

**AGREEMENT WITH ARCPATH PROJECT DELIVERY, INC.
FOR PROFESSIONAL CONSULTATION SERVICES
FOR
PROGRAM MANAGEMENT PROFESSIONAL SERVICES**

This Agreement, made and entered into this day of _____, by and between the **CITY OF SAN MATEO**, a municipal corporation existing under the laws of the State of California ("CITY"), and **ARCPATH PROJECT DELIVERY, INC.**, a Corporation, ("CONSULTANT"), whose address is 580 Second Street, Suite 260, Oakland, CA 94607.

RECITALS:

A. CITY desires certain program management consulting services hereinafter described.

B. CITY desires to engage CONSULTANT to provide these program management consulting services by reason of its qualifications and experience for performing such services and CONSULTANT has offered to provide the required services on the terms and in the manner set forth herein.

NOW, THEREFORE, IT IS AGREED as follows:

SECTION 1 - SCOPE OF SERVICES

The scope of services to be performed by CONSULTANT under this Agreement is as described in Exhibit A to this Agreement, attached and incorporated by reference.

SECTION 2 - DUTIES OF CONSULTANT

CONSULTANT shall be responsible for the professional quality, technical accuracy and coordination of all work furnished by CONSULTANT under this Agreement. CONSULTANT shall, without additional compensation, correct or revise any errors or deficiencies in its work.

CONSULTANT represents that it is qualified to furnish the services described under this Agreement.

CONSULTANT shall be responsible for employing or engaging all persons necessary to perform the services of CONSULTANT.

CONSULTANT agrees to comply with the City's minimum wage ordinance as codified in Municipal Code Chapter 5.92, which differs from the state minimum wage and includes a Consumer Price Index escalator.

SECTION 3 - DUTIES OF CITY

CITY shall provide pertinent information regarding its requirements for the project.

CITY shall examine documents submitted by CONSULTANT and shall render decisions pertaining thereto promptly, to avoid unreasonable delay in the progress of CONSULTANT's work.

SECTION 4 - TERM

The services to be performed under this Agreement shall commence on July 1, 2024 and be completed on or about June 30, 2025.

SECTION 5 - PAYMENT

Payment shall be made by CITY only for services rendered and upon submission of a payment request upon completion and CITY approval of the work performed. In consideration for the full performance of the services set forth in Exhibit A, CITY agrees to pay CONSULTANT a fee in an amount not to exceed \$150,000, pursuant to rates specified in Exhibit B.

SECTION 6 - TERMINATION

Without limitation to such rights or remedies as CITY shall otherwise have by law, CITY shall have the right to terminate this Agreement or suspend work on the Project for any reason, upon ten (10) days' written notice to CONSULTANT. CONSULTANT agrees to cease all work under this Agreement upon receipt of said written notice.

Upon termination and upon CITY's payment of the amount required to be paid, documents become the property of CITY, and CONSULTANT shall transfer them to CITY upon request without additional compensation.

SECTION 7 - OWNERSHIP OF DOCUMENTS

All documents prepared by CONSULTANT in the performance of this Agreement, although instruments of professional service, are and shall be the property of CITY, whether the project for which they are made is executed or not.

SECTION 8 - CONFIDENTIALITY

All reports and documents prepared by CONSULTANT in connection with the performance of this Agreement are confidential until released by CITY to the public. CONSULTANT shall not make any such documents or information available to any individual or organization not employed by CONSULTANT or CITY without the written consent of CITY before any such release.

SECTION 9 - INTEREST OF CONSULTANT

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 under this Agreement.

SECTION 10 - CONSULTANT'S STATUS

It is expressly agreed that in the performance of the professional services required under this Agreement, CONSULTANT shall at all times be considered an independent contractor as defined in Labor Code Section 3353, under control of the CITY as to the result of the work but not the means by which the result is accomplished. Nothing herein shall be construed to make CONSULTANT an agent or employee of CITY while providing services under this Agreement.

SECTION 11 - INDEMNITY

CONSULTANT agrees to hold harmless and indemnify CITY, its elected and appointed officials, employees, and agents from and against any and all claims, loss, liability, damage, and expense arising out of CONSULTANT's performance of this Agreement, except those claims arising out of CITY's sole negligence or willful misconduct. CONSULTANT agrees to defend City, its elected and appointed officials, employees, and agents against any such claims. The CONSULTANT'S duty to indemnify shall survive expiration or early termination of this Agreement.

