

Attachment B

AGREEMENT BETWEEN COUNTY OF MONTEREY AND WESTON MILES ARCHITECTS, INC.

This AGREEMENT is made and entered into by and between the County of Monterey, a political subdivision of the State of California, hereinafter referred to as "County", and **WESTON MILES ARCHITECTS, INC.** hereinafter referred to as "CONTRACTOR."

RECITALS

WHEREAS, County has invited Statements of Qualifications (SOQ) through Request for Qualifications (RFQ) #10456 for CONTRACTORS to provide **"ON-CALL" SERVICES PURSUANT TO AN AGREEMENT FOR OVER \$100,000 FOR ARCHITECTURAL AND ENGINEERING DESIGN SERVICES FOR VARIOUS PROJECTS LOCATED IN MONTEREY COUNTY, CALIFORNIA**, in accordance with the specifications set forth in this AGREEMENT; and

WHEREAS, CONTRACTOR has submitted a responsive and responsible SOQ to perform such services; and

WHEREAS, CONTRACTOR has the expertise and capabilities necessary to provide the services requested.

NOW THEREFORE, County and CONTRACTOR, for the consideration hereinafter named, agree as follows:

1.0 PERFORMANCE OF THE AGREEMENT

- 1.1 After consideration and evaluation of the CONTRACTOR's SOQ, the County hereby engages CONTRACTOR to provide the services set forth in RFQ #10456 and in this AGREEMENT on the terms and conditions contained herein and in RFQ #10456. The intent of this AGREEMENT is to summarize the contractual obligations of the parties. The component parts of this AGREEMENT include the following:

This AGREEMENT with Attachment K: Fee Schedule

The following documents are on file with the County's Contracts/Purchasing Division:

RFQ #10456 plus all associated Addenda

CONTRACTOR's SOQ package dated January 19, 2018

Certificate of Insurance

Additional Insured Endorsements

- 1.2 All of the above-referenced AGREEMENT documents are intended to be complementary. Work required by one (1) of the above-referenced AGREEMENT documents and not by others shall be done as if required by all. In the event of a conflict between or among component parts of the

AGREEMENT, the AGREEMENT documents shall be construed in the following order: RFQ, Addenda #1, #2, #3 and #4, CONTRACTOR's SOQ package, Certificate of Insurance and Additional Insured Endorsements.

- 1.3 CONTRACTOR warrants that CONTRACTOR and CONTRACTOR's agents, employees, and subcontractors performing services under this AGREEMENT are specially trained, experienced, competent, and appropriately licensed to perform the work and deliver the services required under this AGREEMENT and are not employees of the County, or immediate family of an employee of the County.
- 1.4 CONTRACTOR, its agents, employees, and subcontractors shall perform all work in a safe and skillful manner and in compliance with all applicable laws and regulations. All work performed under this AGREEMENT that is required by law to be performed or supervised by licensed personnel shall be performed in accordance with such licensing requirements.
- 1.4.1 CONTRACTOR must maintain all licenses throughout the term of the AGREEMENT.
- 1.5 CONTRACTOR shall furnish, at its own expense, all materials, equipment, and personnel necessary to carry out the terms of this AGREEMENT, except as otherwise specified in this AGREEMENT. CONTRACTOR shall not use County premises, property (including equipment, instruments, or supplies) or personnel for any purpose other than in the performance of its obligations under this AGREEMENT.

2.0 SCOPE OF SERVICES

- 2.1 The Scope of Services includes but is not limited to the following:

The Scope of Services shall include, in general, the full range of professional architectural or engineering pre-planning and design services including services of all types of sub-consultant design disciplines typically required for architectural projects in the Public sector. Tasks may include but are not limited to the following architectural or engineering design tasks:

- Program Development to Program Validation including Concept Development and Spatial Programming Studies
- Feasibility Studies/Project Definition
- Bid Scoping Documents
- All Phases of Project Design and Disciplines
- Specifications
- Design Reviews
- Cost Estimating
- Value Engineering
- Constructability Reviews
- Building Evaluations

- Troubleshooting
- Construction Support Services
- Building Information Modeling (BIM)/Computer Aided Design and Drafting (CADD)/Drafting Work
- General Engineering Services

2.2 Specific requirements include but are not limited to the following:

2.2.1 Services will be provided on an on-call basis. The process will consist of the County contacting the CONTRACTOR(s) and requesting services related to an individual project. CONTRACTOR(s) will then prepare a detailed scope and cost.

