



TO: Mayor and Councilmembers

SUBMITTED BY: Matthew R. Fore, General Services Director
JoAnne Plummer, Neighborhood Services Director

PREPARED BY: Cassidy Le Air, Senior Management Analyst

SUBJECT: Amendment No. 1 to Professional Design Services Agreement 2024-045 with Jeffrey Miller Architecture and Design (JM|A+D) for the Goleta Valley Library ADA, Safety, and Building Improvement Project (CIP 9130)

RECOMMENDATION:

- A. Authorize the City Manager to execute Amendment No. 1 to Professional Design Services Agreement 2024-045 between the City of Goleta and Jeffrey Miller Architecture and Design, to expand the scope of work, update the fee schedule, and add \$174,311 to the compensation, thereby increasing the not-to-exceed amount to \$854,295; and
- B. Authorize a budget transfer of \$128,633 from various operating accounts into the Capital Project accounts for the Goleta Valley Library ADA, Safety, and Building Improvement Project (CIP 9130) as described in the Fiscal Impacts Section.

BACKGROUND:

In October of 2023, the City received a \$4.2M Building Forward Library Facilities Improvement Program grant (Grant) from the California State Library to make several infrastructural improvements to the Goleta Valley Library (Library). On December 19, 2023, Council adopted Resolution No. 23-75, authorizing the City Manager to accept the grant funds and execute the grant agreement.

On May 21, 2024, Council authorized the City Manager to execute an agreement with Jeffrey Miller Architect and Design (JMAD) for Architectural and Engineering services for the Goleta Valley Library ADA, Safety, and Building Improvements Project (Project) and to accept a donation of \$250,000 from the Friends of the Goleta Valley Library to fund the City's grant match for the Americans with Disabilities Act (ADA) restroom improvements portion of the project. On May 6, 2025, Council authorized the City Manager to execute

an agreement with Kitchell/CEM for Construction Management, Inspection, and Testing services for the project.

DISCUSSION:

The contract amendment consists of two additions to the design scope:

Required Design Modifications:

This component addresses design changes necessitated by unforeseen site conditions, as identified through preliminary engineering studies and plan checks. These modifications involve the installation of additional utility infrastructure, the incorporation of structural reinforcements to specific sections of the building to adequately support increased structural loads, and the implementation of stormwater mitigation measures.

Interior Design Scope:

The second addition expands the project scope to include interior design elements, funded through sources other than the Grant or matching funds. Initially, interior furnishings and equipment were excluded from the project scope, as the Grant explicitly prohibits funding for such items, including those necessary for ADA compliance. However, an ADA evaluation revealed that several existing furnishings, including the service desk and various bookstacks, do not meet current accessibility standards. These furnishings date back to the facility's original construction in 1973 and are largely incompatible with modern technology, including computer systems.

FISCAL IMPACTS:

Sufficient funding is available within the existing project budget to cover the additional required design modifications scope related to the required site and structural modifications associated with the grant funding. The portion of the scope costs \$80,846.

For the interior design portion of the amendment, which totals \$93,465, a budget transfer is proposed from existing Library operating accounts to the Capital Project accounts to fund these services. Due to the temporary closure of the Library, several operating accounts were identified with unexpended funds that will remain unused through the end of the current fiscal year.

| Fund Type | Current Account | Total Available Budget | Budget Transfer | New Account |
|------------------|------------------------|-------------------------------|------------------------|--------------------|
| General | 101-20-2100-51031 | \$31,634 | \$31,000 | 101-90-9130-57040 |
| General | 101-20-2100-51200 | \$20,120 | \$20,000 | 101-90-9130-57040 |
| General | 101-20-2100-51032 | \$22,372 | \$9,000 | 101-90-9130-57040 |
| General | 101-20-2100-57040 | \$4,351 | \$4,351 | 101-90-9130-57040 |
| General | 101-20-2100-51035 | \$14,282 | \$14,282 | 101-90-9130-57040 |
| Library DIF | 223-20-2100-51035 | \$50,000 | \$50,000 | 223-90-9130-57040 |
| Total | | \$144,807 | \$128,633 | |

The proposed budget transfer of \$128,633 consists of \$93,465 for interior design work and \$35,168 that will be allocated toward the purchase of furniture and equipment upon completion of the interior design phase.

In addition to the funding identified for transfer, the Friends of the Goleta Valley Library have committed to donate additional monies to fund various elements of the project that were not covered by the grant, including a new service desk, mobile shelving, bike racks, book drops, and computer desks. Staff will return to City Council at a future date to formally accept the donation and appropriate the funding.

ALTERNATIVES:

Council may choose not to approve the proposed contract amendment and associated budget transfers or may elect to exclude the interior design component from the scope of services. However, because a portion of the interior design elements are directly related to accessibility compliance, staff would be required to identify alternative methods or funding sources to implement the necessary ADA-related improvements.

LEGAL REVIEW BY: Isaac Rosen, City Attorney

APPROVED BY: Robert Nisbet, City Manager

ATTACHMENTS:

1. Amendment No. 1 to Professional Design Services Agreement No. 2024-045
2. Professional Design Services Agreement No. 2024-045

ATTACHMENT 1

Amendment No. 1 to Professional Design Services Agreement No. 2024-045

**AMENDMENT NO. 1
TO A PROFESSIONAL DESIGN SERVICES AGREEMENT
BETWEEN THE CITY OF GOLETA
AND
JEFFREY MILLER ARCHITECTURE AND DESIGN**

This **Amendment No. 1** to the Professional Design Services Agreement by and between the **City of Goleta**, a municipal corporation ("City") and **Jeffrey Miller Architecture and Design, dba JM|A+D** ("Consultant") dated May 21, 2024 ("Agreement," Agreement No. 2024-045) is made on this ____ day of ____, 2025.

SECTION A. RECITALS

1. This Agreement is for the Architectural & Engineering services for the Goleta Valley Library ADA, Safety, and Building Improvement Project; and
2. The Agreement currently provides in Section 3, Subsection (a) for the total compensation amount not to exceed \$679,984; and
3. The parties desire to amend the Agreement so as to provide for additional compensation in the amount of \$174,311 for additional tasks; and
4. The Agreement currently provides in Exhibit A entitled "Scope of Work" the complete and particular description of services; and
5. The parties desire to amend Exhibit A by adding additional services as more completely and particularly set forth in the Scope of Work, attached as Exhibit "A-1"; and
6. The Agreement currently provides in Exhibit B, entitled "Fee Schedule," the Task List; and
7. The parties desire to amend Exhibit B of the Agreement to identify an updated Task List, attached as "Exhibit B-1"; and
8. The City Council approved this Amendment No. 1, on this ____ day of ____, 2025.

SECTION B. AMENDED TERMS

Now therefore City and Consultant agree that the Agreement be, and hereby is, amended as follows:

1. **Subsection (a) of Section 3. COMPENSATION AND PAYMENT** of the Agreement is amended to add an additional authorized amount of \$174,311 and to read in its entirety:

(a) **Maximum and Rate.** The total compensation payable to CONSULTANT by CITY for the services under this AGREEMENT **SHALL NOT EXCEED** the sum of \$854,295 (herein "not-to-exceed amount") and shall be earned as the work progresses.

Hourly at the hourly rates and with reimbursement to CONSULTANT for those expenses set forth in CONSULTANT's Schedule of Fees marked Exhibit "B," attached and incorporated herein. The rates and expenses set forth in that exhibit shall be binding upon CONSULTANT until June 30, 2028, after which any change in said rates and expenses must be approved in writing by CITY's Project Manager as described in Section 5 (CITY is to be given 60 days notice of any rate increase request), provided the not to exceed amount is the total compensation due CONSULTANT for all work described under this AGREEMENT.