SECTION 12 - INSURANCE

CONSULTANT shall procure and maintain for the duration of the contract and three years thereafter (five years for building or major improvements) the insurance specified in Exhibit C to this Agreement.

SECTION 13 - NON-ASSIGNABILITY

Both parties hereto recognize that this Agreement is for the personal services of CONSULTANT and cannot be transferred, assigned, or subcontracted by CONSULTANT without the prior written consent of CITY.

SECTION 14 - RELIANCE UPON PROFESSIONAL SKILL OF CONSULTANT

It is mutually understood and agreed by and between the parties hereto that CONSULTANT is skilled in the professional calling necessary to perform the work agreed to be done under this Agreement and that CITY relies upon the skill of CONSULTANT to do and perform the work in the most skillful manner, and CONSULTANT agrees to thus perform the work. The acceptance of CONSULTANT's work by CITY does not operate as a release of CONSULTANT from said obligation.

SECTION 15 - WAIVERS

The waiver by either party of any breach or violation of any term, covenant, or condition of this Agreement or of any provisions of any ordinance or law shall not be deemed to be a waiver of such term, covenant, condition, ordinance or law or of any subsequent breach or violation of the same or of any other term, condition, ordinance, or law. The subsequent acceptance by either party of any fee or other money which may become due hereunder shall not be deemed to be a waiver of any preceding breach or violation by the other party of any term, covenant, or condition of this Agreement or of any applicable law or ordinance.

SECTION 16 - SEVERABILITY

If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.

SECTION 17 - COSTS AND ATTORNEY FEES

Attorney fees in total amount not exceeding \$5000, shall be recoverable as costs (by the filing of a cost bill) by the prevailing party in any action or actions to enforce the provisions of this Agreement. The above \$5000 limit is the total of attorney fees recoverable whether in the trial court, appellate court, or otherwise, and regardless of the number of attorneys, trials, appeals, or actions. It is the intent of this Agreement that neither party shall have to pay the other more than \$5000 for attorney fees arising out of an action, or actions to enforce the provisions of this Agreement.

SECTION 18 - NON-DISCRIMINATION

CONSULTANT warrants that it is an Equal Opportunity Employer and shall comply with applicable regulations governing equal employment opportunity. Neither CONSULTANT nor any of its subcontractors shall discriminate in the employment of any person because of race, color, national origin, ancestry, physical handicap, medical condition, marital status, sex, or age, unless based upon a bona fide occupational qualification pursuant to the California Fair Employment and Housing Act.

SECTION 19 - MEDIATION

Should any dispute arise out of this Agreement, any party may request that it be submitted to mediation. The parties shall meet in mediation within 30 days of a request. The mediator shall be agreed to by the mediating parties; in the absence of an agreement, the parties shall each submit one name from mediators listed by either the American Arbitration Association, the State Mediation and Conciliation Service, or other agreed-upon service. The mediator shall be selected by a blind draw.

The cost of mediation shall be borne equally by the parties. Neither party shall be deemed the prevailing party. No party shall be permitted to file a legal action without first meeting in mediation and making a good faith attempt to reach a mediated settlement. The mediation process, once commenced by a meeting with the mediator, shall last until agreement is reached by the parties but not more than 60 days, unless the maximum time is extended by the parties.

SECTION 20 - LITIGATION

CONSULTANT shall testify at CITY'S request if litigation is brought against CITY in connection with CONSULTANT's services under this Agreement. Unless the action is brought by CONSULTANT, or is based upon CONSULTANT's wrongdoing, CITY shall compensate CONSULTANT for preparation for testimony, testimony, and travel at CONSULTANT's standard hourly rates at the time of actual testimony.

