

**COUNTY OF SAN MATEO AGREEMENT WITH INDEPENDENT CONTRACTOR
FOR PROFESSIONAL SERVICES
AGREEMENT NO. _____**

This Agreement entered this ____ day of _____, 2002, by and between the County of San Mateo, a political subdivision of the State of California, hereinafter called "County" and Engineering Economics, Inc. (EEI), hereinafter called "Contractor".

WITNESSETH

WHEREAS, the County has the authority to engage independent Contractors to perform sundry services for the County, with or without the furnishing of materials; and

WHEREAS, it is necessary and desirable that Contractor be engaged by County for the purpose of performing services and/or purchasing material hereinafter described:

IT IS AGREED BETWEEN THE COUNTY AND CONTRACTOR as follows:

1. **Scope of Work.** Contractor shall provide all labor, material, and incidentals, in accordance with the terms of this Agreement, necessary to conduct LEED certification Fundamental Building Systems Commissioning for the San Mateo County Youth Services Center, a new 240-bed facility for youthful offenders, replacing the existing San Mateo County Hillcrest Juvenile Hall. Contractor is to verify and ensure that building elements and systems are designed, installed and calibrated to operate as intended, including additional commissioning as outlined in LEED Credit 3; act as third-party, Commissioning Agent for the County, reporting solely to the County and coordinating on-site activities with the County's Construction Manager, Turner Construction Co. All duties will be in accordance with those described in Contractor's "Proposal for Building Systems Commissioning for the San Mateo County Youth Services Center, San Mateo, California", No. 02-02165, dated October 2002 and shall be made part of this Agreement as Exhibit "A".

2. **Schedule and Term**
Terms of this Agreement shall begin November 1, 2002 and Contractor shall work on the schedule as executed by Turner Construction Co. until work is complete through LEED Measurement and Verification Credit in accordance with the following current design and construction schedule for the project:
 - Complete Master Plan Nov.7, 2002
 - Complete Schematic Design Jan.15, 2003
 - Complete Design Development Apr.24, 2003
 - Complete Construction Documents Sept.30,2000
 - Start Construction Dec.30, 2003

- Substantial Completion Nov.30, 2005
- Occupy Facility Mar.1, 2006
- Post-Occupancy Review Jan.1, 2007
- Complete LEED Measurement & Verification Credit Mar.1, 2007

3. Payments. In consideration of the services rendered in accordance with the terms, conditions and specifications set forth herein and in attached exhibits, County shall make payment to Contractor as follows:

<u>Description</u>	<u>Total Labor</u>	<u>Total Expenses</u>	<u>Total Costs</u>
• Design Phase Review	\$10,223	\$ 882	\$11,204
• Commissioning Plan Development	\$ 6,586	\$1,964	\$ 8,550
• Develop Commissioning Spec.'s	\$ 3,868	\$ 837	\$ 4,705
• Construction Phase Activities	\$119,225	\$19,234	\$138,489
• Commissioning Report LEED Cert.	\$ 6,275	\$ 837	\$ 7,113
• LEED Additional Credits	\$ 8,702	\$1,884	\$10,586
• LEED M&V Credit	<u>\$ 9,209</u>	<u>\$1,884</u>	<u>\$11,093</u>
GRAND TOTAL FEES	\$164,117	\$27,622	\$191,739

In no event shall total payment for services under this Agreement exceed \$191,739.

4. Changes. County may require changes in the scope of services to be performed by Contractor under this Agreement and Contractor agrees to perform said changes. Such changes, including any increase or decrease in the Contractor's fee, shall be made by written amendment to the Agreement and such amendment shall be issued prior to commencing with the changes. Changes to this Agreement will be paid for at a lump sum amount agreed to by the parties or at an amount based on the actual labor hours and expenses incurred in the performance of the change as directed by the County.

5. Relationship of the Parties. It is understood that this is an Agreement by and between County and Contractor and is not intended to, and shall not be construed to, create the relationship of agent, servant, employee, partnership, joint venture, or any other relationship whatsoever other than that of independent contractor.

