

**AGREEMENT FOR OMNIBUS ARCHITECTURAL & ENGINEERING
PROFESSIONAL SERVICES IN SAN MATEO COUNTY**

THIS AGREEMENT, entered into this ____ day of _____ 2002, by and between the SAN MATEO COUNTY, a political subdivision of the State of California, with offices at 555 County Center, 5th Floor, Redwood City, CA 94063-1665, hereinafter called 'COUNTY' and Keller and Daseking Architects, hereinafter called 'CONSULTANT'.

WITNESSETH:

WHEREAS, the Board of Supervisors of the County of San Mateo is authorized to engage the services of a professional technical expert on a temporary basis for a specific project for performance of necessary services for and on behalf of COUNTY; and

WHEREAS, the COUNTY occasionally needs consultant services to deliver public works projects hereinafter referred to as the "Project"; and

WHEREAS, CONSULTANT is a competent professional qualified and with employees duly licensed to perform such architectural & engineering services in connection with said project, and the parties hereto desire to enter into an Agreement for said professional services.

NOW, THEREFORE, IT IS HEREBY AGREED BY THE PARTIES HERETO as follows:

SECTION 1. SCOPE OF PROJECT

The COUNTY occasionally needs consultant services to deliver public works projects. The type of projects may include building alterations, new construction, and/or improvements on new or existing facilities throughout the COUNTY.

The Scope of the Project to be executed by CONSULTANT shall be as described in Scope of Services for the Omnibus Architectural & Engineering Professional Services attached hereto as Exhibit "A", and by reference made as part of this Agreement.

SECTION 2. GENERAL REQUIREMENTS

(a) When a project is identified that needs consultant services, the COUNTY will issue a preliminary task order for each specific project to the CONSULTANT. The CONSULTANT will then propose detailed scope of services, a 'not-to-exceed' fee, and a timetable for completing the proposed project. Once an agreement is reached for a specific project, the COUNTY will issue a Final Task Order, herein after called 'Task Order' for the CONSULTANT to proceed.

(b) CONSULTANT'S work shall begin within ten (10) days after receiving COUNTY'S Notice to Proceed.

(c) The CONSULTANT will be responsible to the COUNTY in matters pertaining to the contractual obligations, approvals, and interpretations required for this project. The Director of Public Works or the respective designated representative will be the representative of the COUNTY for all purposes under this Agreement.

(d) The CONSULTANT as part of the services to be performed, will keep the COUNTY apprised at all times of the progress of the work.

(e) The CONSULTANT shall meet with COUNTY to develop a time schedule to be prepared and kept up to date by CONSULTANT of the anticipated program to complete services described in Exhibit "A" and any approved final task orders.

(f) Computer software used by the CONSULTANT to produce the documents required in this Agreement shall be compatible with the COUNTY'S current versions of software. The software currently used by the COUNTY is Autodesk's Land Development (AutoCAD 2000) for drawings, Microsoft Project 2000, and Microsoft Office 2000 for Windows with Access, Excel and Word. During all phases of this Agreement and at the time of final submittal of report, the CONSULTANT shall furnish the COUNTY with all electronic media acceptable to the COUNTY, in addition to the number of copies specified in the Agreement.

SECTION 3. SERVICES BY CONSULTANT

Exhibit "A", attached hereto, includes a list of the type of projects for which the Consultant may be requested to provide services. The Task Order(s) will be issued by the County to the Consultant and will define a specific project with a scope of work to accomplish said project.

In consideration of payment by COUNTY to CONSULTANT, as hereinafter provided, CONSULTANT agrees to perform all professional services described in the approved Task Order(s) necessary to complete the project.

SECTION 4. GENERAL OBLIGATIONS OF CONSULTANT

4.1 CONSULTANT PERSONNEL

The **CONSULTANT** shall provide the **COUNTY** with resumes of key staff members to be assigned to said project including the project manager in advance of commencing any professional services, as outlined under Exhibit "A" of this Agreement and any approved final task orders. Once the **COUNTY** approves the key staff to be assigned to the project, any substitutions or additions shall be subject to written approval by the **COUNTY**. The **COUNTY** reserves the right to reject any personnel the **CONSULTANT** proposes for use on the project. Approval of the use of staff from work sites other than the work sites of the staff initially identified to work on said project shall be subject to written approval by the **COUNTY**.