2.2.2 The County is implementing a Job Order Contracting (JOC) construction delivery method. Not all construction projects will use the JOC program. For those projects that elect to use the JOC program, CONTRACTOR(s) must become familiar with the quality and workmanship required by the applicable Construction Task Catalogs (CTC) and coordinate and adjust specifications and details produced by the JOC Contractor.

2.3 CONTRACTOR will advocate for the County and ensure the project produced is in the best interest of the County. CONTRACTOR is expected to deliver products on or ahead of the required schedule and within budget.

2.4 All work shall be done in conformance with all applicable County, State and Federal laws, County Design Manuals, County Standard Plans, all Caltrans manuals, policies, State Standard Plans and Specifications, Manual of Uniform Control Devices, Uniform Building Code, (Fire, Electrical), Americans with Disabilities Act (ADA), California Green Building Standards Code (Part 11, Title 24, California Code of Regulations), and as revised and amended by County ordinance.

3.0 TERM OF AGREEMENT

3.1 The initial term shall commence with the signing of this AGREEMENT through May 20, 2019.

3.2 CONTRACTOR shall commence negotiations for any desired fee changes a minimum of sixty (60) days prior to the expiration of this AGREEMENT in order to be considered.

3.2.1 Both parties shall agree upon changes to fees in writing.

3.3 County reserves the right to cancel this AGREEMENT, or any extension of this AGREEMENT, without cause, with a thirty (30) day written notice, or immediately with cause.

4.0 COMPENSATION AND PAYMENTS

- 4.1 It is mutually understood and agreed by both parties that CONTRACTOR shall be compensated under this AGREEMENT in accordance with the pricing sheet attached hereto (Attachment K). The total aggregate amount payable to the CONTRACTOR under this AGREEMENT shall not exceed the sum of \$2,500,000.
- 4.2 Prices shall remain firm for the initial term of this AGREEMENT. County does not guarantee any minimum or maximum amount of dollars to be spent under this AGREEMENT.
- 4.3 Any discount offered by the CONTRACTOR must allow for payment after receipt and acceptance of services, material or equipment and correct invoice, whichever is later. In no case will a discount be considered that requires payment in less than thirty (30) days.
- 4.4 CONTRACTOR shall levy no additional fees or surcharges of any kind during the term of this AGREEMENT without first obtaining approval from County in writing.
- 4.5 Tax:
- 4.5.1 Pricing as per this AGREEMENT is inclusive of all applicable taxes.
- 4.5.2 County is registered with the Internal Revenue Service, San Francisco office, and registration number 94-6000524. The County is exempt from Federal Transportation Tax; an exemption certificate is not required where shipping documents show County as consignee.

5.0 INVOICES AND PURCHASE ORDERS

- 5.1 Invoices for all services rendered under this AGREEMENT shall be billed directly to the Resource Management Agency at the following address:
- County of Monterey
Resource Management Agency (RMA) – Finance Division
1441 Schilling Place, South 2nd Floor
Salinas, California 93901-4527
- Any questions pertaining to invoices under this AGREEMENT should be directed to RMA Finance Division at (831) 755-4800.
- 5.2 CONTRACTOR shall reference RFQ #10456, Multi-Year Agreement (MYA) number and project name on all invoices submitted to County. CONTRACTOR shall submit such invoices periodically or at the completion of services, but in any event, not later than thirty (30) days after completion of services. The invoice shall set forth the amounts claimed by CONTRACTOR for the previous period, together with an itemized basis for the amounts claimed, and such other information pertinent to the invoice. County shall certify the invoice, either in the requested amount or in such other amount as County approves in conformity with this AGREEMENT, and shall promptly submit such invoice to County Auditor-Controller for payment. County Auditor-Controller shall pay the amount certified within thirty (30) days of receiving the certified invoice.

- 5.3 All County Purchase Orders issued for the AGREEMENT are valid only during the fiscal year in which they are issued (the fiscal year is defined as July 1 through June 30).
- 5.4 Unauthorized Surcharges or Fees: Invoices containing unauthorized surcharges or unauthorized fees of any kind shall be rejected by County. Surcharges and additional fees not included the AGREEMENT must be approved by County in writing via an Amendment.
- 5.5 In addition to any information and documentation otherwise required, invoices shall contain information and documentation satisfactory to County and Grantor (if project is grant funded) to facilitate expeditious reimbursement to County by Grantor for project expenses, and for Grantor project auditing purposes.