2. This Agreement is amended to delete and replace in its entirety:

Exhibit A "Scope of Work" with **Exhibit A-1 "Scope of Work"** attached hereto and incorporated herein.

3. This Agreement is amended to delete and replace in its entirety:

Exhibit B "Fee Schedule" with **Exhibit B-1 "Fee Schedule"** attached hereto and incorporated herein.

4. Except as otherwise specifically provided herein, all other provisions of the Agreement shall remain in full force and effect.

In concurrence and witness whereof, this Amendment No. 1 has been executed by the parties effective on the date and year first above written.

CITY OF GOLETA

CONSULTANT

Robert Nisbet, City Manager

Jeffrey Miller, CEO/Secretary

ATTEST:

Deborah Lopez, City Clerk

Tanya Paz, VP/Director of Interiors

APPROVED AS TO FORM:
ISAAC ROSEN, CITY ATTORNEY

Signed by:

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Scott Shapses, Deputy City Attorney

EXHIBIT A-1 SCOPE OF WORK

The scope of work of the project includes, but is not limited to, the following:

- Americans with Disabilities Act (ADA) Restrooms Renovation & Upgrades
- Modernizing and Replacement of HVAC Systems
- Americans with Disabilities Act (ADA) Path of Travel
- Life Safety and Security Installation and Upgrades
- LED Lighting Retrofits
- Doors/Windows Replacements and Upgrades
- Fascia Repair and Exterior Paint
- Interior Design (*separate from Building Forward Grant*)

The Consultant shall design the project to comply with any laws and regulations including, but not limited to, the California Environmental Quality Act (CEQA), legal requirements for building codes, health and safety codes, California Labor Code, and disabled access laws.

The Consultant shall follow Resolution 12-65, a Green Building Policy for New City Building Construction and Major Renovations and Additions to Existing City Owned and Operated Buildings.

The Consultant shall provide independent construction cost estimates, as described below, to ensure that the design is within the project budget. If the estimate exceeds the established project budget, the Consultant shall adjust the design as required, at no additional cost to the City.

The Consultant shall prepare Monthly Progress reports and supporting data. The progress report shall include accomplished tasks for the month, anticipated progress for the next month, pending issues and schedule completion target dates.

The Consultant shall retain sub-consultants or have proven in-house expertise, for any of the following specialties, but not inclusive of, to provide technical assistance in the development of the project as required.

- Engineer / Architect of Record
- Civil Engineering
- Structural Engineering
- Mechanical and Plumbing Engineering
- Fire Protection Design and Engineering
- Landscape Architecture
- Electrical Engineering
- Communications, Audio-Visual, Low Voltage Systems Engineering
- Cost Estimating
- Verification of Existing Facility and Site Conditions
- ADA Accessibility Standards
- State of California Certified Access Specialist

The Consultant shall provide the following design, bidding, construction documentation and close-out services which shall include, but not be limited to, the following:

Pre-Design & Conceptual Design

- Attend a project kick-off meeting with the City to introduce team members, discuss project schedule, and review scope of work and available data. The project kick-off meeting shall be held within 10 calendar days of the notice to proceed. The consultant shall prepare agenda and meeting minutes.
- A complete code and zoning analysis of the building/site constraints and site investigation.
- Coordinate and perform necessary materials testing to determine the presence of, and the necessary remediation of hazardous material including, but not limited to, asbestos and lead paint.
- Review existing data and evaluate the existing conditions for utility services, capacity and location.
- Consultant shall provide a LEED checklist of achievable points that shall be incorporated into the design.
- Prepare a Conceptual Design that addresses the scope of work. Assume (3) client meetings during the preliminary design phase.
- Prepare schematic floor plan for City review and approval.
- Prepare schematic level cost estimate for construction for City review and approval.

Design Development

- Upon the City's written approval of the schematic level floor plan and cost estimate, the Consultant shall prepare Design Development documents and outline technical specifications.
- Assume two (2) client review meetings during the Design Development phase.
- Completed Design Development documents will be reviewed and approved prior to commencing with final Construction Documents.
- Included in Design Development documents shall be all trades necessary to meet current code requirements and regulations.
- Provide third-party construction cost estimate at the completion of the design development phase. The project shall be designed within the construction budget.
- Present final design to various City Boards and Commissions. Assume (3) Board/Commission meetings during the Design Development phase. Consultant shall be responsible for preparing presentation materials (e.g. PowerPoint Slides, Display Boards).

Construction Documents:

- Upon the City's written approval of the Design Development documents, provide technical specifications for all architectural and engineering disciplines as applicable to the project scope.
- Provide drawings, specifications, and cost estimates for review at the 30 and 60 percent completion phase.
- The Construction Documents will include all information, data, drawings and specifications necessary to meet all current codes and regulations and receive Building Department approval.
- The consultant will make any and all permits required "ready to issue" including the City Building Permit. Permits will be paid for and pulled by others.

- Submit 95% construction drawings to City Building Department for permit review.
- Provide design support and modifications to 95% construction drawings and specifications as directed by City staff during the drawing review process. A 95% construction review meeting will be dependent upon the number and complexity of review comments from City staff.
- The consultant shall provide additional drawing submissions as required during the permit review process.
- Provide 100% design complete construction drawings and technical specifications for construction contractors to bid and execute. Provide four (4) copies of 100% construction drawings on Architectural D sized paper and three (3) copies on minimum of 11x17 inch paper. Provide two (2) copies of specifications. Provide one (1) electronic copy of drawings and specifications in both ACAD and PDF.
- Provide final construction cost estimate at 100% completion of construction documents.

Permitting:

- Provide complete construction documents for permitting by the City of Goleta's Building Department.
- Provide complete plan check corrections and clarifications.
- Coordination with City staff and permitting agencies as required to obtain the needed permits.
- The City will be responsible for the submission of the permit application and plan check fees.

Bidding & Award Support:

- Assist City staff in obtaining approval from the City Council to bid the plans, specifications, and working details.
- Assist in the development of final contract documents and complete bid packages for bidding, incorporating final construction documents and technical specifications.
- Provide bidding support services with issues such as answering contractor requests for information and assisting in the preparation of addenda exhibits and clarification drawings as required.
- Participate in the pre-bid job walk with the contractor.
- Once a bid is accepted and approved by the City, compile any addendums and changes to the bid package and provide the City with a conformed CDs set labeled "conformed set for construction".

Construction Support Services:

- Attend the pre-construction site meeting.
- Provide submittal reviews and comments.
- Review the construction schedule.
- Make periodic site visits to ensure compliance with the intent of the construction documents. Assume a total of (6) site visits during the course of construction.
- Provide construction support services to include clarifications, responses to RFI's, and change order reviews.
- Participate in the development of the punch list and final job walk/review.

Project Close-Out Services:

- Review final owner's manuals and other data as prepared for the City by the Contractor.

- Provide final as-built drawings at the completion of construction in ACAD and PDF format.
- Provide Hardcopy 22 x 34 Plan Set, Qty (4).
- Provide final building evacuation plans with all life-safety components in ACAD and PDF format.

