

**AGREEMENT WITH MCGINNIS CHEN ASSOCIATES, INC.
FOR DESIGN PROFESSIONAL SERVICES
FOR
POLICE DEPARTMENT ROOF IMPROVEMENTS PROJECT**

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 **MCGINNIS CHEN ASSOCIATES, INC.**, a Corporation (“CONSULTANT”), whose address is 1019 Mission Street, San Francisco, CA 94103:

RECITALS:

- A. CITY desires certain design consulting services hereinafter described.
- B. CITY desires to engage CONSULTANT to provide these design 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 April 1, 2023 and be completed on December 31, 2024.

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 \$92,500.

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 B 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. 20th Avenue
San Mateo, CA 94403

To CONSULTANT: McGinnis Chen Associates, Inc.
Attn: Jeff Chen, Project Manager
1019 Mission Street
San Francisco, CA 94103

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 and McGinnis Chen Associates, Inc. have executed this Agreement the day and year first above written.

CITY OF SAN MATEO

CONSULTANT

Azalea Mitch
Public Works Director

Date

Yi-tso Jeff Chen 3/16/2023

Yi-tso Jeff Chen
Its Authorized Agent
President

Date

If a Corporation, can be either 1) President or 2) Vice President plus an additional corporate officer (i.e., Secretary, Treasurer) who shall sign below.

APPROVED AS TO FORM

ADDITIONAL CORPORATE OFFICER
(if necessary per the above)

Linh Nguyen
Assistant City Attorney

Date

Date

Attachments:

- Exhibit A: Scope of Services
- Exhibit B: Insurance Requirements

EXHIBIT A

SCOPE OF SERVICES

Signing In Process

PHASE 1.0 – PROJECT INITIATION

With the Client's authorization to proceed with the Project and our proposal is approved, the following tasks are performed during the Project Initiation Phase:

- A. Coordination to finalize Professional Services Contract.
- B. Conduct internal kick-off meeting with in-house team members to coordinate Project scope and Project Schedule.
- C. Set-up Project files (hardcopies and electronic records). Conduct necessary administrative and accounting tasks.
- D. Review available documents pertinent to the building components and systems related to the current scope of work; including drawings, specifications, prior reports and/or maintenance records.

PHASE 2.0 – INVESTIGATION AND EVALUATION

MCA will survey the existing waterproofing conditions at the building components noted above. The investigative services will include the following tasks:

- A. Discuss the overall Project with the Client, including the criteria for repair of the identified problem conditions.
- B. Review documents regarding leaks including previous investigation report and associated files, original architectural drawings, drawings from remodels such as the set produced for electrical charging stations, or other remedial work that have been performed.
- C. Survey components of the roof drain and gutter systems, roofing, wall assemblies at windows, below parapets, around gutter downspouts to identify and document existing conditions. Record any existing conditions that in MCA's opinion could affect immediate or long-term design and performance, including surface and perimeter conditions and previous water intrusion or deferred maintenance items. MCA estimates that one (1) site visit will be required for the exterior survey.
- D. Perform exploratory field testing and investigation at gutter downspouts and cement plaster soffits at the South Elevations, roof, walls, cement plaster soffits at West Elevation to verify and document existing problematic conditions that have lead to the water intrusion issues, and to record any existing conditions that may facilitate the remedial design process going forward. MCA estimates that three (3) days of onsite exploratory field testing and investigation will be required. MCA's investigation will include the following:
 - a. Isolation water testing at representative gutter downspout assembly – including exploratory demolition of interior finishes where leak damage is observed.
 - b. Exploratory demolition of gutter downspout assembly included but not limited to boxes around downspouts, adjacent walls and soffits.
 - c. Exploratory demolition of roofing and parapet assemblies, with water testing to replicate and document path of water.

Note: The services of a remedial Contractor or capable General Contractor will be required to assist with the exploratory investigation and water testing. The Contractor will also be

responsible for the reinstallation and replacement of the downspout and wall assemblies, soffits, roof assemblies, interior finishes and other necessary repairs as part of MCA's investigation. Additional fees associated with their services should be anticipated and are not included in our professional fees. MCA recommends that the Client contract directly with a local Contractor

- E. If necessary, recommend field tests and/or laboratory tests to be conducted by outside Consultants.
- F. Based on the results of the Investigation, MCA will provide a written report that includes the following:
- Methodology of evaluation.
 - Nature and extent of problem conditions that may impact or limit solutions for waterproofing design.
 - Conclusions and recommendations for repairs.
 - Preliminary estimate for budgetary planning.

Please note that estimates are preliminary and are for budgetary planning only. The current construction market is highly volatile. MCA's estimates are based on past experience and may not reflect the most recent changes in the market.

- G. Attend one (1) meeting with the Client to discuss MCA's repair recommendations and report findings.

PHASE 3.0 – REMEDIAL DESIGN DEVELOPMENT

Based on MCA's survey findings and preliminary scope of repairs approved by the Client at the end of Phase 2.0, MCA will prepare a preliminary remedial design for the gutter assembly, parapets, walls and roof repairs elements. The goals of Remedial Design Development are:

- Establish the scope of remedial construction based on available budget.
- Explore possible remedial alternatives.

The following descriptions outline the Remedial Design Development services to be provided:

- A. Develop typical and most pertinent details for installation of new solar panels, the gutter assembly, parapets, walls and roof repairs with focus on establishing sufficient details. MCA assumes approximately twelve (12) details total to be developed in this Phase. Submit DD drawings at 75% completion for the Client's review.