6.0 DESIGN PROFESSIONAL INDEMNIFICATION

- 6.1 For purposes of the following indemnification provisions ("Indemnification Agreement"), "design professional" has the same meaning as set forth in California Civil Code section 2782.8. If any term, provision or application of this Indemnification Agreement is found to be invalid, in violation of public policy or unenforceable to any extent, such finding shall not invalidate any other term or provision of this Indemnification Agreement and such other terms and provisions shall continue in full force and effect. If there is any conflict between the terms, provisions or application of this Indemnification Agreement and the provisions of California Civil Code Sections 2782 or 2782.8, the broadest indemnity protection for County under this Indemnity Agreement that is permitted by law shall be provided by CONTRACTOR.
- 6.2 Indemnification for Design Professional Services Claims:
CONTRACTOR shall indemnify, defend and hold harmless County, its governing board, directors, officers, employees, and agents against any claims that arise out of, or pertain to, or relate to the negligence, recklessness, or willful misconduct of CONTRACTOR, its employees, subcontractors, and agents in the performance of design professional services under this AGREEMENT, excepting only liability arising from the sole negligence, active negligence or willful misconduct of County, or defect in a design furnished by County, but in no event shall the amount of such CONTRACTOR's liability exceed such CONTRACTOR's proportionate percentage of fault as determined by a court, arbitrator or mediator, or as set out in a settlement agreement. In the event one (1) or more defendants to any action involving such claim or claims against COUNTY is unable to pay its share of defense costs due to bankruptcy or dissolution of the business, such CONTRACTOR shall meet and confer with the other parties to such action regarding unpaid defense costs.
- 6.3 Indemnification for All Other Claims or Loss:
For any claim, loss, injury, damage, expense or liability other than claims arising out of CONTRACTOR's performance of design professional services under this AGREEMENT, CONTRACTOR shall indemnify, defend and hold harmless County, its governing board, directors, officers, employees, and agents against any claim for loss, injury, damage, expense or liability resulting from or alleging injury to or death of any person or loss of use of or damage to

property, arising from or related to the performance of services under this AGREEMENT by CONTRACTOR, its employees, subcontractors or agents, excepting only liability arising from the sole negligence, active negligence or willful misconduct of County, or defect in a design furnished by County.

7.0 INSURANCE REQUIREMENTS

7.1 Evidence of Coverage:

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

7.1.2 This verification of coverage shall be sent to the County's Contracts/Purchasing Department, unless otherwise directed. CONTRACTOR shall not receive a "Notice to Proceed" with the work under this AGREEMENT until it has obtained all insurance required and such, insurance has been approved by County. This approval of insurance shall neither relieve nor decrease the liability of CONTRACTOR.

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

7.3 Insurance Coverage Requirements:

7.3.1 Without limiting CONTRACTOR's duty to indemnify, CONTRACTOR shall maintain in effect throughout the term of this AGREEMENT a policy or policies of insurance with the following minimum limits of liability:

7.3.1.1 Commercial general liability insurance, including but not limited to premises and operations, including coverage for Bodily Injury and Property Damage, Personal Injury, Contractual Liability, Broadform Property Damage, Independent Contractors, Products and Completed Operations, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.

7.3.2 Business automobile liability insurance, covering all motor vehicles, including owned, leased, non-owned, and hired vehicles, used in providing services under this AGREEMENT, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence

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property, arising from or related to the performance of services under this AGREEMENT by CONTRACTOR, its employees, subcontractors or agents, excepting only liability arising from the sole negligence, active negligence or willful misconduct of County, or defect in a design furnished by County.

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7.3.2 Business automobile liability insurance, covering all motor vehicles, including owned, leased, non-owned, and hired vehicles, used in providing services under this AGREEMENT, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence

- 7.3.3 Workers' Compensation Insurance, if CONTRACTOR employs others in the performance of this AGREEMENT, in accordance with California Labor Code section 3700 and with Employer's Liability limits not less than \$1,000,000 each person, \$1,000,000 each accident and \$1,000,000 each disease.
- 7.3.4 Professional liability insurance, if required for the professional services being provided, (e.g., those persons authorized by a license to engage in a business or profession regulated by the California Business and Professions Code), in the amount of not less than \$1,000,000 per claim and \$2,000,000 in the aggregate, to cover liability for malpractice or errors or omissions made in the course of rendering professional services. If professional liability insurance is written on a "claims-made" basis rather than an occurrence basis, CONTRACTOR shall, upon the expiration or earlier termination of this AGREEMENT, obtain extended reporting coverage ("tail coverage") with the same liability limits. Any such tail coverage shall continue for at least three (3) years following the expiration or earlier termination of this AGREEMENT.