Interior Design:

- Provide interior design services to facilitate the selection of materials and furniture for the Library's public spaces, including the checkout desk area.
- Prepare visual collateral to illustrate design look and feel, including renderings produced from the Revit Model/Enscape. Presentation of materials to stakeholders; assume two presentations.
- Provide furniture layouts and necessary studies to evaluate lighting, camera angles, and building infrastructure requirements to meet project goals. The approved design will be incorporated into the REVIT model and the drawing set; assume one presentation of the final design.
- Amend the Permit Documents as necessary to implement the scope. The design team may be required to file a supplemental permit pending the final design and completion timing.
- The consultant shall utilize a cooperative or piggyback contract for the furniture. Approval of the cooperative or piggy-back contract from the City Project Manager is required before incorporation into the project.

EXHIBIT B-1**FEE SCHEDULE**

| TASK | FEES USD |
|--|---------------------|
| Pre-Design & Conceptual Design | \$177,142.00 |
| Design Development | \$128,732.75 |
| Construction Documents + Permitting | \$270,557.25 |
| Bidding & Award Support | \$11,308.00 |
| Construction Support Services | \$107,834.50 |
| Project Close-Out | \$6,338.00 |
| Interior Design Services | \$93,465.00 |
| Reimbursable Expenses | \$25,000.00 |
| Contingency | \$33,917.50 |
| TOTAL NOT TO EXCEED – TOTAL PROJECT | \$854,295.00 |

FEE SCHEDULE DETAIL- INTERIOR DESIGN SERVICES

| TASK | FEES USD |
|--|--------------------|
| Architecture and Interior Design Services | \$39,465.00 |
| Allowance for Structural Engineering | \$9,000.00 |
| Allowance for Mechanical, Electrical, Plumbing | \$16,500.00 |
| Allowance for Low-Voltage Security | \$11,500.00 |
| Allowance for Code (ADA) | \$9,000.00 |
| Allowance for Cost Estimates | \$8,000.00 |
| TOTAL NOT TO EXCEED – Interior Design | \$93,465.00 |

Reimbursable Expenses:

Reimbursable expenses (e.g., travel), when applicable, shall be billed on a straight pass-through basis. The consultant must obtain written pre-approval from the City Project Manager for all anticipated reimbursable expenses before incurring such expenses. Pre-approval requests shall include a detailed breakdown of expenses, purpose, and any other relevant information.

Pass-Through Rates for Subconsultants:

The Consultant may engage subconsultants to perform certain aspects of the services under this agreement, subject to the Client's prior approval. The Consultant agrees to bill the Client for the services rendered by subconsultants at the actual rates charged by the subconsultants, without applying any markup or additional charges.

Separate Billing:

The Consultant shall bill separately for Interior Design Services.

Hourly Billing:

All work performed under this agreement shall be billed on an hourly basis.

Hourly Rates:

The hourly rates for the Consultant’s services are as follows:

| (JMAD) CLASSIFICATION | HOURLY |
|--------------------------------|--------|
| Principal Architect / Designer | \$145 |
| Director | \$225 |
| Project Manager | \$155 |
| Job Captain | \$165 |
| Staff Architect (Licensed) | \$145 |
| Staff Designer (Unlicensed) | \$125 |
| Draftsperson (Unlicensed) | \$115 |
| Clerical Staff | \$85 |

ATTACHMENT 2

Professional Design Services Agreement No. 2024-045

Project Name: Goleta Valley Library ADA, Safety, and Building Improvement Project

**AGREEMENT FOR PROFESSIONAL DESIGN SERVICES
BETWEEN THE CITY OF GOLETA
AND
JEFFREY MILLER ARCHITECTURE AND DESIGN**

This AGREEMENT FOR PROFESSIONAL DESIGN SERVICES (herein referred to as "AGREEMENT") is made and entered into this ^{21st} day of ^{May} _____, 2024, by and between the **CITY OF GOLETA**, a municipal corporation (herein referred to as "CITY"), and **JEFFREY MILLER ARCHITECTURE AND DESIGN, DBA JM|A+D**, a California Corporation (herein referred to as "CONSULTANT").

SECTION A. RECITALS

1. The CITY has a need for professional Architectural & Engineering services for the Goleta Valley Library ADA, Safety, and Building Improvement Project; and
2. The CITY does not have the personnel able and/or available to perform the services required under this AGREEMENT, and therefore, the CITY desires to contract for professional services to accomplish this work; and
3. The CITY procured these services in compliance with Goleta Municipal Code Section 3.05.260; and
4. The City Council, on this ²¹ day of ^{May}, 2024, approved this AGREEMENT and authorized the City Manager to execute the AGREEMENT.

SECTION B. TERMS

1. RETENTION AS CONSULTANT

CITY hereby retains CONSULTANT, and CONSULTANT hereby accepts such engagement, to perform the services described in Section 2. CONSULTANT warrants it has the qualifications, experience, and facilities to properly and timely perform said services.

2. DESCRIPTION OF SERVICES

The services to be performed by CONSULTANT are as follows:

Professional Design Services in conjunction with the Goleta Valley Library ADA, Building, and Safety Improvement Project (CIP 9130). Services shall generally include Architectural and Engineering Services as more particularly set forth in the Scope of Work, attached as Exhibit "A," and incorporated herein.

CONSULTANT shall deliver to CITY the deliverables defined in Exhibit "A."

3. COMPENSATION AND PAYMENT

(a) **Maximum and Rate.** The total compensation payable to CONSULTANT by CITY for the services under this AGREEMENT **SHALL NOT EXCEED** the sum of **\$ 679,984.00** (herein "not to exceed amount"), and shall be earned as the work progresses on the following basis:

Hourly at the hourly rates and with reimbursement to CONSULTANT for those expenses set forth in CONSULTANT's Fee Schedule marked Exhibit "B," attached and incorporated herein. The rates and expenses set forth in that exhibit shall be binding upon CONSULTANT until **June 30, 2028** after which any change in said rates and expenses must be approved in writing by CITY's Project Manager as described in Section 5 (CITY is to be given 60 days notice of any rate increase request), provided the not to exceed amount is the total compensation due CONSULTANT for all work described under this AGREEMENT.

(b) **Payment.** CONSULTANT shall provide CITY with written verification of the actual compensation earned, which written verification shall be in a form satisfactory to CITY's Project Manager, as described in Section 5. Invoices shall be made no more frequently than on a monthly basis, and describe the work performed (including a list of hours worked by personnel classification). All payments shall be made within 30 days after CITY's approval of the invoice.

4. EXTRA SERVICES

CITY shall pay CONSULTANT for those CITY authorized extra services, not reasonably included within the services described in Section 2, as mutually agreed to writing in advance of the incurrence of extra services by CONSULTANT. Unless CITY and CONSULTANT have agreed in writing before the performance of extra services, no liability and no right to claim compensation for such extra services or expenses shall exist. The applicable hourly rates for extra services shall be at the hourly rates set forth in Exhibit B, if one is included as part of this agreement. Any compensation for extra services shall be part of the total compensation and shall not increase the not to exceed amount identified in Section 3.

5. CITY PROJECT MANAGER AND SERVICES BY CITY

The services to be performed by CONSULTANT shall be accomplished under the general direction of, and coordinate with, CITY's "Project Manager", as that staff person is designated by CITY from time to time, and who presently is Matthew Fore. Project Manager shall have the authority to act on behalf of the CITY in administering this AGREEMENT but shall not be authorized to extend the term of the AGREEMENT or increase the not to exceed amount.

6. TERM, PROGRESS AND COMPLETION

The term of this AGREEMENT is from the date first written above to **June 30, 2028**, unless term of this AGREEMENT is extended, or the AGREEMENT is terminated as provided for herein.

CONSULTANT shall not commence work on the services to be performed until (i) CONSULTANT furnishes proof of insurance as required by Section 10 below, and (ii) CITY gives written authorization to proceed with the work provided by CITY's Project Manager.