6. Non-Assignability. Contractor shall not assign this Agreement or any portion thereof to a third party without the prior written consent of County. Contractor shall not employ subcontractors or consultants to carry out the responsibilities undertaken pursuant to this Agreement without the prior written consent of the County. All assignees, subcontractors, or consultants approved by the County shall be subject to the same terms and conditions applicable to Contractor under this Agreement, and Contractor shall be liable for the assignee's, subcontractor's, or consultant's act and/or omissions. All agreements between Contractor and subcontractor and/or assignee for services pursuant to this Agreement shall be in writing and a copy shall be provided to the County.

7. Termination of Agreement. Either party may terminate this Agreement after giving the other party written notice of a violation of this Agreement and the violating party does not correct the violation within fifteen calendar days after receiving said notice. Said notice shall specify what work other than correcting the violation may be performed after receipt of such notice. Violations of this Agreement include failure to perform obligations required by this Agreement in a timely and proper manner and failure to adhere to the covenants, terms, conditions or stipulations of this Agreement.

In the event of such termination for cause, all finished or unfinished documents, data, studies, surveys, drawings, reports, and specifications prepared by Contractor shall, at the option of the County become the property of County, and Contractor shall be entitled to receive just and equitable compensation for work completed in accordance with this Agreement. Notwithstanding the above, Contractor shall not be relieved of any liability to County for damages sustained by County by reason of Contractor's breach of this Agreement and County may withhold any and all payments to Contractor until such time as the exact amount of damages due the County from Contractor has been determined.

County may terminate this Agreement at any time without cause upon ten calendar days written notice to Contractor, and thereupon all documents, data, studies, surveys, drawings, estimates, reports and specifications prepared by Contractor shall become the property of County and subject to payment therefore be delivered to County upon demand. Said notice shall specify what work may be performed after receipt of such notice. In the event of such termination by County without cause, County shall pay Contractor for services actually performed pursuant to this Agreement prior to the date of termination.

8. Hold Harmless. The Contractor shall indemnify and hold harmless the County, its officers, agents, employees, and servants from all claims, suits or actions of every name, kind and description, including those of third parties, brought as a result of the negligent performance of work required pursuant to this contract. This indemnification and hold harmless shall include but not be limited to all claims, suits, or actions brought for or on account of (1) injuries to or death of any person, including Contractor; or (2) damage to property or any kind whatsoever and to whomsoever belonging; or (3) any other loss or cost as a result of this work; or (4) the concurrent active or passive negligence of the County, its officers, agents, or employees and servants. This indemnification and hold harmless shall not apply to injuries or damage for which the 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 Contractor to indemnify and hold harmless as set forth herein, shall include the duty to defend as set forth in Section 2778 of the California Civil Code, provided, however, that nothing herein shall be construed to require the Consultant to indemnify the County, its officer, agents, employees and servants against any responsibility or liability in contravention of Section 2782 of the California Civil Code.

9. Insurance. The Contractor shall not commence work under this Agreement until all insurance required under this section has been obtained. The Contractor shall furnish County with Certificates of Insurance evidencing the required coverage and there shall be a specific contractual liability endorsement extending the Contractor's coverage to include the contractual liability assumed by the Contractor pursuant to this Agreement. These certificates shall be endorsed to provide thirty calendar days written notice to County of any change in the limits, cancellation or other modification of the insurance.

The Contractor shall have in effect during the entire life of this Agreement, Worker's Compensation and Employer Liability Insurance providing full statutory coverage in accordance with Section 3700 of the California Labor Code which requires every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of the Code.

Contractor shall take out and maintain during the life of this Agreement such Bodily Injury Liability Insurance and Property Damage Liability Insurance as shall protect him while performing work covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as any and all operations under this Agreement, whether such operations are by himself or by any subcontractor or 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 shall be not less than the amount specified below:

A.	Comprehensive General Liability	\$1,000,000
B.	Motor Vehicle Liability Insurance	\$1,000,000

County and its officers, agents, employees, and servants shall be named 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, 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.

10. Non-Discrimination. Contractor, with regard to this Agreement, shall not discriminate on the grounds of age, ancestry, creed, color, disability, marital status, medical condition, national origin, political or religious affiliation, race, sex, sexual orientation or any other non-job-related criteria. This shall apply to Contractor's organization and in the selection and retention of subcontractors and vendors. In regard to contracts over \$5,000 with respect to the provision of employee benefits, Contractor 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

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; 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.