7.4 Other Insurance Requirements:

- 7.4.1 All insurance required by this AGREEMENT shall be with a company acceptable to County and issued and executed by an admitted insurer authorized to transact Insurance business in the State of California. Unless otherwise specified by this AGREEMENT, all such insurance shall be written on an occurrence basis, or, if the policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of three (3) years following the date CONTRACTOR completes its performance of services under this AGREEMENT.
- 7.4.2 Each liability policy shall provide that County shall be given notice in writing at least thirty (30) days in advance of any endorsed reduction in coverage or limit, cancellation, or intended non-renewal thereof. Each policy shall provide coverage for CONTRACTOR and additional insureds with respect to claims arising from each subcontractor, if any, performing work under this AGREEMENT, or be accompanied by a certificate of insurance from each subcontractor showing each subcontractor has identical insurance coverage to the above requirements.
- 7.4.3 Commercial general liability and automobile liability policies shall provide an endorsement naming the County of Monterey, its officers, agents, and employees as Additional Insureds with respect to liability arising out of the CONTRACTOR'S work, including ongoing and completed operations, and shall further provide that such insurance is primary insurance to any insurance or self- insurance maintained by the County and that the insurance of the Additional Insureds shall not be called upon to contribute to a loss covered by the CONTRACTOR'S insurance. The required endorsement form for Commercial General Liability Additional Insured is ISO Form CG 20 10 11-85 or CG 20 10 10 01 in tandem with CG 20 37 10 01 (2000). The required endorsement form for Automobile Additional Insured endorsement is ISO Form CA 20 48 02 99.

- 7.4.4 Prior to the execution of this AGREEMENT by County, CONTRACTOR shall file certificates of insurance with County's Contract Administrator and County's Contracts/Purchasing Division, showing that CONTRACTOR has in effect the insurance required by this AGREEMENT. CONTRACTOR shall file a new or amended certificate of insurance within five (5) calendar days after any change is made in any insurance policy, which would alter the information on the certificate then on file. Acceptance or approval of insurance shall in no way modify or change the indemnification clause in this AGREEMENT, which shall continue in full force and effect.
- 7.4.5 CONTRACTOR shall at all times during the term of this AGREEMENT maintain in force the insurance coverage required under this AGREEMENT and shall send, without demand by County, annual certificates to County's Contract Administrator and County's Contracts/Purchasing Division. If the certificate is not received by the expiration date, County shall notify CONTRACTOR and CONTRACTOR shall have five (5) calendar days to send in the certificate, evidencing no lapse in coverage during the interim. Failure by CONTRACTOR to maintain such insurance is a default of this AGREEMENT, which entitles County, at its sole discretion, to terminate this AGREEMENT immediately.

8.0 RECORDS AND CONFIDENTIALITY

- 8.1 Confidentiality: CONTRACTOR and its officers, employees, agents, and subcontractors shall comply with any and all Federal, State, and local laws, which provide for the confidentiality of records and other information. CONTRACTOR shall not disclose any confidential records or other confidential information received from the County or prepared in connection with the performance of this AGREEMENT, unless County specifically permits CONTRACTOR to disclose such records or information. CONTRACTOR shall promptly transmit to County any and all requests for disclosure of any such confidential records or information. CONTRACTOR shall not use any confidential information gained by CONTRACTOR in the performance of this AGREEMENT except for the sole purpose of carrying out CONTRACTOR's obligations under this AGREEMENT.
- 8.2 County Records: When this AGREEMENT expires or terminates, CONTRACTOR shall return to County any County records which CONTRACTOR used or received from County to perform services under this AGREEMENT.
- 8.3 Maintenance of Records: CONTRACTOR shall prepare, maintain, and preserve all reports and records that may be required by Federal, State, and County rules and regulations related to services performed under this AGREEMENT. CONTRACTOR shall maintain such records for a period of at least three (3) years after receipt of final payment under this Agreement. If any litigation, claim, negotiation, audit exception, or other action relating to this AGREEMENT is pending at the end of the three (3) year period, the CONTRACTOR shall retain said records until such action is resolved.

