

PO# 4300009025

**AMENDMENT No. 1**  
**TO**  
**PROFESSIONAL SERVICES AGREEMENT**  
**BETWEEN THE COUNTY OF SANTA CLARA AND VFA, INC. FOR ARCHITECTURAL -**  
**ENGINEERING FACILITIES CONDITION ASSESSMENT SERVICES FOR VARIOUS COUNTY**  
**FACILITIES**

This Amendment No.1 (the "Amendment") is entered into by and between the County of Santa Clara, a political subdivision of the State of California ("County" or "Owner"), and VFA Inc., with its principal place of business located at 266 Summer Street, Boston, MA 02210 ("Consultant"), and amends that certain Professional Services Agreement originally entered into by and between the Parties on May 24, 2011 as previously amended ("PSA"), for Consultant to provide architectural - engineering facilities condition assessment services for various county facilities. County and Consultant are each a "Party" and collectively the "Parties" to this Amendment.

**RECITALS**

**WHEREAS**, pursuant to the Board-approved delegation of authority granted to the Director of Facilities and Fleet Department, or designee, Owner desires to amend the PSA to add a provision allowing for electronic and/or digital signatures; and

**WHEREAS**, The Parties mutually agree to amend the PSA as provided for herein below.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, **OWNER AND CONSULTANT** agree to the foregoing and as follows:

**1. Amendments.**

**(a)** Add Section 14.08, Section 14.09, and Section 14.10, as follows:

Section 14.08, **Counterparts; Electronic/Digital Signatures.** This PSA, any of the PAs, and any amendments thereto, may each be executed in any number of counterparts, and all of such counterparts so executed together shall be deemed to constitute one and the same agreement, and each such counterpart shall be deemed to be an original provided all of the Parties have fully executed the applicable PSA, PA or amendment. Unless otherwise prohibited by law or County policy, and provided all Parties have first executed the applicable PSA, PA or amendment, the Parties agree and intend that an electronic copy of a signed PSA, PA, or amendment, or an electronically signed PSA, PA or amendment, has the same force and legal effect as if the PSA, PA or amendment had been executed with an original ink signature. The term "electronic copy of a signed PSA, PA or amendment" refers to a transmission of a copy of an original ink-signed PSA, PA or amendment by facsimile, electronic mail (email), or other electronic or digital means in a portable document format. The term "electronically signed PSA, PA, or amendment" means a PSA, PA, or amendment that is fully executed by all Parties each applying an electronic signature. An "electronic signature" means an electronic or digital sound, symbol, or process attached to or logically associated with an electronic or digital record (e.g., docuSign) and executed or adopted by a person with the intent to sign the electronic record." The Parties each represent, warrant and agree that the signatures, whether an ink-signed original or electronically signed PSA, PA or amendment, by their respective signatories are intended to authenticate such signatures and to give rise to a valid, enforceable, and fully effective agreement when so executed by all the Parties. The Parties further agree if a Party has evidenced its signature by forwarding an electronic copy

of a signed PSA, PA or amendment, it will confirm that signature by forwarding to the other Party within ten (10) days an ink-signed original of the applicable PSA, PA or amendment but the failure to so forward an ink-signed original will not affect in any way the validity or enforceability of the applicable PSA, PA or amendment.

**Section 14.09, Submission of PSA/PA; Nonbinding Until Signed.** Each of the Parties agree, accept and understand that a submission of this PSA or any PA, or any amendment thereto, for examination, review, editing or signature by either Party, in any form or by electronic or digital means, by email, facsimile or docusign, by verbal confirmation or discussion or by any other means of delivery, does not constitute a binding agreement or contract, nor does it constitute a meeting of the minds or a commitment to execute the PSA, or any PA, or any amendment thereto, and this PSA or any such PA, or any amendment thereto, shall only be legally binding and enforceable upon full execution by all Parties. The Parties acknowledge and agree that this PSA, any PAs, and any amendments thereto, are nonbinding on either Party and neither Party may claim any legal rights against the other by reason of the existence of this PSA, any PA, or any amendments thereto, or by reason of actions taken in reliance upon this PSA, any PA, or any amendments thereto (including, but not limited to, any obligation to continue negotiations) unless and until this PSA, the subject PA(s), and any applicable amendments thereto, are fully executed by all of the Parties.

**Section 14.10, Signing Warranty.** By signing below, each signatory for a Party warrants and represents that he/she executed this PSA, in his/her authorized capacity, that he/she has the authority to bind the entity or person for whom he/she signs to contractual obligations and that, by his/her signature, the entity or person on behalf of which he/she acted executed this PSA.

2. **Compensation.** Nothing stated herein authorizes or approves an increase in the Maximum Compensation Limit ("MCL") and under no circumstances shall the total cumulative fees, costs and expenses billed to County exceed the MCL.
3. **Definitions.** Capitalized terms used in this Amendment without definition shall have the same meaning ascribed to such terms in the PSA.
4. **Entire Agreement; Amendment.** Except as modified by this Amendment, all other terms, conditions, and stipulations of the PSA remain in full force and effect. The PSA, and as amended by this Amendment, constitutes the full and complete agreement and understanding by and between the Parties relative to the subject matter of the PSA and this Amendment and shall supersede all prior communications, representations, and understandings or agreements, if any, whether oral or written, concerning the same subject matter and may not be modified or amended in whole or in part, except by a written instrument executed by all Parties hereto. Any prior or contemporaneous oral or written representations relating to the same subject matter is hereby revoked and extinguished by the PSA, as amended herein.
5. **Construction.** This Amendment shall not be construed more strongly against either Party regardless of who is more responsible for its preparation.

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IN WITNESS WHEREOF, Owner and Consultant have entered into this Amendment effective as of the last date fully executed by all the Parties herein below ("Effective Date").

**CONSULTANT: VFA, INC.**

By: 

Kirk Orgeldinger  
SVP, Finance

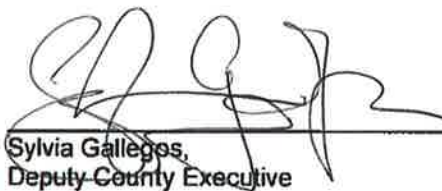
11/21/17  
Date

**OWNER: COUNTY OF SANTA CLARA**

By: 

Roger Soohoo,  
Deputy Director, Facilities and Fleet Department  
Owner's Authorized Representative

11/21/17  
Date

By: 

Sylvia Gallegos,  
Deputy County Executive

12-12-2017  
Date

**APPROVED AS TO FORM AND LEGALITY:**



Shirley R. Edwards, Deputy County Counsel