7. OWNERSHIP OF DOCUMENTS

All drawings, designs, data, photographs, reports and other documentation (other than CONSULTANT's drafts, notes and internal memorandum), including duplication of same prepared by CONSULTANT in the performance of these services, are the property of CITY. CITY shall be entitled to immediate possession of the same upon completion of the work under this AGREEMENT, or at any earlier or later time when requested by CITY. CITY agrees to hold CONSULTANT harmless from all damages, claims, expenses, and losses arising out of any reuse of the plans and specifications for purposes other than those described in this AGREEMENT, unless written authorization of CONSULTANT is first obtained.

8. PERSONAL SERVICES/NO ASSIGNMENT/SUBCONTRACTOR

This AGREEMENT is for professional services which are personal to CITY. Jeffrey Miller, Principal, is deemed to be specially experienced and is a key member of CONSULTANT's firm, and shall be directly involved in the performance of this work. This key person shall communicate with, and periodically report to, CITY on the progress of the work. Should any such individual be removed from assisting in this contracted work for any reason, CITY may terminate this AGREEMENT. This AGREEMENT may not be assigned or subcontracted without the City Manager's prior written consent, except in regard to the following subconsultants:

- KPFF: Civil, Structural, and Survey Engineering Services
- Cumming Group: Cost Estimating Services

- UPLA: Landscape Architect Services
- Interface Engineering: Mechanical, Electrical, Plumbing Services
- Jensen Hughes: Accessibility/CASp, Life Safety Services, Low-Voltage
- Insight Environmental: Environmental Testing and Consulting

9. HOLD HARMLESS AND INDEMNITY

(a) Indemnification and Defense for Professional Service. To the fullest extent permitted by law, Consultant shall indemnify, defend and hold harmless the CITY and any and all of its officials, employees and agents ("Indemnified Parties") from and against any and all claims, losses, liabilities, damages, costs and expenses, including attorney's fees and costs, to the extent they arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the CONSULTANT. CONSULTANT's duty to defend shall consist of reimbursement of defense costs incurred by CITY in direct proportion to the CONSULTANT's proportionate percentage of fault. CONSULTANT's percentage of fault shall be determined, as applicable, by a court of law, jury or arbitrator. In the event any loss, liability or damage is incurred by way of settlement or resolution without a court, jury or arbitrator having made a determination of the CONSULTANT's percentage of fault, the parties agree to mediation with a third party neutral to determine the CONSULTANT's proportionate percentage of fault for purposes of determining the amount of indemnity and defense cost reimbursement owed to the CITY.

(b) For All Other Liabilities. Notwithstanding the foregoing and without diminishing any rights of CITY, for any liability, claim, demand, allegation against CITY arising out of, related to, or pertaining to any act or omission of CONSULTANT, but which is not a design professional service, CONSULTANT shall defend, indemnify, and hold harmless CITY, its officials, employees, and agents ("Indemnified Parties") from and against any and all damages, costs, expenses (including reasonable attorney fees and expert witness fees), judgments, settlements, and/or arbitration awards, whether for personal or bodily injury, property damage, or economic injury, and arising out of, related to, any concurrent or contributory negligence on the part of the CITY, except for the sole or active negligence of, or willful misconduct of the CITY.

(c) No Waiver. CITY does not waive, nor shall be deemed to have waived, any indemnity, defense or hold harmless rights under this section because of the acceptance by CITY, or the deposit with CITY, of any insurance certificates or policies described in Section 10.

10. INSURANCE

CONSULTANT shall, at CONSULTANT's sole cost and expense, provide insurance as described herein. All insurance is to be placed with insurers authorized to do business in the State of California with an A.M. Best and Company rating of A- or better, Class VII or better, or as otherwise approved by CITY.

Insurance shall include the following (or broader) coverage:

- a) Insurance Services Office Commercial Liability coverage "occurrence" form CG 00 01 or its exact equivalent with an edition date prior to 2004 and with minimum limits of \$1,000,000 per occurrence and \$2,000,000 general aggregate.
- b) Insurance Services Office form number CA 00 01 or equivalent covering Automobile Liability, including hired and non-owned automobile liability with a minimum limit of \$1,000,000 per accident. If the Service Provider owns no vehicles, this requirement may be satisfied by a non-owned and hired auto endorsement to Service Provider's commercial general liability policy.
- c) Workers' Compensation insurance complying with California worker's compensation laws, including statutory limits for workers' compensation and an Employer's Liability limit of \$1,000,000 per accident or disease.
- d) Professional liability insurance that covers the services to be performed in connection with this agreement, in the minimum amount of \$1,000,000 per claim.

Liability insurance policies required to be provided by CONSULTANT hereunder shall contain or be endorsed to contain the following provisions:

- a) Except for professional liability insurance, CITY, its employees, officials, agents and member agencies shall be covered as additional insureds. Coverage shall apply to any and all liability arising out of the work performed or related to the contract. Additional insured status under the general liability requirement shall be provided on Insurance Services Office Form CG 20 10, with an edition date prior to 2004, or its equivalent. Additional insured status for completed operations shall be provided either in the additional insured form or through another endorsement such as CG 20 37, or its equivalent.
- b) General and automobile liability insurance shall apply separately to each insured against whom a claim is made or suit is brought, except

with respect to the limits of the insurer's liability. Coverage will not be limited to CITY's vicarious liability.

- c) Professional liability insurance policies inception date, continuity date, or retroactive date must be before the effective date of this agreement. CONSULTANT agrees to maintain continuous coverage through a period no less than three years after completion of the services required by this agreement.
- d) Except for professional liability insurance, liability coverage shall be primary and non-contributing with any insurance maintained by CITY.
- e) Evidence of coverage (including the workers' compensation and employer's liability policies) shall provide that coverage shall not be suspended, voided, canceled or reduced in coverage or in limits except after 30 days' prior written notice has been given to CITY. Such provision shall not include any limitation of liability of the insurer for failure to provide such notice.
- f) No liability insurance coverage provided to comply with this AGREEMENT shall prohibit CONSULTANT, or CONSULTANT's employees, or agents, from waiving the right of recovery prior to a loss. CONSULTANT waives its right of recovery against CITY.
- g) CONSULTANT agrees to deposit with CITY within fifteen days of Notice to Proceed of the Contract certificates of insurance and required endorsements.
- h) There shall be no recourse against CITY for payment of premiums or other amounts with respect to the insurance required to be provided by CONSULTANT hereunder. Any failure, actual or alleged, on the part of CITY to monitor compliance with these requirements will not be deemed as a waiver of any rights on the part of CITY. CITY has no additional obligations by virtue of requiring the insurance set forth herein. In the event any policy of insurance required under this AGREEMENT does not comply with these requirements or is canceled and not replaced, CITY has the right but not the duty to obtain the insurance it deems necessary and any premium paid by CITY will be promptly reimbursed by CONSULTANT or CITY will withhold amounts sufficient to pay premium from CONSULTANT payments.
- i) CONSULTANT agrees to provide immediate notice to CITY of any claim or loss against CONSULTANT arising out of the work performed under this AGREEMENT. CITY assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve CITY.

11. RELATIONSHIP OF CONSULTANT TO CITY

The relationship of the CONSULTANT to CITY shall be that of an independent contractor and that in no event shall CONSULTANT be considered an officer, agent, servant or employee of CITY. CONSULTANT shall be solely responsible for any workers compensation insurance, withholding taxes, unemployment insurance, and any other employer obligations associated with the described work.