CONSULTANT represents that it is qualified to furnish the services described under this Agreement. **CONSULTANT** further declares that one or more members or employees of its firm and that of its subconsultants, if so required by the State, if any, are licensed by the State of California to perform their services and that these services will be performed by them or under their direct supervision. **CONSULTANT** shall furnish to **COUNTY** for approval, upon execution of this Agreement, a list of all firms or corporations to be employed as subconsultants.

Nothing in this Agreement abrogates the professional responsibilities of the **CONSULTANT** and/or subconsultants with respect to design defects, errors, omissions, or malpractice.

4.2 NON-DISCRIMINATION

CONSULTANT, with regard to the work performed under this Agreement, shall not discriminate on the grounds of race, religion, color, national origin, sex, sexual orientation, or age in the selection of **CONSULTANT'S** employees or in the retention of sub-contractors, including procurement of materials and leases of equipment. The **CONSULTANT** and sub-contractors shall provide the **COUNTY** with a copy of their affirmative action program, for review and approval, which should attempt to achieve an ethnic composition of their work forces which approximates the ethnic composition of San Mateo County.

4.3 CORRECTIONS AND/OR REVISIONS

CONSULTANT shall make and provide to **COUNTY** all necessary corrections and/or revisions to the project analysis when it is determined by the Director of Public Works or his designated representative, that such changes are necessary for the project and are due to oversights, omissions or errors of **CONSULTANT**.

Payment to **CONSULTANT** for making any such necessary corrections and/or revisions, addendum, or contract change orders which are determined by the Director of Public Works or the respective designated representative to be due to the oversights, omissions, or errors of the **CONSULTANT** shall be considered as being included in the Basic Services fee to be paid to **CONSULTANT** for Basic Services described in Exhibit "A" of this Agreement and any approved final task orders. It is expressly understood that no additional payment shall be considered or made for these services.

SECTION 5. GENERAL OBLIGATIONS OF COUNTY

(a) **COUNTY** shall be responsible for providing any available data required by the **CONSULTANT** as stipulated in any approved final task orders.

(b) **COUNTY** shall examine documents submitted by **CONSULTANT** and shall render comments and direction pertaining thereto promptly (up to two weeks or otherwise upon written agreement by **COUNTY** and **CONSULTANT**), as stipulated in approved final Task Orders.

SECTION 6. PAYMENT BY COUNTY

In consideration of the furnishing of the professional services by **CONSULTANT**, as herein provided, **COUNTY** agrees to pay **CONSULTANT** for professional services described in Exhibit "A" of this Agreement and any approved Task Order(s) upon receipt of properly completed monthly invoices for work performed as described in said Task Order(s). The PROJECT TOTAL "Not-to-Exceed" amount will be stipulated in each Task Order. Any cost for services deemed necessary by the **COUNTY** for completion of each Task Order shall be authorized in writing prior to proceeding with the work. Billing rates for services provided under this Agreement shall be as set forth on Exhibit "B" attached hereto and by reference made a part of this Agreement.

The "Not to Exceed" amount for this agreement shall be \$300,000 unless said amount is authorized to be increased by the County Board of Supervisors. Specific projects that may be assigned to the Consultant shall have a Project Total 'Not To Exceed' which shall be stipulated in the Task Order. The sum of individual Task Order fees for multiple projects that may be assigned shall not exceed the Agreement 'Not To Exceed' without prior approval by the County Board of Supervisors.

Payments for services performed are due and payable upon completion and approval of each Task Order by the Director of Public Works or the respective designated representative should the project be accomplished within a single billing period.

6.1 METHOD OF PAYMENT

Payment shall be made by COUNTY only for services rendered and upon submission of invoice after approval of each Task Order should the project be accomplished within a single billing period. Partial progress payment for items accomplished within each Task Order shall be made by COUNTY upon submission of invoice and approval of the completion of items identified in the Task Order.

6.2 PAYMENT UPON SUSPENSION, ABANDONMENT OF PROJECT, OR TERMINATION OF AGREEMENT

If any Task Order is suspended for more than thirty (30) calendar days, or abandoned in all or in part, CONSULTANT shall be paid for its services performed prior to receipt of thirty (30) days written notice from COUNTY of such suspension or abandonment, together with reimbursable expenses then due. In the event that the COUNTY abandons any Final Task Order the COUNTY may specifically authorize additional work necessary to properly close out the project.

If this Agreement or any Task Order is suspended or terminated due to fault of CONSULTANT, COUNTY shall be obligated to compensate CONSULTANT only for that portion of CONSULTANT'S services that were satisfactorily performed.