- 8.4 Access to and Audit of Records: County shall have the right to examine, monitor and audit all records, documents, conditions, and activities of CONTRACTOR and its subcontractors related to services provided under this AGREEMENT. The parties to this AGREEMENT may be subject, at the request of County or as part of any audit of County, to the examination and audit of the State Auditor pertaining to matters connected with the performance of this AGREEMENT for a period of three (3) years after final payment under the AGREEMENT.
- 8.5 CONTRACTOR agrees that any information, whether proprietary or not, made known to or discovered by it during the performance of or in connection with this AGREEMENT for County will be kept confidential and not be disclosed to any other person. CONTRACTOR agrees to immediately notify County in accordance with the Notices Section of this AGREEMENT, if it is requested to disclose any information made known to or discovered by it during the performance of or in connection with this AGREEMENT. These conflict of interest and future service provisions and limitations shall remain fully effective five (5) years after termination of services to County hereunder.
- 8.6 Royalties and Inventions: County shall have a royalty-free, exclusive and irrevocable license to reproduce, publish, and use and authorize others to do so, all original computer programs, writings, sound recordings, pictorial reproductions, drawings, and other works of similar nature produced in the course of or under this AGREEMENT. CONTRACTOR shall not publish any such material without the prior written approval of County.

9.0 NON-DISCRIMINATION

- 9.1 During the performance of this AGREEMENT, CONTRACTOR, and its subcontractors, shall not unlawfully discriminate against any person because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, age (over 40), sex, or sexual orientation, either in CONTRACTOR's employment practices or in the furnishing of services to recipients. CONTRACTOR shall ensure that the evaluation and treatment of its employees and applicants for employment and all persons receiving and requesting services are free of such discrimination. CONTRACTOR and any subcontractor shall, in the performance of this AGREEMENT, fully comply with all Federal, State, and local laws and regulations, which prohibit discrimination. The provisions of services primarily or exclusively to such target population as may be designated in this AGREEMENT shall not be deemed to be prohibited discrimination.
- 9.2 The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, §12900, et seq., set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this AGREEMENT by reference and made a part hereof as if set forth in full.
- 9.3 CONTRACTOR shall include the non-discrimination and compliance provisions of the clause in all agreements with subcontractors to perform work under the AGREEMENT.

10.0 OVERRIDING CONTRACTOR PERFORMANCE REQUIREMENTS

- 10.1 Independent Contractor: CONTRACTOR shall be an independent contractor and shall not be an employee of Monterey County, nor immediate family of an employee of County. CONTRACTOR shall be responsible for all insurance (General Liability, Automobile, Workers' Compensation, unemployment, etc.,) and all payroll-related taxes. CONTRACTOR shall not be entitled to any employee benefits. CONTRACTOR shall control the manner and means of accomplishing the result contracted for herein.
- 10.2 Minimum Work Performance Percentage: CONTRACTOR shall perform with his/her/its own organization AGREEMENT work amounting to not less than fifty percent (50%) of the original total AGREEMENT amount, except that any designated 'Specialty Items' may be performed by subcontract and the amount of any such 'Specialty Items' so performed may be deducted from the original total AGREEMENT amount before computing the amount of work required to be performed by CONTRACTOR with his/her/its own organization or per a consortium.
- 10.3 Non-Assignment: CONTRACTOR shall not assign, sell, or otherwise transfer its interest or obligations in this AGREEMENT or the work required herein without the prior written consent of County. None of the services covered by this AGREEMENT shall be subcontracted without the prior written consent of County. Notwithstanding any such subcontract, CONTRACTOR shall continue to be liable for the performance of all requirements of this AGREEMENT.
- 10.4 Any subcontractor shall comply with all of County of Monterey requirements, including insurance and indemnification requirements as detailed in AGREEMENT.

11.0 CONFLICT OF INTEREST

- 11.1 CONTRACTOR covenants that it presently has no interest, and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of services required under this AGREEMENT. Without limitation, CONTRACTOR represents to and agrees with County that CONTRACTOR has no present, and will have no future, conflict of interest between providing County services hereunder and any other person or entity (including but not limited to any Federal or State environmental or regulatory agency) which has any interest adverse or potentially adverse to County, as determined in the reasonable judgment of the Board of Supervisors of County.

12.0 COMPLIANCE WITH APPLICABLE LAWS

- 12.1 CONTRACTOR shall keep itself informed of and in compliance with all Federal, State and local laws, ordinances, regulations, and orders, including but not limited to all State and Federal tax laws that may affect in any manner the Project or the performance of the Services or those engaged to perform services under this AGREEMENT. CONTRACTOR shall procure all permits and licenses, pay all charges and fees, and give all notices required by law in the performance of the Services.
- 12.2 CONTRACTOR shall report immediately to County's Contracts/Purchasing Officer, in writing, any discrepancy or inconsistency it discovers in the laws, ordinances, regulations, orders, and/or guidelines in relation to the Project of the performance of the Services.
- 12.3 All documentation prepared by CONTRACTOR shall provide for a completed project that conforms to all applicable codes, rules, regulations and guidelines that are in force at the time such documentation is prepared.
- 12.4 COMPLIANCE WITH TERMS OF STATE OR FEDERAL GRANT. If this Agreement has been or will be funded with monies received by the County pursuant to a contract with the State or Federal government in which the County is the grantee, CONTRACTOR will comply with all the provisions of said contract, to the extent applicable to CONTRACTOR as a subgrantee under said contract, and said provisions shall be deemed a part of this AGREEMENT, as though fully set forth herein. Upon request, County will deliver a copy of said contract to CONTRACTOR, at no cost to CONTRACTOR.