12. CORRECTIONS

In addition to the above indemnification obligations, CONSULTANT shall correct, at its expense, all errors in the work that may be disclosed during CITY's review of CONSULTANT's report or plans. Should CONSULTANT fail to make such correction in a reasonably timely manner, such correction shall be made by CITY, and the cost thereof shall be charged to CONSULTANT or withheld from any funds due to CONSULTANT hereunder.

13. TERMINATION BY CITY

CITY, by notifying CONSULTANT in writing, may upon 10 calendar days notice, terminate without cause any portion or all of the services agreed to be performed under this AGREEMENT. If termination is for cause, no notice period need be given. In the event of termination, CONSULTANT shall have the right and obligation to immediately assemble work in progress for the purpose of closing out the job. All compensation for actual work performed and charges outstanding at the time of termination shall be payable by CITY to CONSULTANT within 30 days following submission of a final statement by CONSULTANT unless termination is for cause. In such event, CONSULTANT shall be compensated only to the extent required by law.

14. ACCEPTANCE OF FINAL PAYMENT CONSTITUTES RELEASE

The acceptance by CONSULTANT of the final payment made under this AGREEMENT shall operate as and be a release of CITY from all claims and liabilities for compensation to CONSULTANT for anything done, furnished, or relating to CONSULTANT'S work or services. Acceptance of payment shall be any negotiation of CITY's check or the failure to make a written extra compensation claim within 10 calendar days of the receipt of that check. However, approval or payment by CITY shall not constitute, nor be deemed, a release of the responsibility and liability of CONSULTANT, its employees, subcontractors, agents and CONSULTANTS for the accuracy and competency of the information provided and/or work performed; nor shall such approval or payment be deemed to be an assumption of such responsibility or liability by CITY for any defect or error in the

work prepared by CONSULTANT, its employees, subcontractors, agents and consultants.

15. AUDIT OF RECORDS

At any time during normal business hours and as often as it may deem necessary, CONSULTANT shall make available to a representative of CITY for examination of all its records with respect to all matters covered by this AGREEMENT and will permit CITY to audit, examine and/or reproduce such records. CONSULTANT will retain such financial records, time sheets, work progress reports, invoices, bills and project records for at least two years after termination or final payment under this AGREEMENT.

16. WAIVER; REMEDIES CUMULATIVE

Failure by a party to insist upon the strict performance of any of the provisions of this AGREEMENT by the other party, irrespective of the length of time for which such failure continues, shall not constitute a waiver of such party's right to demand strict compliance by such other party in the future. No waiver by a party of a default or breach of the other party shall be effective or binding upon such party unless made in writing by such party, and no such waiver shall be implied from any omissions by a party to take any action with respect to such default or breach. No express written waiver of a specified default or breach shall affect any other default or breach, or cover any other period of time, other than any default or breach and/or period of time specified. All of the remedies permitted or available to a party under this AGREEMENT, or at law or in equity, shall be cumulative and alternative, and invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right of remedy.

17. CONFLICT OF INTEREST

CONSULTANT is unaware of any CITY employee or official that has a financial interest in CONSULTANT'S business. During the term of this AGREEMENT and/or as a result of being awarded this AGREEMENT, CONSULTANT shall not offer, encourage or accept any financial interest in CONSULTANT'S business by any CITY employee or official.

18. CONSTRUCTION OF LANGUAGE OF AGREEMENT

The provisions of this AGREEMENT shall be construed as a whole according to its common meaning of purpose of providing a public benefit and not strictly for or against any party. It shall be construed consistent with the provisions hereof, in order to achieve the objectives and purposes of the parties. Wherever required by the context, the singular shall include the plural and vice versa, and the masculine gender shall include the feminine or neutral genders or vice versa.

19. MITIGATION OF DAMAGES

In all situations arising out of this AGREEMENT, the parties shall attempt to avoid and minimize the damages resulting from the conduct of the other party.

20. GOVERNING LAW

This AGREEMENT, and the rights and obligations of the parties, shall be governed and interpreted in accordance with the laws of the State of California. Should litigation occur, venue shall be in Superior Court of Santa Barbara County.

21. NONDISCRIMINATION

The City reaffirms its ongoing commitment to equality in the conduct of City business, and prohibits any policy, plan, program, custom or practice, including harassment, in the conduct of City business. No discrimination or discriminatory practice shall occur in either employment of persons for, or completion of, the work contemplated by this Agreement, when such discrimination is based on race, color, national origin, or ancestry; religion; sex; gender, gender identity, gender expression, or gender transitioning status; physical disability, mental disability, medical condition, or genetic information; marital or domestic partner status; citizenship status; age; sexual orientation; exercising a legally protected right to an employment leave of absence; status as a victim of domestic violence, sexual assault, or stalking; reproductive health decision-making, or any other classification protected under state or federal law. Among other possible violations of law, a violation of this section exposes CONSULTANT to the penalties provided for in Labor Code Section 1735.

22. TAXPAYER IDENTIFICATION NUMBER

CONSULTANT shall provide CITY with a complete Request for Taxpayer Identification Number and Certification, Form W-9 (Rev. October 2018), as issued by the Internal Revenue Service.

23. NON-APPROPRIATION OF FUNDS

Payments due and payable to CONSULTANT for current services are within the current budget and within an available, unexhausted and unencumbered appropriation of CITY funds. In the event CITY has not appropriated sufficient funds for payment of CONSULTANT services beyond the current fiscal year, this AGREEMENT shall cover only those costs incurred up to the conclusion of the current fiscal year.

24. MODIFICATION OF AGREEMENT

The tasks described in this AGREEMENT and all other terms of this AGREEMENT may be modified only upon mutual written consent of CITY and CONSULTANT.

25. USE OF THE TERM "CITY"

Reference to "CITY" in this AGREEMENT includes City Manager or any authorized representative acting on behalf of CITY.

26. PERMITS AND LICENSES

CONSULTANT, at its sole expense, shall obtain and maintain during the term of this AGREEMENT, all appropriate permits, licenses, and certificates that may be required in connection with the performance of services under this AGREEMENT.

27. CAPTIONS

The captions or headings in this AGREEMENT are for convenience only and in no other way define, limit or describe the scope or intent of any provision or section of the AGREEMENT.

28. AUTHORIZATION

Each party has expressly authorized the execution of this AGREEMENT on its behalf and bind said party and its respective administrators, officers, directors, shareholders, divisions, subsidiaries, agents, employees, successors, assigns, principals, partners, joint venturers, insurance carriers and any others who may claim through it to this AGREEMENT.

29. ENTIRE AGREEMENT BETWEEN PARTIES

Except for CONSULTANT'S proposals and submitted representations for obtaining this AGREEMENT, this AGREEMENT supersedes any other agreements, either oral or in writing, between the parties hereto with respect to the rendering of services, and contains all of the covenants and agreements between the parties with respect to said services.

30. PARTIAL INVALIDITY

If any provision in this AGREEMENT is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

31. NOTICES

Any notice required to be given hereunder shall be deemed to have been given by depositing said notice in the United States mail, postage prepaid, and addressed as follows:

TO CITY: Attention: Robert Nisbet, City Manager
City of Goleta
130 Cremona Drive, Suite B
Goleta, CA 93117

TO CONSULTANT: Attention: Jeffrey Miller, CEO/Secretary
JM|A+D
516 N Sepulveda Blvd.
Manhattan Beach, CA 90266

32. COUNTERPARTS AND ELECTRONIC/FACSIMILE SIGNATURES

This Agreement may be executed in several counterparts, which may be facsimile or electronic copies. Each counterpart is fully effective as an original, and together constitutes one and the same instrument.