6.3 PERFORMANCE OF SERVICES IF CONSULTANT IS NOT DILIGENT IN PERFORMING WORK

In the event CONSULTANT is not diligent in pursuing the designated services as specified in each Task Order, the Director of Public Works or the respective designated representative may, at his option, seven (7) days after written notice to CONSULTANT, perform any such required engineering services or retain a different consultant to do the same, and the cost associated with having said work completed by a means other than the CONSULTANT will be retained from any sums not yet paid to the CONSULTANT.

SECTION 7. PROGRESS AND COMPLETION

7.1 Notice To Proceed

The Notice to Proceed for each Task Order shall be a letter, or similar instrument, signed by the Director of Public Works or the respective designated representative, and shall be labeled "Notice to Proceed". Such "Notice to Proceed" shall contain a reference to the work authorized by said Notice.

7.2 Time of Completion of each Task

CONSULTANT agrees to perform the professional services for the type of projects generally described in Exhibit "A" and described specifically by a Task Order within the time limits set forth in the project schedule required by Section 2 (d) of this Agreement. Any change in the scope of services as outlined in the Task Order will require a revised time table.

COUNTY agrees to exercise due diligence in performing its tasks to implement the **CONSULTANT'S** time schedule.

7.3 COUNTY'S Review and Approval

Between each phase of work and at critical progress points there shall be a review and approval period by **COUNTY** and other agencies. **COUNTY** shall reject **CONSULTANT'S** submittal if changes and/or comments transmitted to **CONSULTANT** by **COUNTY** during previous review were not addressed by **CONSULTANT** in current submittal.

SECTION 8. CHANGES IN WORK

The Director of Public Works or the respective designated representative may order major changes in scope or character of work in writing which are mutually acceptable, either decreasing or increasing the amount of **CONSULTANT'S** services. In the event that such changes are ordered, **CONSULTANT** shall be entitled to compensation for all work previously directed by **COUNTY** and performed by **CONSULTANT** prior to receipt of notice of change. Increased compensation for major changes shall be determined in accordance with Section 6 of the Agreement, but in no event shall **COUNTY** be liable for payment unless the amount of such extra compensation shall first have been agreed to in writing by **COUNTY**.

In the event that major changes are ordered pursuant to this Section, the schedule for progress and completion in Section 7 of this Agreement and compensation under Section 6 of this Agreement shall be adjusted by negotiation between **CONSULTANT** and **COUNTY**.

SECTION 9. RECORDS

The **CONSULTANT** and all subcontractors under its employ, supervision and/or control shall retain all financial and technical records for inspection for a period of not less than three (3) years from completion and approval of each final task order by the **COUNTY** or upon termination of Agreement.

Records of costs pertaining to the Project shall be kept by **CONSULTANT** on a generally recognized accounting basis and shall be available for **COUNTY'S** review at mutually convenient times.

SECTION 10. INTEREST OF CONSULTANT/CONSULTANT INDEPENDENT OF COUNTY

In accepting this Agreement, **CONSULTANT** covenants that it presently has no interest, and shall not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of the services hereunder. **CONSULTANT** further covenants that, in the performance of this Agreement, no subcontractor or person having such an interest shall be employed throughout the term of this Agreement. **CONSULTANT** certifies that no one who has or will have any financial interest under this Agreement is an officer or employee of **COUNTY**.

In the performance of the engineering services necessary for compliance with this Agreement, **CONSULTANT**, and any of its subconsultants or employees, shall be, and is at all times considered, an Independent Contractor, and is not an agent or employee of **COUNTY**. **CONSULTANT** has, and shall retain, the right to exercise full control and supervision of the services, and full control over the employment, direction, compensation and discharge of all persons assisting him in the performance of his engineering services hereunder to include any and all subconsultants employed for the project described herein. **CONSULTANT** shall be solely responsible for all matters relating to payment of his employees, including compliance with social security, withholding, and all other regulations governing such matters, and shall be solely responsible for his own acts and those of his subordinates and employees.

SECTION 11. GENERAL PROVISIONS

(a) The **CONSULTANT** acknowledges that time is of the essence for all projects defined in approved Task Order(s) and agrees to complete all work within the time frame as stipulated within said Task Order(s) commencing with the receipt of the **COUNTY'S** "Notice to Proceed". Time extensions shall only be approved with prior written approval of the County and failure to complete services according to a mutually agreed upon schedule may be grounds for contract termination.