13.0 PREVAILING WAGE

- 13.1 CONTRACTOR shall comply with Section 1720, et. seq., of the Labor Code, regarding the general prevailing wage rates of per diem, holiday, and overtime wages for each craft, classification, or type of worker needed to execute the AGREEMENT where applicable.

14.0 DRUG FREE WORKPLACE

- 14.1 CONTRACTOR and CONTRACTOR'S employees shall comply with the County's policy of maintaining a drug free workplace. Neither CONTRACTOR nor CONTRACTOR'S employees shall unlawfully manufacture, distribute, dispense, possess or use controlled substances, as defined in 21 U.S. Code § 812, including, but not limited to, marijuana, heroin, cocaine, and amphetamines, at any County facility or work site. If CONTRACTOR or any employee of CONTRACTOR is convicted or pleads no contest to a criminal drug statute violation occurring at a County facility or work site, the CONTRACTOR shall, within five (5) days thereafter notify the head of the County department/agency for which the AGREEMENT services are performed. Violation of this provision shall constitute a material breach of this AGREEMENT.

15.0 TIME OF ESSENCE

- 15.1 Time is of the essence in respect to all provisions of this AGREEMENT that specify a time for performance; provided, however, that the foregoing shall not be construed to limit or deprive a party of the benefits of any grace or use period allowed in this AGREEMENT.

16.0 PERFORMANCE ASSURANCE AND WAIVER OF BREACH

- 16.1 Assurance of Performance: If at any time County believes CONTRACTOR may not be adequately performing its obligations under this AGREEMENT or that CONTRACTOR may fail to complete the Services as required by this AGREEMENT, County may request from CONTRACTOR prompt written assurances of performance and a written plan acceptable to County, to correct the observed deficiencies in CONTRACTOR's performance. CONTRACTOR shall provide such written assurances and written plan within ten (10) calendar days of its receipt of County's request and shall thereafter diligently commence and fully perform such written plan. CONTRACTOR acknowledges and agrees that any failure to provide such written assurances and written plan within the required time is a material breach under this AGREEMENT. If County accepts the plan it shall issue a signed waiver.

- 16.1.1 Waiver: No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this AGREEMENT shall be effective unless it is in writing and signed by the party waiving the breach, failure, right or remedy. No waiver of any breach, failure, right or remedy shall be deemed a waiver of any other breach, failure, right or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies.

17.0 TRAVEL REIMBURSEMENT

- 17.1 If travel expenses are to be reimbursed, they must be approved in writing in advance.
- 17.2 If County approves travel, lodging and meal reimbursement, CONTRACTOR shall receive compensation for travel expenses as per the "Monterey County Travel and Business Expense Reimbursement Policy". A copy of the policy is available online at: [http://www.co.monterey.ca.us/auditor/pdfs/County Travel Business Expense Policy 12-5-12.pdf](http://www.co.monterey.ca.us/auditor/pdfs/County%20Travel%20Business%20Expense%20Policy%2012-5-12.pdf). To receive reimbursement, CONTRACTOR must provide a detailed breakdown of authorized expenses, identifying what was expended and when.

18.0 EMERGENCY SITUATIONS

- 18.1 CONTRACTOR shall provide the name and contact information of a representative who shall be available twenty-four (24) hours a day, seven (7) days a week, in the event of an emergency. During the emergency, CONTRACTOR shall provide County with all available supplies, materials, equipment and/or services on a priority basis.
- 18.2 County expects emergency deliveries to occur within four (4) hours of order placement and may be required during evenings, weekends, and holidays. Time is of the essence for delivery during emergency situations. Delivery location(s) and estimated arrival will be mutually agreed upon, by County and CONTRACTOR, at time of order and will be determined based on need and existing conditions. It is understood that current conditions, such as power outages, road closures, and damages to CONTRACTOR's facility and/or equipment, will be taken into consideration.