33. FEDERAL REQUIREMENTS

FEMA financial assistance will be used to fund all or a portion of this contract.

The Consultant shall comply with all federal requirements including, but not limited to, the following:

1. 2 C.F.R. Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, which is expressly incorporated herein by reference.
2. Federal Contract Provisions attached hereto as **Exhibit “C”** and incorporated herein by reference.

Subcontracts, if any, shall contain a provision making them subject to all of the provisions stipulated in the contract, including but not limited to, 2 C.F.R. Part 200 and the Federal Contract Provisions.

With respect to any conflict between such federal requirements and the terms of this contract and/or the provisions of state law and except as otherwise required under federal law or regulation, the more stringent requirement shall control.

In concurrence and witness whereof, this AGREEMENT has been executed by the parties effective on the date and year first above written.

CITY OF GOLETA

DocuSigned by:

1AE8ACAD159E4D7
Robert Nisbet, City Manager

CONSULTANT

DocuSigned by:

20C06EB2498E486...
Jeffrey Miller, CEO/Secretary

ATTEST

DocuSigned by:

A3E00E3473CA47E...
Deborah Lopez, City Clerk

DocuSigned by:

06EE1BDE438442B...
Tanya Paz, VP/Director of Interiors

APPROVED AS TO FORM:
MEGAN GARIBALDI, CITY ATTORNEY

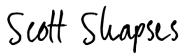
DocuSigned by:

4365248AE6424CE...
Scott Shapses, Deputy City Attorney

EXHIBIT A SCOPE OF WORK

The scope of work of the project includes, but is not limited to, the following:

- Americans with Disabilities Act (ADA) Restrooms Renovation & Upgrades
- Modernizing and Replacement of HVAC Systems
- Americans with Disabilities Act (ADA) Path of Travel
- Life Safety and Security Installation and Upgrades
- LED Lighting Retrofits
- Doors/Windows Replacements and Upgrades
- Fascia Repair and Exterior Paint

The Consultant shall design the project to comply with any laws and regulations including, but not limited to, the California Environmental Quality Act (CEQA), legal requirements for building codes, health and safety codes, California Labor Code, and disabled access laws.

The Consultant shall follow Resolution 12-65, a Green Building Policy for New City Building Construction and Major Renovations and Additions to Existing City Owned and Operated Buildings.

The Consultant shall provide independent construction cost estimates, as described below, to ensure that the design is within the project budget. If the estimate exceeds the established project budget, the Consultant shall adjust the design as required, at no additional cost to the City.

The Consultant shall prepare Monthly Progress reports and supporting data. The progress report shall include accomplished tasks for the month, anticipated progress for the next month, pending issues and schedule completion target dates.

The Consultant shall retain sub-consultants or have proven in-house expertise, for any of the following specialties, but not inclusive of, to provide technical assistance in the development of the project as required.

- Engineer / Architect of Record
- Civil Engineering
- Structural Engineering
- Mechanical and Plumbing Engineering
- Fire Protection Design and Engineering
- Landscape Architecture
- Electrical Engineering
- Communications, Audio-Visual, Low Voltage Systems Engineering
- Cost Estimating
- Verification of Existing Facility and Site Conditions
- ADA Accessibility Standards
- State of California Certified Access Specialist

The Consultant shall provide the following design, bidding, construction documentation and close-out services which shall include, but not be limited to, the following:

Pre-Design & Conceptual Design

- Attend a project kick-off meeting with the City to introduce team members, discuss project schedule, and review scope of work and available data. The project kick-off meeting shall be held within 10 calendar days of the notice to proceed. The consultant shall prepare agenda and meeting minutes.
- A complete code and zoning analysis of the building/site constraints and site investigation.
- Coordinate and perform necessary materials testing to determine the presence of, and the necessary remediation of hazardous material including, but not limited to, asbestos and lead paint.
- Review existing data and evaluate the existing conditions for utility services, capacity and location.
- Consultant shall provide a LEED checklist of achievable points that shall be incorporated into the design.
- Prepare a Conceptual Design that addresses the scope of work. Assume (3) client meetings during the preliminary design phase.
- Prepare schematic floor plan for City review and approval.
- Prepare schematic level cost estimate for construction for City review and approval.

Design Development

- Upon the City's written approval of the schematic level floor plan and cost estimate, the Consultant shall prepare Design Development documents and outline technical specifications.
- Assume two (2) client review meetings during the Design Development phase.
- Completed Design Development documents will be reviewed and approved prior to commencing with final Construction Documents.
- Included in Design Development documents shall be all trades necessary to meet current code requirements and regulations.
- Provide third-party construction cost estimate at the completion of the design development phase. The project shall be designed within the construction budget.
- Present final design to various City Boards and Commissions. Assume (3) Board/Commission meetings during the Design Development phase. Consultant shall be responsible for preparing presentation materials (e.g. PowerPoint Slides, Display Boards).

Construction Documents:

- Upon the City's written approval of the Design Development documents, provide technical specifications for all architectural and engineering disciplines as applicable to the project scope.
- Provide drawings, specifications, and cost estimates for review at the 30 and 60 percent completion phase.
- The Construction Documents will include all information, data, drawings and specifications necessary to meet all current codes and regulations and receive Building Department approval.
- The consultant will make any and all permits required "ready to issue" including

the City Building Permit. Permits will be paid for and pulled by others.

- Submit 95% construction drawings to City Building Department for permit review.
- Provide design support and modifications to 95% construction drawings and specifications as directed by City staff during the drawing review process. A 95% construction review meeting will be dependent upon the number and complexity of review comments from City staff.
- The consultant shall provide additional drawing submissions as required during the permit review process.
- Provide 100% design complete construction drawings and technical specifications for construction contractors to bid and execute. Provide four (4) copies of 100% construction drawings on Architectural D sized paper and three (3) copies on minimum of 11x17 inch paper. Provide two (2) copies of specifications. Provide one (1) electronic copy of drawings and specifications in both ACAD and PDF.
- Provide final construction cost estimate at 100% completion of construction documents.

Permitting:

- Provide complete construction documents for permitting by the City of Goleta's Building Department.
- Provide complete plan check corrections and clarifications.
- Coordination with City staff and permitting agencies as required to obtain the needed permits.
- The City will be responsible for the submission of the permit application and plan check fees.

Bidding & Award Support:

- Assist City staff in obtaining approval from the City Council to bid the plans, specifications, and working details.
- Assist in the development of final contract documents and complete bid packages for bidding, incorporating final construction documents and technical specifications.
- Provide bidding support services with issues such as answering contractor requests for information and assisting in the preparation of addenda exhibits and clarification drawings as required.
- Participate in the pre-bid job walk with the contractor.
- Once a bid is accepted and approved by the City, compile any addendums and changes to the bid package and provide the City with a conformed CDs set labeled "conformed set for construction".

Construction Support Services:

- Attend the pre-construction site meeting.
- Provide submittal reviews and comments.
- Review the construction schedule.
- Make periodic site visits to ensure compliance with the intent of the construction documents. Assume a total of (6) site visits during the course of construction.
- Provide construction support services to include clarifications, responses to RFI's, and change order reviews.
- Participate in the development of the punch list and final job walk/review.

Project Close-Out Services:

- Review final owner's manuals and other data as prepared for the City by the Contractor.
- Provide final as-built drawings at the completion of construction in ACAD and PDF format.
- Provide Hardcopy 22 x 34 Plan Set, Qty (4).
- Provide final building evacuation plans with all life-safety components in ACAD and PDF format.