(b) The **CONSULTANT** upon becoming aware of factors which would result in delays shall be responsible for alerting **COUNTY** to potential delays well in advance in order that possible mitigation measures may be evaluated. **CONSULTANT** shall detail the nature and reasons for potential delays and shall provide the **COUNTY** with possible mitigation measures for consideration.

(c) On all matters pertaining to Task Orders to be performed and the time taken by **CONSULTANT** to perform such services, the decision of the Director of Public Works or the respective designated representative will be final after discussions between **COUNTY** and **CONSULTANT**.

(d) The **CONSULTANT** warrants that he/she has not employed or retained any company or person, other than a bona fide employee working for the **CONSULTANT**, to solicit or secure this Agreement, and that he/she has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or formation of this Agreement. For breach or violation of this warranty, the **COUNTY** shall have the right to annul this Agreement without liability, or at its discretion to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

SECTION 12. OWNERSHIP OF DOCUMENTS

All tracings, sketches, plans, specifications, estimates, maps, design calculations, quantity calculations, supporting documents, studies, survey notes, and other documents prepared by **CONSULTANT** or subconsultants under the terms of this Agreement shall be delivered to and become the property of the **COUNTY** without restriction or limitation on their use. However, should **COUNTY** re-use or utilize data or drawings not for their intended use then **COUNTY** shall be solely liable and indemnify **CONSULTANT** against such use. Computer files used by **CONSULTANT** to produce the final set of plans and specifications shall also be delivered in AutoCAD, Access, Excel and Word electronic form on compact disks, 3-1/2" floppy diskettes or other media acceptable to the **COUNTY** at no additional cost and become the property of the **COUNTY**.

SECTION 13. TERM OF AGREEMENT

The Term of this Agreement shall be for two (2) years from the date of execution of the Agreement by the County. The term of the Agreement may be extended for a period of two (2) years, in one (1) year increments. Said approval to extend the Agreement beyond the first year shall be accomplished by written notification from the Director of Public Works or his designated representative.

SECTION 14. TERMINATION OF AGREEMENT

The **COUNTY** reserves the right to terminate this Agreement, at no fault of either party to this Agreement, with thirty (30) days written notice by the Director of Public Works or the respective designated representative to the **CONSULTANT**.

The **COUNTY** is under no obligation to employ the **CONSULTANT** for all phases of work as outlined in this Agreement, but reserves the right to employ other consulting firms for the various phases of work. If, in the **COUNTY**'s opinion, the **CONSULTANT** is without cause not diligent in pursuing any of the professional services provided for in Section 3 of this Agreement, the Director of Public Works or the respective designated representative may, at his option, with no more than seven (7) days after written notice to **CONSULTANT**, terminate this Agreement for professional services or retain a different consultant to do the same, and retain the appropriate portion of any sums not yet paid to the **CONSULTANT**. Lack of diligence may include but not be limited to: lack of compliance with agreed upon schedule, submittal of partially completed required documents, and lack of quality control.

CONSULTANT agrees that failure to carry out the requirements as set forth in this section shall constitute a breach of contract and after appropriate notification, may result in termination of the Agreement by the **COUNTY** as the **COUNTY** deems appropriate.

SECTION 15. NON-ASSIGNMENT OF AGREEMENT

This Agreement shall not be assigned, sublet or transferred by **CONSULTANT**, in whole, or in part without the written consent of the **COUNTY**. If the **CONSULTANT** elects to subcontract the soil investigation, photogrammetric mapping, traffic engineering, surveying, seismic studies or any other portions of the contract, **CONSULTANT** shall notify the Director of Public Works or the respective designated representative in writing with whom **CONSULTANT** proposes to subcontract. The approval for use of subcontractors for any aspect of the work not initially identified as part of the design team shall only be after written approval from the **COUNTY**, as stipulated in Section 11 of this Agreement.

SECTION 16. HOLD HARMLESS AND INSURANCE CLAUSES

16.1 HOLD HARMLESS

The **CONSULTANT** shall indemnify and save harmless the **COUNTY**, its officers, agents, employees and servants from all claims, suits or actions brought for, or on account of, injuries to or death of any person including **CONSULTANT**, or damage to property of any kind whatsoever and to whomsoever, but only to the extent that they result from the negligent performance of any work required by this Agreement of **CONSULTANT**, provided that this shall not apply to injuries or damage for which **COUNTY** has been found in a court of competent jurisdiction to be liable by reason of its own negligence or willful misconduct.