Note: MCA expects a set of architectural or as-built record set drawings to be available for our reference and/or to be used as background drawings. If the original drawings are not available, additional fees may be necessary to generate the minimum information needed to produce the remedial construction drawings.

- B. Produce and provide technical outline specifications for wall and roofing systems, as necessary, including the scope, standards and frequency of required testing and inspections by independent agencies. Submit DD specifications at Project milestones. MCA assumes up to three (3) total technical sections will be required relating to Division 07.
- C. Attend one (1) meeting. MCA will meet with the Client to review the recommended repair scope.

PHASE 4.0 – CONSTRUCTION DOCUMENTS

Remedial construction documents will consist of technical drawings, specifications and other necessary documents to the extent outlined below, suitable for soliciting competitive bids from prospective Contractors.

- A. Produce and provide technical working drawings outlining waterproofing requirements of the Project including plans, elevations, sections, and details. Submit CD drawings at 85% and 100% completion for the Client's review. MCA assumes two (2) sheets of reference drawings and up to twenty-four (24) details for the CD Phase.
- B. Attend coordination meetings with the Client and/or relevant Consultants to discuss the pertinent impact of podium waterproofing systems and assemblies on other team members' design elements. MCA anticipates attending one (1) meeting during the Remedial Construction Document Phase.

PHASE 5.0 – BID PHASE

MCA will make recommendations for a select bidders' list and provide Phase services as follows:

- A. Coordinate with potential Bidders for pre-bid conference. Coordinate with Solar vendors.
- B. Perform one (1) pre-bid walkthrough of the site with the Client and potential Bidders to review the scope of work and Project requirements.
- C. Answer Bidders' inquiries regarding the scope of work and issue addenda as necessary.
- D. Receive and evaluate bids.
- E. If necessary, perform one (1) round of bid interviews with Bidders to review the Project scope, clarify any questions related to their submitted bids and discuss potential project unknowns.
- F. Make recommendation to Owner for award of construction contact to the successful Bidder.
- G. Assistance in interpretation of the construction contract. Owner should consult with their Attorneys for review and execution of the Contract.

The estimated fee for this Phase is for one (1) bid cycle only. *Any additional scope of Bid Services will require a separate authorization, and will be billed as an Additional Service.*

PHASE 6.0 – CONSTRUCTION CONTRACT ADMINISTRATION

MCA will observe the Project closely at the start of the remedial work to establish the required levels of workmanship. Where appropriate, mock-up and water tests will be conducted at the beginning of the construction work. Once the procedure is established, MCA will visit the site periodically to observe and report on the work. The Client understands MCA is not providing full time observation. The execution of the work is ultimately the Contractor's responsibility.

- A. Attend one (1) CA coordination conference with the Contractor, Subcontractors, and other entities.
- B. Review and comment on product submittals. Evaluate product substitutions for conformance with Contract Documents. MCA estimates up to five (5) submittals and up to two (2) reviews per submittal. *Additional reviews will be billed on an hourly basis in accordance with our attached Professional Fee Schedule.*

- C. During excavation, conditions not conforming to drawings will be revealed. MCA will provide resolutions through the Requests for Information (RFI) process. Review RFI as they relate to waterproofing and the scope of work. MCA estimates up to ten (10) RFI. *Additional reviews will be billed on an hourly basis, in accordance with our attached Professional Fee Schedule.*
- D. Provide periodic field observations to observe the work in progress. A field report will be issued, inclusive of written narrative and photographs of each procedure observed. MCA estimates up to ten (10) site visits, averaging six (6) to eight (8) hours each, including field report writing, management review, and administrative processing time. *Additional site visits will be billed on an hourly basis, in accordance with the attached Professional Fee Schedule.*
- E. Provide Project closeout services, such as punchlisting the Project and gathering record documents and warranties for the remedial work as related to MCA's services.

PROFESSIONAL COMPENSATION

Compensation for services provided under this Letter Agreement will be billed monthly. Lump sums will be billed as a percentage of completion of the work. Services on an hourly not-to-exceed basis will be billed in accordance with the attached Professional Fee Schedule. When time for services or travel exceeds regular daily work hours to meet Client imposed schedules, the rates will be charged at 1.5 times our hourly rates. Saturday, Sunday, or holiday fees will be charged at two times our hourly rates.

The proposed amount is an estimate only. Due to the unique nature of the services, MCA cannot guarantee or warranty that the fee for services will not exceed this amount. MCA will not exceed the proposed amount without authorization by the Client.

Reimbursable expenses are not included in our professional fees, and will be billed according to the attached Professional Fee Schedule. Our reimbursable expenses are typically in the range of 3% to 5% of our professional fees. The services of any professional Sub-Consultants, when approved by the Client and retained by MCA, are not included in MCA's fee, and will be billed according to the attached Professional Fee Schedule.

MCA'S PROFESSIONAL FEES			
Phase	Services	Fee Type	Amount
0.0	Proposal		Waived
1.0	Project Initiation	(Lump Sum)	\$1,500
2.0	Investigation and Evaluation	(Estimated Hourly NTE)	\$13,500
3.0	Remedial and Solar Panel Design	(Lump Sum)	\$12,500
4.0	Construction Documents	(Lump Sum)	\$22,000
5.0	Bidding	(Estimated Hourly NTE)	\$7,000
6.0	Construction Contract Administration	(Estimated Hourly NTE)	\$36,000
ESTIMATED PROFESSIONAL FEES			\$92,500

EXHIBIT B

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

Each insurance policy required above shall provide that **coverage shall not be canceled, except after thirty (30) days' prior written notice** (10 days for non-payment) has been given to the City.

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.