Cancellation

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

D. Insurance Required

1. Commercial General Liability Insurance - for bodily injury (including death) and property damage which provides limits as follows:
 - a. Each occurrence - \$1,000,000
 - b. General aggregate - \$2,000,000
 - c. Personal Injury - \$1,000,000
2. General liability coverage shall include:
 - a. Premises and Operations
 - b. Personal Injury liability
 - c. Severability of interest
3. General liability coverage shall include the following endorsement, a copy of which shall be provided to the County:

Additional Insured Endorsement, which shall read:

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

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

4. Automobile Liability Insurance

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

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

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

5. Workers' Compensation and Employer's Liability Insurance

- a. Statutory California Workers' Compensation coverage including broad form all-states coverage.
- b. Employer's Liability coverage for not less than one million dollars (\$1,000,000) per occurrence.

6. Professional Errors and Omissions Liability Insurance

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

7. Claims Made Coverage

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

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

E. Special Provisions

The following provisions shall apply to this Agreement:

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

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

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