The duty of the **CONSULTANT** to indemnify and save harmless, as set forth herein, shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

16.2 INSURANCE

The **CONSULTANT** shall not commence work under this Agreement until all insurance required under this section has been obtained and such insurance has been approved by the Director of Public Works. The **CONSULTANT** shall furnish the **COUNTY** with Certificates of Insurance evidencing the required coverage, and there shall be a specific contractual liability provision extending the **CONSULTANT'S** coverage to include the contractual liability assumed by the **CONSULTANT** pursuant to this Agreement, subject to the terms, conditions, limitations and exclusions of the policy. These Certificates shall specify or be endorsed to provide that thirty (30) days' notice must be given by **CONSULTANT**, in writing, to the **COUNTY** of any cancellation or modification of the policy(ies) concerning the insurance requirements set forth in this Agreement.

16.2.1 Workers' Compensation and Employer's Liability Insurance

The **CONSULTANT** shall have in effect during the entire life of this Agreement Workers' Compensation and Employer Liability Insurance providing full statutory coverage. In signing this Agreement, the **CONSULTANT** makes the following certification, required by Section 1861 of the California Labor Code:

I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of the Code, and I will comply with such provisions before commencing the performance of the work of this Agreement.

16.2.2 Liability Insurance

The **CONSULTANT** shall take out and maintain during the life of this Agreement such Bodily Injury Liability and Property Damage Liability Insurance as shall protect him while performing work covered by this Agreement from any and all operations under this Agreement, whether such operations be by himself or by any sub-contractor or by anyone directly or indirectly employed by either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence, and in the aggregate, and shall be not less than the amount specified below:

Such insurance shall include:

- | | |
|---------------------------------------|--------------------|
| (a) Commercial General Liability | <u>\$1,000,000</u> |
| (b) Motor Vehicle Liability Insurance | <u>\$1,000,000</u> |
| (c) Professional Liability | <u>\$1,000,000</u> |

The **CONSULTANT** shall provide proof of continuing professional liability insurance to **COUNTY** in the amount of \$1,000,000 for a period of two (2) years after acceptance by **COUNTY** of the work constructed in conformance with **CONSULTANT'S** design and any subsequent revisions/modifications made by **CONSULTANT**. **COUNTY** and its officers, agents, employees and servants shall be included as additional insured on any such policies of insurance, except professional liability, which shall also contain a provision that the insurance afforded thereby to the **COUNTY**, its officers, agents, employees and servants shall be primary insurance to the full limits of liability of the policy, but only to the extent of the **CONSULTANT'S** negligence, and that if the **COUNTY** or its officers and employees have other insurance against the loss covered by such a policy, such other insurance shall be excess insurance only.

In the event of the breach of any provisions of this Section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, the **COUNTY**, at its option, may, notwithstanding any other provision of this Agreement to the contrary, immediately declare a material breach of this Agreement and suspend all further work pursuant to this Agreement.

SECTION 17. DISPUTES AND REMEDIES

Any dispute between the parties to this Agreement regarding the interpretation or application of any provision contained herein shall be resolved in a court of competent jurisdiction pursuant to the laws of the State of California. Each party shall bear its own costs and attorneys fees associated with the resolution of the dispute.

SECTION 18. JOBSITE SAFETY AND ENVIRONMENTAL PROTECTION

Neither the professional activities of the CONSULTANT nor the presence of the CONSULTANT or his or her employees and subconsultants at a construction site, shall relieve the General Contractor and any other entity of their obligations, duties and responsibilities including, but not limited to, construction means, methods, sequence, techniques or procedures necessary for performing, superintending or coordinating all portions of the Work of construction in accordance with the contract documents and any health or safety or environmental protection precautions required by any regulatory agencies. The CONSULTANT and his or her personnel have no authority to exercise any control over any construction contractor or other entity or their employees in connection with their work or any health or safety precautions. The CONSULTANT agrees that the General Contractor is solely responsible for jobsite safety, and environmental protection, and warrants that this intent shall be made evident in the COUNTY'S Agreement with the General Contractor. The CONSULTANT also agrees that the COUNTY, the CONSULTANT and any other COUNTY CONSULTANTS that may be providing services at the construction site shall be indemnified and shall be made additional insured's under the General Contractor's general liability insurance policy.

SECTION 19. EMPLOYEE BENEFITS

For the purpose of Section 19 and section 20, contractor shall mean consultant.