SECTION 21 - NOTICES

All notices hereunder shall be given in writing and mailed, postage prepaid, addressed as follows:

To CITY:	Steve Wu, Project Manager City of San Mateo 330 W. 20 th Avenue San Mateo, CA 94403
To CONSULTANT:	ArcPath Project Delivery, Inc. Attn: Fred Ponce, Principal 580 Second Street, Suite 260 Oakland, CA 94607

SECTION 22 - AGREEMENT CONTAINS ALL UNDERSTANDINGS; AMENDMENT

This document represents the entire and integrated agreement between CITY and CONSULTANT and supersedes all prior negotiations, representations, and agreements, either written or oral.

This document may be amended only by written instrument, signed by both CITY and CONSULTANT.

SECTION 23 - AUTHORITY TO ENTER INTO AGREEMENT

CONSULTANT has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and to bind each respective party.

SECTION 24 - GOVERNING LAW AND VENUE

This Agreement shall be governed by the laws of the State of California and, in the event of litigation, venue will be in the County of San Mateo.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, CITY OF SAN MATEO and ARCPATH PROJECT DELIVERY, INC.
have executed this Agreement the day and year first above written.

CITY OF SAN MATEO

CONSULTANT

Matt Fabry
Public Works Director

Date

Fred Ponce
Principal

Attachments:

Exhibit A: Scope of Services
Exhibit B: Fee Schedule
Exhibit C: Insurance Requirements

EXHIBIT A

SCOPE OF SERVICES

Understanding of the Projects

The City of San Mateo Public Works Department has been granted funding for various projects throughout the city. Due to a shortfall of internal resources, the department has been allowed to use the services of a third-party consultant.

ArcPath Project Delivery, Inc. has been requested to assist with the programming and management of the design, bidding, and construction of these projects. The projects will generally be classified into one of two categories:

- Job Order Contracting Method: ArcPath provides project oversight, coordination with Construction Procurement Services (Gordian), and Design Development / Construction Document level drawings with specifications to clarify scopes for pricing. Projects of this type may or may not be subject to Building Permits.
- Design-Bid-Build Method: ArcPath provides project oversight and overall coordination, but the complexity of the project requires the services of a separate professional design team.

General Scope and Intent of the Proposal

The Scope of Services for owner representation and professional design services performed by ArcPath Project Delivery is outlined as follows:

Various Capital Improvement Projects

- Review the general scope of an individual Capital Improvement Project to be implemented with Public Works Director, Deputy Director, and Facilities Project Manager.
- Conduct or participate in meetings with users and stakeholders to review overall scope.
- Determine appropriate tasks required to deliver project.
- Develop and implement necessary communication tools such as scoping documents, schedules, drawing vignettes or sketches and budgets.
- Information from scoping documents and sketches is to be used for budget preparation.
- Communicate with facility staff or Construction Procurement Service representatives to develop a Work Plan and Bid/Cost Package.
- Coordinate contractor joint scope meetings to review project requirements, identify key details to be included in cost estimation phase.
- Identify potential cost savings measures with contractor during estimation phase.
- Develop construction documents suitable for pricing and permitting.
- Review design with Plan Check staff, Building Inspection, or other appropriate City/County personnel to obtain required permits.
- It is assumed that construction documents submitted for Building or Health Department review will either not require "wet seal and signed" documents, or the documents will be signed by a city staff member acting in the capacity of Engineer of Record.

Parallel Tasks to be Completed with Work Plan Development / Staff Disruption Plan

- As Contractor Joint Scope Meetings are conducted, provide an analysis to determine how facilities and staff will be affected by construction work.
- Conduct meetings with Department supervisor(s) to review extent of staff disruption.
- Determine extent of construction interference on staff including but not limited to: Workplace environment relocations; IT/Communications – repositioning of computers, phones; provision of temporary facilities needed for staff to continue performing assigned tasks.
- When disruption extent is known, identify temporary facilities for relocation of staff.
- Develop scope of work for temporary facilities.
- Develop proposed construction schedule with Contractor.
- Review relocation plans and schedule with department staff and secure approval.

Final Pricing, Contract and Construction Phase

- Define full work scope and review with Construction Procurement Service (Gordian).
- Prepare comprehensive cost proposal in collaboration with Gordian and present to appropriate City Departments and staff for review and approval.
- Upon receiving approval, coordinate Work Order with Public Works and Facilities staff for selected Contractor.
- Distribute disruption plan for all City staff affected by construction work.
- Execute plan for temporary relocations as designed.
- If required, collaborate with IT Department for computer and communications relocations.
- Coordinate design reviews and field inspections directly with Inspection Department staff.