19.0 NON-APPROPRIATIONS CLAUSE

- 19.1 Notwithstanding anything contained in this AGREEMENT to the contrary, if insufficient funds are appropriated, or funds are otherwise unavailable in the budget for County for any reason whatsoever in any fiscal year, for payments due under this AGREEMENT, County will immediately notify CONTRACTOR of such occurrence, and this AGREEMENT shall terminate after the last day during the fiscal year for which appropriations shall have been budgeted for County or are otherwise available for payments.

20.0 WARRANTY BY CONTRACTOR

- 20.1 CONTRACTOR shall perform all services and provide all drawing and documents in accordance with applicable codes and regulations, and shall be fully responsible for the content of all design documents prepared or provided under this AGREEMENT. Time is of the essence of this AGREEMENT.

21.0 NOTICES

- 21.1 Notices required to be given to the respective parties under this AGREEMENT shall be deemed given by any of the following means: (1) when personally delivered to County's Contract Administrator or to CONTRACTOR'S responsible officer; (2) when personally delivered to the party's principle place of business during normal business hours, by leaving notice with any person apparently in charge of the office and advising such person of the import and contents of the notice; (3) twenty-four (24) hours after the notice is transmitted by FAX machine to the other party, at the party's FAX number specified pursuant to this AGREEMENT, provided that the party giving notice by FAX must promptly confirm receipt of the FAX by telephone to the receiving party's office; or, (4) three (3) days after the notice is deposited in the U.S. mail with first class or better postage fully prepaid, addressed to the party as indicated below.

- 21.2 Notices mailed or faxed to the parties shall be addressed as follows:

TO COUNTY:

Donald D. Searle, Deputy Director of
Public Works, Parks and Facilities
County of Monterey, Resource Management Agency
1441 Schilling Place, South 2nd Floor
Salinas, California 93901-4527
Tel. No.: (831) 755-4831
FAX No.: (831) 755-4958
Email: searledd@co.monterey.ca.us

TO CONTRACTOR:

Lesley L. Miles, Principal
Weston Miles Architects, Inc.
17500 Depot Street, Suite 120
Morgan Hill, CA 95037
Tel.No. (408) 779-6686
FAX No. (408) 778-9417
Email: lesley@wmarchitects.com

22.0 LEGAL DISPUTES

- 22.1 CONTRACTOR agrees that this AGREEMENT and any dispute arising from the relationship between the parties to this AGREEMENT, shall be governed and interpreted by the laws of the State of California, excluding any laws that direct the application of another jurisdiction's laws.
- 22.2 Any dispute that arises under or relates to this AGREEMENT (whether contract, tort, or both) shall be resolved in the Superior Court of California in Monterey County, California.
- 22.3 CONTRACTOR shall continue to perform under this AGREEMENT during any dispute.
- 22.4 The parties agree to waive their separate rights to a trial by jury. This waiver means that the trial will be before a judge.

23.0 MISCELLANEOUS PROVISIONS

- 23.1 Amendment. This AGREEMENT may be amended or modified only by an instrument in writing signed by County and the CONTRACTOR.
- 23.2 CONTRACTOR. The term "CONTRACTOR" as used in this AGREEMENT includes CONTRACTOR's officers, agents, and employees acting on CONTRACTOR's behalf in the performance of this AGREEMENT.
- 23.3 Successors and Assigns. This AGREEMENT and the rights, privileges, duties, and obligations of County and CONTRACTOR under this AGREEMENT, to the extent assignable or delegable, shall be binding upon and inure to the benefit of the parties and their respective successors, permitted assigns, and heirs.
- 23.4 Headings. The headings are for convenience only and shall not be used to interpret the terms of this AGREEMENT.

- 23.5 Non-exclusive Agreement. This AGREEMENT is non-exclusive and both County and CONTRACTOR expressly reserve the right to contract with other entities for the same or similar services.
- 23.6 Construction of Agreement. County and CONTRACTOR agree that each party has fully participated in the review and revision of this AGREEMENT and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this AGREEMENT or any amendment to this AGREEMENT.
- 23.7 Counterparts. This AGREEMENT may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one (1) and the same AGREEMENT.
- 23.8 Authority. Any individual executing this AGREEMENT on behalf of County or the CONTRACTOR represents and warrants hereby that he or she has the requisite authority to enter into this AGREEMENT on behalf of such party and bind the party to the terms and conditions of this AGREEMENT.
- 23.9 Integration. This AGREEMENT, including the exhibits, represent the entire AGREEMENT between County and the CONTRACTOR with respect to the subject matter of this AGREEMENT and shall supersede all prior negotiations, representations, or agreements, either written or oral, between County and CONTRACTOR as of the effective date of this AGREEMENT, which is the date that County signs the AGREEMENT.
- 23.10 Interpretation of Conflicting Provisions. In the event of any conflict or inconsistency between the provisions of this AGREEMENT and the Provisions of any exhibit or other attachment to this AGREEMENT, the provisions of this AGREEMENT shall prevail and control.