All Contractors with contracts over \$5,000 with the County must comply with the County Ordinance Code, Chapter 2.93 with respect to the provisions on employee benefits. As set forth in the ordinance, such contractors are prohibited from discriminating in the provisions of employee benefits between an employee with a domestic partner and an employee with a spouse. A copy of the ordinance and compliance form are attached to the Proposal Section of these Specifications.

In the event that it is determined, by the County, that any portion of the County Ordinance Code regarding employee benefits conflict with Federal or State regulations, the Federal or State regulations shall take precedence over the County Ordinance Code. Exhibit "C" and "D" Attached.

SECTION 20. NON-DISCRIMINATION

No person shall be excluded from participation in, denied benefits of, or be subject to discrimination under this Agreement on the basis of their race, color, religion, national origin, age, sex, sexual orientation, pregnancy, childbirth or related conditions, medical condition, mental or physical disability or veteran's status. With respect to the provision of employee benefits, all Contractors with contracts over \$5,000 shall comply with the County Ordinance which prohibits contractors from discriminating in the provision of employee benefits between an employee with a domestic partner and an employee with a spouse. Contractor shall ensure full compliance with federal, state and local laws, directives and executive orders regarding non-discrimination for all employees and Subcontractors under this Agreement.

Violation of the non-discrimination provisions of this Agreement shall be considered a breach of this Agreement and subject the Contractor to penalties, to be determined by the County Manager, including but not limited to:

- i) termination of this Agreement;
- ii) disqualification of the Contractor from bidding on or being awarded a County contract for a period of up to 3 years (up to 5 years for Equal Benefits Violation);
- iii) liquidated damages of \$2,500 per violation;
- iv) imposition of other appropriate contractual and civil remedies and sanctions, as determined by the County Manager.

To effectuate the provisions of this paragraph, the County Manager shall have the authority to:

- i) examine Contractor's employment records with respect to compliance with this paragraph;
- ii) set off all or any portion of the amount described in this paragraph against amounts due to Contractor under the Contract or any other Contract between Contractor and County.

Contractor shall report to the County Manager the filing by any person in any court of any complaint of discrimination or the filing by any person of any and all charges with the Equal Employment Opportunity Commission, the Fair Employment and Housing Commission or any other entity charged with the investigation of allegations within 30 days of such filing, provided that within such 30 days such entity has not notified Contractor that such charges are dismissed or otherwise unfounded. Such notification shall include the name of the complainant, a copy of such complaint and a description of the circumstance. Contractor shall provide County with a copy of its response to the Complaint when filed.

In the event that it is determined, by the County, that any portion of these requirements regarding non-discrimination conflict with Federal or State regulations, the Federal or State regulations shall take precedence over County requirements.

SECTION 21. NOTIFICATIONS

All notices hereunder and communications regarding interpretation of the terms of this Agreement and changes thereto shall be effected by the mailing thereof by registered or certified mail, return receipt requested postage prepaid, unless other forms of mailing are approved, in advance, by the County and addressed as follows:

COUNTY:

Neil R. Cullen, Director of Public Works
(or his designated representative)
COUNTY of San Mateo, DPW
555 County Center, 5th Floor
Redwood City, CA 94063-1665

CONSULTANT:

Mr. Walter Keller, AIA
Keller and Daseking Architects
825 Oak Grove Avenue
Menlo Park, CA 94025

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have affixed their hands on the day and year first above written.

"COUNTY"

SAN MATEO COUNTY

BY

Jerry Hill, President
Board of Supervisors, County of San Mateo

ATTEST:

Clerk of said Board

"CONSULTANT"

Keller and Daseking Architects

BY:

Mr. Walter Keller, AIA

Exhibit "A"

Omnibus Architectural & Engineering Professional Services

The Consultant shall provide services that may include, but not be limited to, programming, evaluation, design, planning, independent investigation of existing conditions, proposed solutions and schematic plans, cost analysis and preparation of independent cost estimates, feasibility, preparation of specifications and drawings, projected schedules, construction observation and administration, reports and coordination with applicable code enforcing and environmental agencies, site analysis, coordination with and/or relocation of utilities, coordination with applicable local, state, and federal jurisdictions, regulatory permit acquisition, topographic surveys, geotechnical analysis and/or reports, hazardous material assessments, and preliminary structural analysis for a variety of public works type projects. The type public works projects that the consultant may be requested to provide services for could include the following:

- Building Alterations
- New Construction
- Improvements

on:

- Office Buildings
- Court Houses
- Health Care Facilities
- Detention Facilities
- Maintenance Buildings
- Park and Recreation Structures or Facilities

The above represent general categories of possible type projects. The Consultant would be assigned a specific project with a specified fee by means of a Project Task Order as described elsewhere in this Agreement.