The following tasks and site reviews with Contractors may or may not be performed by others:

- When advance preparation work is completed, execute relocation of staff to temporary facilities.
- Commence work on main project with Contractor, monitor progress through site meetings and communications as needed to maintain updates.
- Review Change Orders submitted by Contractor; provide recommendation/rejection to City staff for official response; coordinate adjustments to progress billings with Contractor.
- Complete the construction project, follow through with Contractor on all closeout procedures.
- Upon completion of the renovation, coordinate the return of staff to reconstructed facilities.
- Upon vacating the temporary facilities, return the area to previous conditions, or as directed.

Possible Various City Hall Renovation Projects

Proposed tasks will generally include the scope of services as listed above, except in addition:

- Collaborate with the staff of the selected design team (ELS) to review the project program.
- Maintain oversight of construction document production.
- Provide design team with Owner based information as requested, including but not limited to: Existing fixture/furniture specifications, dimensions, special requirements.
- Act as liaison between design team, City departments, users, Public Works and Facilities managers, and Construction Procurement Service.

General Intent of the Scope of Services

Over the course of the work, tasks will be needed that are of an unknown quantity and duration, which may not be fully identified in the Scope of Services listed here.

The intent is for the Program Manager Consultant to provide comprehensive project management services as needed and to identify all tasks required to complete the designated project.

Due to the nature of the work, involvement and tasks can often change over the course of the project. Tasks generally remain within the parameters of the Scope of Services but depending on project needs the Program Manager Consultant will often perform additional services that were

not anticipated at inception of the contract. Other than what is mutually agreed as excluded, these additional tasks will be accommodated as reasonably possible within the requested fee.

EXHIBIT B

FEE SCHEDULE

Hourly rates for ArcPATH Project Delivery are \$195/hour for professional services staff and \$75/hour for administrative tasks. Reimbursable expenses would include items such as reproduction of construction documents and specifications for plan check and Building Department approval; delivery charges or other project related items requested by staff of the City of San Mateo. Travel mileage to and from the City of San Mateo project sites is not considered reimbursable.

EXHIBIT C

INSURANCE REQUIREMENTS

MINIMUM SCOPE OF INSURANCE

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office (ISO) Form CG 00 01 12 07 covering CGL on an "occurrence" basis, including products-completed operations, personal & advertising injury, with limits no less than **\$2,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. **Automobile Liability:** ISO Form Number CA 00 01 covering any auto (Code 1), or if CONSULTANT has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than **\$1,000,000** per accident for bodily injury and property damage.
3. **Workers' Compensation:** as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than **\$1,000,000** per accident for bodily injury or disease.
4. **Professional Liability (Errors and Omissions):** Insurance appropriate to the CONSULTANT's profession, with limit no less than **\$1,000,000** per occurrence or claim, **\$2,000,000** aggregate

If the CONSULTANT maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the CONSULTANT.

Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

Additional Insured Status

The City, its elected and appointed officials, employees, and agents are to be covered as insureds on the auto policy for liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the CONSULTANT; and on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the CONSULTANT including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the CONSULTANT's insurance (at least as broad as ISO Form CG 20 10, 11 85 or both CG 20 10 and CG 20 37 forms if later revisions used).

Primary Coverage

For any claims related to this contract, the **CONSULTANT's insurance coverage shall be primary** insurance as respects the City, its elected and appointed officials, employees, and agents. Any insurance or self-insurance maintained by the City, its elected and appointed officials, employees, or agents shall be excess of the CONSULTANT's insurance and shall not contribute with it.

Notice of Cancellation

The contractor shall immediately notify the City when it has notice or receives notification that any insurance coverage is subject to cancellation, or is in fact cancelled, lapsed, or otherwise unavailable.

Waiver of Subrogation

CONSULTANT hereby grants to City a waiver of any right to subrogation which any insurer of said CONSULTANT may acquire against the City by virtue of the payment of any loss under such insurance. CONSULTANT agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the City. The City may require the CONSULTANT to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City.

Verification of Coverage

CONSULTANT shall furnish the City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the CONSULTANT's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.