

**SECOND AMENDMENT
TO
PROFESSIONAL SERVICES AGREEMENT BY AND BETWEEN THE COUNTY OF SANTA CLARA
AND VFA, INC. FOR ARCHITECTURAL ENGINEERING FACILITIES CONDITION ASSESSMENT
SERVICES.**

This Second Amendment ("Second 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., a Delaware corporation, with its principal place of business located at 99 Bedford Street, Suite 300, Boston, Massachusetts 02111 ("Consultant"), and amends that certain Professional Services Agreement ("PSA") entered into by and between the Parties on May 24, 2011, as previously amended on December 12, 2017 ("First Amendment"), for the provision of Architectural Engineering Facilities Condition Assessment services. County and Consultant are each a "Party" and collectively the "Parties" to this Second Amendment.

RECITALS

WHEREAS, in response to a March 15, 2006 Request for Statement of Qualifications ("RFSOQ") issued by Owner, Consultant proposed to offer architectural engineering facilities condition assessment services to Owner, and in material reliance on the information and representations made by Consultant in said response, Owner entered into two PSAs with Consultant; and,

WHEREAS, on October 17, 2006, the Board of Supervisors approved a Professional Services Agreement with Consultant which expired in October 2009, for the provision of architectural engineering facilities condition assessment services.

WHEREAS, on June 21, 2011, the Board of Supervisors approved a new Professional Services Agreement ("PSA") with Consultant for the provision of architectural engineering facilities condition assessment services which expires on June 21, 2021; and,

WHEREAS, the Maximum Compensation Limit set out in the PSA is \$1,500,000.00; and,

WHEREAS, Owner and Consultant mutually desire to amend the PSA to increase the Maximum Compensation Limit 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. **Amendment.** PART 2.02 (MAXIMUM COMPENSATION) is deleted in its entirety and replaced with the following language:

2.02 MAXIMUM COMPENSATION

- A. The sum of all Project Agreements issued pursuant to this PSA shall not exceed TWO MILLION ONE HUNDRED SEVENTY-FIVE THOUSAND DOLLARS AND NO CENTS (\$2,175,000.00) (the "Maximum Compensation Limit" or "MCL"). If Consultant performs services or incurs expenses beyond this Maximum Compensation Limit specified herein, Consultant does so at Consultant's sole risk, liability, cost and expense, and Consultant shall not be reimbursed for such excess amounts by Owner.
- B. Owner is not obligated to issue any Project Agreement ("PA") and without the issuance of a PA by Owner and the completion of all work in accordance with said PA, no compensation is owed or owing to Consultant under this PSA. Each Project Agreement will specify its own maximum compensation limit which cannot and shall not exceed, together with all other PAs issued, the MCL specified in this PSA. If the amount of compensation authorized, under any PA in total with all other PAs issued, exceeds the

MCL stated in this PSA, then Consultant shall be solely responsible and liable for such excess costs and expenses and Owner shall not reimburse Consultant for such amounts. Nothing stated herein or in any PA shall authorize or approve an increase in the MCL or in the compensation limit specified in any PA. Consultant is fully responsible for not exceeding these limits and solely assumes and accepts all liability, cost and expense for exceeding these limits.

2. Definitions. Capitalized terms used in this Second Amendment without definition shall have the same meaning ascribed to such terms in the PSA, as previously amended.

3. Entire Agreement; Amendment. Except as modified by this Second Amendment, all other terms, conditions, and stipulations of the PSA as previously amended, remain in full force and effect. The PSA as previously amended, and as amended by this Second Amendment, constitutes the full and complete agreement and understanding by and between the Parties relative to the subject matter of the PSA as previously amended and this Second 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 amended PSA, as amended by this Second Amendment.

4. Counterparts; Electronic/Digital Signatures. This Second Amendment 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 this Second Amendment. Unless otherwise prohibited by law or County policy, and provided all Parties have first executed this Second Amendment, the Parties agree and intend that an electronic copy of the signed Second Amendment, or an electronically signed Second Amendment, has the same force and legal effect as if this Second Amendment had been executed with an original ink signature. The term "electronic copy of the signed Second Amendment" refers to a transmission of a copy of an original ink-signed Second Amendment by facsimile, electronic mail (email), or other electronic or digital means in a portable document format. The term "electronically signed Second Amendment" means this Second Amendment 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 Second 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 the signed Second Amendment, it will confirm that signature by forwarding to the other Party within ten (10) days an ink-signed original of the Second Amendment but the failure to so forward an ink-signed original will not affect in any way the validity or enforceability of this Second Amendment.

5. Construction. This Second Amendment shall not be construed more strongly against either Party regardless of who is more responsible for its preparation.

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////SIGNATURES FOLLOW ON NEXT PAGE////

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6. **Signing Authority.** By signing this Second Amendment, each signatory for a Party warrants and represents that he/she executed this Second Amendment 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 Second Amendment.

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

CONSULTANT: VFA, Inc.



Kirk Orgeldinger
SVP - Finance

2/20/18

Date



COUNTY OF SANTA CLARA:

S. Joseph Simitian, President
Board of Supervisors

Date

ATTEST:

Megan Doyle,
Clerk of the Board of Supervisors

Date

APPROVED AS TO FORM AND LEGALITY:

DocuSigned by:


Shirley R. Edwards, Deputy County Counsel