Exhibit "B"

Hourly Rate Schedule

Will be based upon current schedule of fees attached as Exhibit "B1"

Notes:

1. Reimbursable Expenses: The Consultant shall be entitled to mileage, meals, and lodging at the same rate granted to employees of the County whenever the Consultant is required to travel outside the County in the performance of his duties under this contract, excepting San Francisco and Santa Clara Counties. Such travel must first be approved in writing by the County. The Consultant shall also be reimbursed for expenses associated with reproduction (drawings, project manuals, reports, etc); photographs for consultants use (film and processing); telephone or FAX (outside 650, 415, 408, 510, 925 area codes); fees paid for securing permits and approvals of authorities having jurisdiction over the Project; and special delivery service.
2. The hourly rates indicated above shall remain in effect for the term of the Agreement, unless adjustments are approved in writing, in advance of accruing cost at new rates, by the County.

Exhibit "C"

Equal Benefits Ordinance

CHAPTER 2.93

ORDINANCE NO 04026

An Ordinance Adding Chapter 2.93 to the San Mateo Ordinance Code to Provide for Non-Discrimination by County Contractors in the Provision of Employee Benefits

WHEREAS, employee benefits routinely comprise a significant proportion of total employee compensation; and

WHEREAS, discrimination in the provision of employee benefits between employees with domestic partners and employees with spouses results in unequal pay for equal work; and

WHEREAS, County of San Mateo law prohibits discrimination based on marital status and/or sexual orientation; and

WHEREAS, it is the County's intent, through the contracting practices outlined herein, to equalize the total compensation between similarly situated employees with spouses and employees with domestic partners;

NOW THEREFORE, BE IT ORDAINED BY THE COUNTY OF SAN MATEO AS FOLLOWS:

Section 1. There is hereby added to the Ordinance Code of the County of San Mateo a new Chapter 2. 93 to read as follows:

Chapter 2. 93 County Contracts - Non-Discrimination in Benefits

2.93.010 Definitions.

For the purposes of this chapter,

- A. "Contract" means a legal agreement between the County and a Contractor for public works, consulting, or other services, or for purchase of supplies, material or equipment for which the consideration is in excess of \$5,000.
- B. "Contractor" means a party who enters into a Contract with the County.
- C. "Contract Awarding Authority" means the Board of Supervisors or the individual authorized by the Board of Supervisors to enter into Contracts on behalf of the County.
- D. "Domestic Partner" means any person who is registered as a domestic partner with the Secretary of State, State of California registry or the registry of the state in which the employee is a resident.
- E. "Employee Benefits" means the provision of any benefit other than pension and retirement benefits provided to spouses of employees or provided to an employee on account of the employee's having a spouse, including but not limited to bereavement leave; disability, life, and other types of insurance; family medical leave; health benefits; membership or membership discounts; moving expenses; vacation; travel benefits; and any other benefits given to employees, provided that it does not include benefits to the extent that the application of the requirements of this chapter to such benefits may be preempted by federal or state law.

2.93.020 Discrimination in the provision of benefits prohibited.

(a) No Contractor on a County Contract shall discriminate in the provision of Employee Benefits between an employee with a domestic partner and an employee with a spouse, subject to the following conditions:

1. In the event that the Contractor's actual cost of providing a particular benefit for the domestic partner of an employee exceeds that of providing it for the spouse of an employee, or the Contractor's actual cost of providing a particular benefit to the spouse of an employee exceeds that of providing it for the domestic partner of an employee, the Contractor shall not be deemed to discriminate in the provision of Employee Benefits if the Contractor conditions providing such benefit upon the employee's agreement to pay the excess costs.
2. The Contractor shall not be deemed to discriminate in the provision of Employee Benefits if, despite taking reasonable measures to do so, the Contractor is unable to extend a particular employee benefit to domestic partners, so long as the Contractor provides the employee with a cash payment equal to the Contractor's cost of providing the benefit to an employee's spouse.