EXHIBIT B**FEE SCHEDULE**

| TASK | FEES USD |
|-------------------------------------|---------------------|
| Pre-Design & Conceptual Design | \$137,895.00 |
| Design Development | \$122,734.75 |
| Construction Documents + Permitting | \$207,056.25 |
| Bidding & Award Support | \$11,308.00 |
| Construction Support Services | \$107,834.50 |
| Project Close-Out | \$6,338.00 |
| Reimbursable Expenses | \$25,000 |
| Contingency | \$61,817.50 |
| TOTAL NOT TO EXCEED | \$679,984.00 |

Reimbursable Expenses:

Reimbursable expenses (e.g., travel), when applicable, shall be billed on a straight pass-through basis. CONSULTANT must obtain written pre-approval from the City Project Manager for all anticipated reimbursable expenses before incurring such expenses. Pre-approval requests shall include a detailed breakdown of expenses, purpose, and any other relevant information.

Pass-Through Rates for Subconsultants: The Consultant may engage subconsultants to perform certain aspects of the services under this agreement, subject to the Client's prior approval. The Consultant agrees to bill the Client for the services rendered by subconsultants at the actual rates charged by the subconsultants, without applying any markup or additional charges.

Hourly Billing:

All work performed under this agreement shall be billed on an hourly basis.

Hourly Rates:

The hourly rates for the CONSULTANT's services are as follows:

| (JMAD) CLASSIFICATION | HOURLY |
|--------------------------------|--------|
| Principal Architect / Designer | \$145 |
| Director | \$225 |
| Project Manager | \$155 |
| Job Captain | \$165 |
| Staff Architect (Licensed) | \$145 |
| Staff Designer (Unlicensed) | \$125 |
| Draftsperson (Unlicensed) | \$115 |
| Clerical Staff | \$85 |

EXHIBIT C

FEDERAL CONTRACT PROVISIONS

During the performance of this contract, Jeffrey Miller Architecture and Design (the "Consultant") shall comply with all applicable federal laws and regulations, including but not limited to the federal contract provisions in this Exhibit. In this Exhibit, the term "Agency" shall mean the local agency entering into this contract with the Consultant.

1. CONTRACTING WITH SMALL AND MINORITY FIRMS, WOMEN'S BUSINESS ENTERPRISE AND LABOR SURPLUS AREA FIRMS (2 C.F.R. § 200.321)

- A. Consultant shall be subject to 2 C.F.R. § 200.321 and will take affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible and will not be discriminated against on the grounds of race, color, religious creed, sex, or national origin in consideration for an award.
- B. Affirmative steps shall include:
 - i. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
 - ii. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
 - iii. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;
 - iv. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises; and
 - v. Using the services/assistance of the Small Business Administration (SBA), and the Minority Business Development Agency (MBDA) of the Department of Commerce.

Consultant shall submit evidence of compliance with the foregoing affirmative steps when requested by the Agency.

Notwithstanding the foregoing, the affirmative steps requirements detailed above do not apply in the case of a noncompetitive procurement made

under the emergency exception/exigency exception to competitive procurements.

2. COST PRINCIPLES (2 C.F.R. PART 200, SUBPART E)

- A. If any indirect costs will be charged to the Agency under this contract, such costs must conform to the cost principles set forth under the Uniform Rules at 2 C.F.R. Part 200, subpart E ("Cost Principles"). In general, costs must (i) be necessary and reasonable; (ii) allocable to the grant award; (iii) conform to any limitations or exclusions set forth in the Cost Principles; (iv) be adequately documented; and (v) be determined in accordance with generally accepted accounting principles ("GAAP"), except, for state and local governments and Indian tribes only, as otherwise provided for in 2 C.F.R. Part 200, subpart E. 2 C.F.R. § 200.403. Costs that are determined unallowable pursuant to a federal audit are subject to repayment by Consultant.

3. ACCESS TO RECORDS & RECORD RETENTION (2 C.F.R. 200.336)

- A. Consultant shall comply with 2 C.F.R. § 200.336 and provide the Federal Agency, Inspectors General, the Comptroller General of the United States, Agency, and the State of California or any of their authorized representatives access, during normal business hours, to documents, papers, books and records which are directly pertinent to this contract for the purposes of making and responding to audits, examinations, excerpts, and transcriptions. The right also includes timely and reasonable access to the Consultant personnel for the purpose of interview and discussion related to the books and records.
- B. The Consultant agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- C. The Consultant agrees to provide the Federal Agency or its authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

4. REQUIRED CONTRACT PROVISIONS IN ACCORDANCE WITH APPENDIX II TO PART 200 – CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY CONTRACTS UNDER FEDERAL AWARDS (2 C.F.R. § 200.326)

A. Appendix II to Part 200 (A); Appendix II to Part 200 (B): Remedies for Breach; Termination for Cause/Convenience. If the contract is in excess of \$10,000 and the contract does not include provisions for both termination for cause and termination for convenience by the Agency, including the manner by which it will be effected and the basis for settlement, then the following termination clauses shall apply. If the contract is for more than the simplified acquisition threshold (see 2 C.F.R. § 200.88) at the time the contract is executed and does not provide for administrative, contractual, or legal remedies in instances where Contractor violates or breaches the terms of the contract, then the following termination clauses shall apply and have precedence over the contract. Otherwise, the following termination clauses shall not be applicable to the contract.

- i. Termination for Convenience. The Agency may, by written notice to Consultant, terminate this contract for convenience, in whole or in part, at any time by giving written notice to Consultant of such termination, and specifying the effective date thereof ("Notice of Termination for Convenience"). If the termination is for the convenience of the Agency, the Agency shall compensate Provider for work or materials fully and adequately provided through the effective date of termination. No amount shall be paid for unperformed work or materials not provided, including anticipated profit. Consultant shall provide documentation deemed adequate by the Agency to show the work actually completed or materials provided by Consultant prior to the effective date of termination. This contract shall terminate on the effective date of the Notice of Termination.
- ii. Termination for Cause. If Consultant fails to perform pursuant to the terms of this contract, the Agency shall provide written notice to Consultant specifying the default ("Notice of Default"). If Consultant does not cure such default within ten (10) calendar days of receipt of Notice of Default, the Agency may terminate this contract for cause. If Consultant fails to cure a default as set forth above, the Agency may, by written notice to Consultant, terminate this contract for cause, in

whole or in part, and specifying the effective date thereof ("Notice of Termination for Cause"). If the termination is for cause, Consultant shall be compensated for that portion of the work or materials provided which has been fully and adequately completed and accepted by the Agency as of the date the Agency provides the Notice of Termination. In such case, the Agency shall have the right to take whatever steps it deems necessary to complete the project and correct Consultant's deficiencies and charge the cost thereof to Consultant, who shall be liable for the full cost of the Agency's corrective action, including reasonable overhead, profit and attorneys' fees.

- iii. Reimbursement; Damages. The Agency shall be entitled to reimbursement for any compensation paid in excess of work rendered or materials provided and shall be entitled to withhold compensation for defective work or other damages caused by Consultant performance of the work.