IN WITNESS WHEREOF, County and CONTRACTOR have executed this AGREEMENT as of the last date opposite the respective signatures below:

COUNTY OF MONTEREY

CONTRACTOR

Weston Miles Architects, Inc.

Contracts/Purchasing Officer

By:

(Signature of Chair, President, or Vice-President)*

Dated:

Lesley L Miles, President
Printed Name and Title

Approved as to Fiscal Provisions:

Dated:

3/26/18

Deputy Auditor/Controller

By:

(Signature of Secretary, Asst. Secretary, CFO, Treasurer or Asst. Treasurer)*

Dated:

4-2-18

Approved as to Liability Provisions:

CHARLES D. WESTON DEC.
Printed Name and Title

Risk Management

Dated:

3/26/18

Dated:

4/3/18

Approved as to Form and Legality:

Deputy County Counsel

Dated:

4-3-2018

County Board of Supervisors' Agreement Number: _____.

*INSTRUCTIONS: If CONTRACTOR is a corporation, including non-profit corporations, the full legal name of the corporation shall be set forth above together with the signatures of two (2) specified officers per California Corporations Code Section 313. If CONTRACTOR is a Limited Liability Corporation (LLC), the full legal name of the LLC shall be set forth above together with the signatures of two (2) managing members. If CONTRACTOR is a partnership, the full legal name of the partnership shall be set forth above together with the signature of a partner who has authority to execute this Agreement on behalf of the partnership. If CONTRACTOR is contracting in an individual capacity, the individual shall set forth the name of the business, if any, and shall personally sign the Agreement or Amendment to said Agreement.

IN WITNESS WHEREOF, County and CONTRACTOR have executed this AGREEMENT as of the last date opposite the respective signatures below:

COUNTY OF MONTEREY

CONTRACTOR

Weston Miles Architects, Inc.

Contracts/Purchasing Officer

By:

(Signature of Chair, President, or Vice-President)*

Dated:

LESLAY L. MILES, PRESIDENT
Printed Name and Title

Approved as to Fiscal Provisions:

Dated:

3/26/18

Deputy Auditor/Controller

By:

(Signature of Secretary, Asst. Secretary, CFO, Treasurer or Asst. Treasurer)*

Dated:

Approved as to Liability Provisions:

CHARLES D. WESTON SEC.
Printed Name and Title

Risk Management

Dated:

3/26/18

Dated:

Approved as to Form and Legality:

Deputy County Counsel

Dated:

County Board of Supervisors' Agreement Number: _____.

*INSTRUCTIONS: If CONTRACTOR is a corporation, including non-profit corporations, the full legal name of the corporation shall be set forth above together with the signatures of two (2) specified officers per California Corporations Code Section 313. If CONTRACTOR is a Limited Liability Corporation (LLC), the full legal name of the LLC shall be set forth above together with the signatures of two (2) managing members. If CONTRACTOR is a partnership, the full legal name of the partnership shall be set forth above together with the signature of a partner who has authority to execute this Agreement on behalf of the partnership. If CONTRACTOR is contracting in an individual capacity, the individual shall set forth the name of the business, if any, and shall personally sign the Agreement or Amendment to said Agreement.

Attachment K: Fee Schedule

The undersigned, having read and understood all proposal information, hereby submits hourly rates. It is understood that the basic design of each particular type of facility can be duplicated as the situation permits. It is also understood that the Fee Schedule will be used by the County as a criteria to select the firm(s) for possible interviews by the selection Committee, but that a final fee may be negotiated with the qualified firm(s) for the required services.

Position/Title	Hourly Rate	
	2017-2018 (July 1 – June 30)	2018-2019 (July 1 – June 30)
Architect Designer III	\$85.00	\$90.00
Architect	\$100.00	\$105.00
Project Architect	\$120.00	\$125.00
Project Manager	\$140.00	\$150.00
Principal	\$185.00	\$195.00
Clerical	\$60.00	\$65.00

Reimbursable Items to be Billed	Estimated Cost Bills	
	Total Cost (if applicable at the time of RFQ)	% of Markup Calculated
Printing and Plotting	Actual Cost	10%
Mileage	Standard IRS Rate	0%
All other reimbursable expenses	Actual Cost	10%