(b) The Board of Supervisors may waive the requirements of this Chapter when it determines that it is in the best interests of the County. The County Manager may waive the requirements of this chapter for Contracts not needing the approval of the Board of Supervisors where waiver would be in the best interests of the County for such reasons as follows:

1. Award of a Contract or amendment is necessary to respond to an emergency;
2. The Contractor is a sole source;
3. No compliant Contractors are capable of providing goods or services that respond to the County's requirements;
4. The requirements are inconsistent with a grant, subvention or agreement with a public agency;
5. The County is purchasing through a cooperative or joint purchasing agreement;

(c) Contractors should submit requests for waivers of the terms of this Chapter to the Contract Awarding Authority for that Contract, or in the case of Contracts approved by the Board, the County Manager.

(d) The Contract Awarding Authority, or in the case of Contracts approved by the Board, the County Manager, may reject an entity's bid or proposals, or terminate a Contract, if the Contract Awarding Authority determines that the entity was set up, or is being used, for the purpose of evading the intent of this Chapter.

(e) No Contract Awarding Authority shall execute a Contract with a Contractor unless such Contractor has agreed that the Contractor will not discriminate in the provision of Employee Benefits as provided for in this Chapter.

2.93.030 Application of Chapter.

The requirements of this Chapter shall only apply to those portions of a Contractor's operations that occur (i) within the County; (ii) on real property outside of the County if the property is owned by the County or if the County has a right to occupy the property, and if the Contractor's presence at that location is connected to a Contract with the County; and (iii) elsewhere in the United States where work related to a County Contract is being performed. The requirements of this Chapter shall not apply to subcontracts or subcontractors of any contract or Contractor.

2.93.040 Powers and duties of the County Manager.

The County Manager's office shall have the authority to:

(a) Adopt rules and regulations, in accordance with this Chapter and the Ordinance Code of the County of San Mateo, establishing standards and procedures for effectively carrying out this Chapter.

(b) Receive notification from employees of Contractors regarding violations of this Chapter.

(c) Determine and recommend to the Board of Supervisors for final decision the imposition of appropriate sanctions for violation of this Chapter by Contractors including, but not limited to:

1. Disqualification of the Contractor from bidding on or being awarded a County contract for a period of up to 5 years; and
2. Contractual remedies, including, but not limited to termination of contract.
3. Liquidated damages in the amount of \$2,500.

- (d) Examine Contractors' benefit programs covered by this chapter;
- (e) Impose other appropriate contractual and civil remedies and sanctions for violations of this chapter;
- (f) Allow for remedial action after a finding of non-compliance, as specified by rule;
- (g) Perform such other duties as may be required or which are necessary to implement the purposes of this Chapter.

2.93.050 Date of Application.

The provisions of this Chapter shall apply to any Contract awarded or amended on or after July 01, 2001, provided that if the Contractor is then signatory to a collective bargaining agreement, this Chapter shall only apply to any Contract with that Contractor which is awarded or amended after the effective date of the next collective bargaining agreement.

Section 2. Severability. The provisions of this ordinance are declared to be separate and severable. If a court of competent jurisdiction, all appeals having been exhausted or all appeal periods having run, finds any provision of this ordinance to be invalid or unenforceable as to any person or circumstance, such offending provision shall, if feasible, be deemed to be modified to be within the limits of enforceability or validity. However, if the offending provision cannot be so modified, it shall be null and void with respect to the particular person or circumstance, and all other provisions of this ordinance in all other respects, and the offending provision with respect to all other persons and all other circumstances, shall remain valid and enforceable.

Section 3. This ordinance shall take effect and be in force 30 days after its enactment.

Exhibit "D"

COUNTY OF SAN MATEO

**Equal Benefits Compliance Declaration Form
(To Be Submitted with Proposal)**

I Vendor Identification

Name of Contractor: _____

Contact Person: _____

Address: _____

Phone Number: _____ Fax Number: _____

II Employees

Does the Contractor have any employees? _____ Yes _____ No

Does the Contractor provide benefits to spouses of employees? _____ Yes _____ No

If the answer to one or both of the above is no, please skip to Section IV.

III Equal Benefits Compliance (Check One)

Yes, the Contractor complies by offering equal benefits, as defined by Chapter 2.93, to its employees with spouses and its employees with domestic partners.

Yes, the Contractor complies by offering a cash equivalent payment to eligible employees in lieu of equal benefits.

No, the Contractor does not comply.

The Contractor is under a collective bargaining agreement which began on _____ (date) and expires on _____ (date).

IV Declaration

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that I am authorized to bind this entity contractually.

Executed this _____ day of _____, 20____ at _____ (City) _____ (State).

Signature

Name (Please Print)

Title

Contractor Tax Identification Number