11. EQUAL BENEFITS: With respect to the provision of employee benefits. Contractor 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.

12. Records. Any system or documents developed, produced or provided under this contract shall become the sole property of the County. Contractor shall maintain all required records for three years after the County makes final payment and all other pending matters are closed, and shall be subject to examination and audit of the County, a federal grantor agency, and the State of California.

13. Notices. Notices are valid only if written. Written notice shall be deemed to have been duly served if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or if delivered at or sent by certified mail to the last business address known to him who gives the notice.

Notices to the County shall be addressed to:

James Sowerbrower, Project Manager
County of San Mateo
County Manager's Office/Capital Projects Division

455 County Center, 5th Floor
Redwood City, CA 94063
Phone: (650) 363-4658
Fax: (650) 363-4832

Notices to Contractor shall be addressed to:

Bill Folkerts
Engineering Economics, Inc.
41-800 Washington St.. B105 #206
Bermuda Dunes, CA 92201-8150
Phone: (858) 688-1246
Fax: (858)

14. Review of Work. It is understood that periodic review of the Contractor's work will be necessary and the right to review is reserved to the County. Contractor agrees to provide County, or any of its duly authorized representatives, access to any and all books, documents, papers, and records which are directly pertinent to this Agreement. Contractor shall maintain all required records for three years after County makes final payments and all other pending matters are closed

15. Interest of Contractor. Contractor covenants that he presently has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of services required to be performed under this Agreement. Contractor further covenants that in the performance of this Agreement no persons having such interest shall be employed.

16. Commencement of Work. Contractor shall commence performance of the services and duties required to be performed under this Agreement immediately upon receiving a signed copy of the Agreement. Contractor shall obtain any license, permit, or approval necessary from any agency whatsoever for the services required by this agent.

17. Compliance with Laws. This Agreement shall be governed by the laws of the State of California. In performing this Agreement, the Contractor shall comply with applicable federal, state, and local codes, statutes, regulations and ordinances currently in effect. Where requested, Contractor shall provide engineering calculations and other information necessary for compliance.

18. Merger Clause. This Agreement, including Exhibit A, constitutes the sole agreement of the parties hereto and correctly states the rights, duties and obligations of each part of the document's date. Any prior agreement, promises, negotiations or representations between the parties not expressly stated in this document are not binding.

All subsequent modifications shall be in writing. In the event of a conflict between the terms, conditions or specifications set forth herein and those in exhibits attached hereto or contractor's proposal, the terms, conditions or specifications set forth herein shall prevail.

19. Exhibits. The following exhibits are a part of this Agreement:

Exhibit "A" Contractor's Proposal No. 02-02165

Contractor's Signature

Date

Purchasing Agent
County of San Mateo

Date

Contractor's Tax I.D. Number or Social Security
Number

Exhibit A

1.	General Description of RFP	Commissioning Services
2.	List key evaluation criteria	<p>Experience</p> <ul style="list-style-type: none"> • as Commissioning Authority for at least 3 projects over 100,000s.f. • as Commissioning Authority for at least 1 LEED Certified project • in operation and trouble-shooting of HVAC systems, energy management and security systems. • a minimum of 5 years field experience • knowledgeable in building operation, maintenance and O&M training.
3.	Where advertised	<ul style="list-style-type: none"> • US Green Building Council web-site. • County Recycleworks web-site
4.	In addition to any advertisement, list others to whom RFP was sent	<ul style="list-style-type: none"> • CTG Energetics, Inc. • Encon • Farnsworth Group • Flack & Kurtz • Jacobs Facilities, Inc. • Mazzetti & Associates
5.	Total number sent to prospective proposers	7
6.	Number of proposals received	5
7.	Who evaluated the proposals	<ul style="list-style-type: none"> • Paul Scannell, Assistant County Manager • Jim Sowerbrower, Project Manager • Frank Battipede, Capital Projects
8.	In alphabetical order, names of proposers (or finalists, if applicable) and location	<ul style="list-style-type: none"> • CTG Energetics, Inc., Irvine, CA • Encon, Los Altos, CA • Engineering Economics, Inc., Bermuda Dunes, CA • Farnsworth Group, Corona, CA • Mazzetti & Associates, San Francisco, CA