- iv. Additional Termination Provisions. Upon receipt of a Notice of Termination, either for cause or for convenience, Consultant shall promptly discontinue the work unless the Notice directs to the contrary. Consultant shall deliver to the Agency and transfer title (if necessary) to all provided materials and completed work, and work in progress including drafts, documents, plans, forms, maps, products, graphics, computer programs and reports. The rights and remedies of the parties provided in this Section are in addition to any other rights and remedies provided by law or under this contract. Consultant acknowledges the Agency's right to terminate this contract with or without cause as provided in this Section, and hereby waives any and all claims for damages that might arise from the Agency's termination of this contract. The Agency shall not be liable for any costs other than the charges or portions thereof which are specified herein. Consultant shall not be entitled to payment for unperformed work or materials not provided and shall not be entitled to damages or compensation for termination of work or supply of materials. If Agency terminates this contract for cause, and it is later determined that the termination for cause was wrongful, the termination shall automatically be converted to and treated as a termination for convenience. In such event, Consultant shall

be entitled to receive only the amounts payable under this Section, and Consultant specifically waives any claim for any other amounts or damages, including, but not limited to, any claim for consequential damages or lost profits. The rights and remedies of the Agency provided in this Section shall not be exclusive and are in addition to any other rights and remedies provided by law, equity or under this contract including, but not limited to, the right to specific performance.

B. Appendix II to Part 200 (C) – Equal Employment Opportunity: Except as otherwise provided under 41 C.F.R. Part 60, Consultant shall comply with the following equal opportunity clause, in accordance with Executive Order 11246 of September 24, 1965 entitled “Equal Employment Opportunity,” as amended by Executive Order 11375 of October 13, 1967 and implementation regulations at 41 C.F.R. Chapter 60:

- i. Consultant will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. Consultant will take affirmative action to insure that applicants are employed and that employees are treated equally during employment, without regard to race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment upgrading, demotion, transfer, recruitment, or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship. Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Agency setting forth the provisions of this nondiscrimination clause.
- ii. Consultant will, in all solicitations or advertisements for employees placed by or on behalf of Consultant, state that all qualified applicants will receive consideration for employment without regard to their race, color, religion, sex, or national origin.
- iii. Consultant will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant.

This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with Consultant's legal duty to furnish information.

- iv. Consultant will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- v. Consultant will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- vi. Consultant will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- vii. In the event of Consultant's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept. 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation,

or order of the Secretary of Labor, or as otherwise provided by law.

- viii. Consultant will include the provisions of paragraphs (i) through (viii) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or Consultant. Consultant will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event Consultant becomes involved in, or is threatened with, litigation with a subcontractor or Consultant as a result of such direction, Consultant may request the United States to enter into such litigation to protect the interests of the United States.

C. Appendix II to Part 200 (D) – Davis-Bacon Act; Copeland Act: Not applicable to this contract.

D. Appendix II to Part 200 (E) – Contract Work Hours and Safety Standards Act:

- i. If this contract is in excess of \$100,000 and involves the employment of mechanics or laborers, Consultant shall comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 C.F.R. Part 5). Under 40 U.S.C. 3702, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

- ii. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- iii. In the event of any violation of the clause set forth in paragraph (ii) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (ii) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (ii) of this section.
- iv. The Agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Consultant or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (iii) of this section.
- v. The Consultant or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (ii) through (v) of this Section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The

Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (ii) through (v) of this Section.

E. Appendix II to Part 200 (F) – Rights to Inventions Made Under a Contract or Agreement:

- i. If the Federal award meets the definition of “funding agreement” under 37 C.F.R. § 401.2(a) and the non-Federal entity wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the non-Federal entity must comply with the requirements of 37 C.F.R. Part 401 (Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements), and any implementing regulations issued by the Agency.
- ii. The regulation at 37 C.F.R. § 401.2(a) currently defines “funding agreement” as any contract, grant, or cooperative agreement entered into between any Federal agency, other than the Tennessee Valley Authority, and any contractor for the performance of experimental, developmental, or research work funded in whole or in part by the Federal government. This term also includes any assignment, substitution of parties, or subcontract of any type entered into for the performance of experimental, developmental, or research work under a funding agreement as defined in the first sentence of this paragraph.
- iii. This requirement does not apply to the Public Assistance, Hazard Mitigation Grant Program, Fire Management Assistance Grant Program, Crisis Counseling Assistance and Training Grant Program, Disaster Case Management Grant Program, and Federal Assistance to Individuals and Households – Other Needs Assistance Grant Program, as FEMA awards under these programs do not meet the definition of “funding agreement.”

F. Appendix II to Part 200 (G) – Clean Air Act and Federal Water Pollution Control Act: If this contract is in excess of \$150,000, Consultant shall comply with all applicable standards, orders, or

requirements issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387).

- i. Pursuant to the Clean Air Act, (1) Consultant agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq., (2) Consultant agrees to report each violation to the Agency and understands and agrees that the Agency will, in turn, report each violation as required to assure notification to the Federal awarding agency and the appropriate Environmental Protection Agency Regional Office, and (3) Consultant agrees to include these requirements in each subcontract exceeding \$150,000.
- ii. Pursuant to the Federal Water Pollution Control Act, (1) Consultant agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq., (2) Consultant agrees to report each violation to the Agency and understands and agrees that the Agency will, in turn, report each violation as required to assure notification to the Federal awarding agency and the appropriate Environmental Protection Agency Regional Office, and (3) Consultant agrees to include these requirements in each subcontract exceeding \$150,000.

G. Appendix II to Part 200 (H) – Debarment and Suspension: A contract award (see 2 C.F.R. § 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 C.F.R. part 1986 Comp., p. 189) and 12689 (3 C.F.R. part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

- i. This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such Consultant is required to verify that none of the Consultant, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. §

180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

- ii. Consultant must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- iii. This certification is a material representation of fact relied upon by Agency. If it is later determined that Consultant did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the Agency, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- iv. Consultant warrants that it is not debarred, suspended, or otherwise excluded from or ineligible for participation in any federal programs. Consultant also agrees to verify that all subcontractors performing work under this contract are not debarred, disqualified, or otherwise prohibited from participation in accordance with the requirements above. Consultant further agrees to notify the Agency in writing immediately if Consultant or its subcontractors are not in compliance during the term of this contract.

H. Appendix II to Part 200 (I) – Byrd Anti-Lobbying Act: If this contract is in excess of \$100,000, Consultant shall have submitted and filed the required certification pursuant to the Byrd Anti-Lobbying Amendment (31 U.S.C. § 1353). If at any time during the contract term funding exceeds \$100,000.00, Consultant shall file with the Agency the Federal Standard Form LLL titled “Disclosure Form to Report Lobbying.” Consultants that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

I. Appendix II to Part 200 (J) – Procurement of Recovered Materials:

- i. Consultant shall comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement.
- ii. In the performance of this contract, the Consultant shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired: Competitively within a timeframe providing for compliance with the contract performance schedule; Meeting contract performance requirements; or at a reasonable price.
- iii. Information about this requirement, along with the list of EPA-designate items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

5. MISCELLANEOUS PROVISIONS

- A. The Consultant shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA preapproval.
- B. This is an acknowledgement that FEMA financial assistance will be used to fund the contract only. The Consultant will comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.

- C. Consultant acknowledges that 31 U.S.C. Chapter 38 (Administrative Remedies for False Claims and Statements) applies to the Consultant's actions pertaining to this contract.
- D. The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the Agency, Consultant, any subcontractors or any other party pertaining to any matter resulting from the contract.
- E. General and Administrative Expenses And Profit For Time And Materials Contracts/Amendments.
 - i. General and administrative expenses shall be negotiated and must conform to the Cost Principles.
 - ii. Profit shall be negotiated as a separate element of the cost. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the Consultant, the Consultant's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.
 - iii. Any agreement, amendment or change order for work performed on a time and materials basis shall include a ceiling price that Consultant exceeds at its own risk.