

**FIRST AMENDMENT TO
PROFESSIONAL SERVICES AGREEMENT (PSA)
BETWEEN
THE COUNTY OF SANTA CLARA AND
GHD Inc. FOR
COMPREHENSIVE ENGINEERING CONSULTANT SERVICES**

This First Amendment is entered into by and between the County of Santa Clara, a political subdivision of the State of California ("County" or "Owner"), and GHD Inc. ("Consultant"), a California corporation with its principal place of business located at 655 Montgomery Street Suite 1010, San Francisco, CA 94111, and amends Professional Services Agreement ("PSA") entered into by and between the parties on September 23, 2014 for comprehensive engineering consultant services. County and Consultant are each a "Party" and collectively "Parties" to this First Amendment.

RECITALS

WHEREAS, the PSA had an original compensation limit of \$1,000,000 and an initial term of sixty (60) months; and did not address the County's required Wage Theft Prevention and Living Wage provisions; and

WHEREAS, the Owner desires to add provisions for Wage Theft Prevention and Living Wage, among others; and

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, County and Consultant agree to the foregoing and as follows:

1. Additions. Recitals 13.24 - 13.30 are added to the PSA as follows:

13.24 WAGE THEFT PREVENTION

- A. Compliance with Wage and Hour Laws: Contractor, and any subcontractor it employs to complete work under this Agreement, must comply with all applicable federal, state, and local wage and hour laws. Applicable laws may include, but are not limited to, the Federal Fair Labor Standards Act, the California Labor Code, and any local Minimum Wage Ordinance or Living Wage Ordinance.
- B. Final Judgments, Decisions, and Orders: For purposes of this Section, a "final judgment, decision, or order" refers to one for which all appeals have been exhausted. Relevant investigatory government agencies include: the federal Department of Labor, the California Division of Labor Standards Enforcement, a local enforcement agency, or any other government entity tasked with the investigation and enforcement of wage and hour laws.
- C. Prior Judgments against Contractor and/or its Subcontractors: BY SIGNING THIS AGREEMENT, CONTRACTOR AFFIRMS THAT IT HAS DISCLOSED ANY FINAL JUDGMENTS, DECISIONS, OR ORDERS FROM A COURT OR INVESTIGATORY GOVERNMENT AGENCY FINDING—IN THE FIVE YEARS PRIOR TO EXECUTING THIS AGREEMENT—THAT CONTRACTOR OR ITS SUBCONTRACTOR(S) HAS VIOLATED ANY APPLICABLE WAGE AND HOUR LAWS.



CONTRACTOR FURTHER AFFIRMS THAT IT OR ITS SUBCONTRACTOR(S) HAS SATISFIED AND COMPLIED WITH—OR HAS REACHED AGREEMENT WITH THE COUNTY REGARDING THE MANNER IN WHICH IT WILL SATISFY—ANY SUCH JUDGMENTS, DECISIONS, OR ORDERS.

- D. **Judgments During Term of Contract:** If at any time during the term of this Agreement, a court or investigatory government agency issues a final judgment, decision, or order finding that Contractor or any subcontractor it employs to perform work under this Agreement has violated any applicable wage and hour law, or Contractor learns of such a judgment, decision, or order that was not previously disclosed, Contractor must inform the Office of the County Executive-Office of Countywide Contracting Management (OCCM), no more than 15 days after the judgment, decision, or order becomes final or of learning of the final judgment, decision, or order. Contractor and its subcontractors shall promptly satisfy and comply with any such judgment, decision, or order, and shall provide the Office of the County Executive-OCCM with documentary evidence of compliance with the final judgment, decision, or order within 5 days of satisfying the final judgment, decision, or order. The County reserves the right to require Contractor to enter into an agreement with the County regarding the manner in which any such final judgment, decision, or order will be satisfied.
- E. **County's Right to Withhold Payment:** Where Contractor or any subcontractor it employs to perform work under this Agreement has been found in violation of any applicable wage and hour law by a final judgment, decision, or order of a court or government agency, the County reserves the right to withhold payment to Contractor until such judgment, decision, or order has been satisfied in full.
- F. **Material Breach:** Failure to comply with any part of this Section constitutes a material breach of this Agreement. Such breach may serve as a basis for termination of this Agreement and/or any other remedies available under this Agreement and/or law.
- G. **Notice to County Related to Wage Theft Prevention:** Notice provided to the Office of the County Executive as required under this Section shall be addressed to: Office of the County Executive—OCCM; 70 West Hedding Street; East Wing, 11th Floor; San José, CA 95110. The Notice provisions of this Section are separate from any other notice provisions in this Agreement and, accordingly, only notice provided to the above address satisfies the notice requirements in this Section.

13.25. LIVING WAGE

Unless otherwise exempted or prohibited by law or County policy, where applicable, Contractors that contract with the County to provide Direct Services developed pursuant to a formal Request for Proposals process, as defined in County of Santa Clara Ordinance Code Division B36 ("Division B36") and Board Policy section 5.5.5.5 ("Living Wage Policy"), and their subcontractors, where the contract value is \$100,000 or more ("Direct Services Contract"), must comply with Division B36 and the Living Wage Policy and compensate their employees in accordance with Division B36 and the Living Wage Policy. Compliance and compensation for purposes of this provision includes, but is not limited to, components relating to fair compensation, earned sick leave, paid jury duty, fair workweek, worker retention, fair chance hiring, targeted hiring, local hiring, protection from retaliation, and labor peace. If Contractor and/or a subcontractor violates this provision, the Board of Supervisors or its designee may, at its sole discretion, take responsive actions including, but not limited to, the following:

- a) Suspend, modify, or terminate the Direct Services Contract.

- b) Require the Contractor and/or Subcontractor to comply with an appropriate remediation plan developed by the County.
- c) Waive all or part of Division B36 or the Living Wage Policy.

This provision shall not be construed to limit an employee's rights to bring any legal action for violation of the employee's rights under Division B36 or any other applicable law. Further, this provision does not confer any rights upon any person or entity other than the Board of Supervisors or its designee to bring any action seeking the cancellation or suspension of a County contract. By entering into this contract, Contractor certifies that it is currently complying with Division B36 and the Living Wage Policy with respect to applicable contracts, and warrants that it will continue to comply with Division B36 and the Living Wage Policy with respect to applicable contracts.

- 13.26** Definitions. Capitalized terms used in this First Agreement without definition shall have the same meaning ascribed to such terms in the PSA.
- 13.27** Entire Agreement; Amendment. The PSA, as amended by this First Amendment, constitutes the full and complete agreement and understanding by and between the Parties relative to the subject matter of the PSA and the First 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 by this First Amendment.
- 13.28** Counterparts. This First Amendment may be executed in several 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. Facsimile or electronic signatures shall have the same legal effect as original or manual signatures if followed by mailing of a fully executed original to both Parties.
- 13.29** Construction. This First Amendment shall not be construed more strongly against either Party regardless of who is more responsible for its preparation.
- 13.30** Contract Execution. Unless otherwise prohibited by law or County policy, the parties agree that an electronic copy of a signed contract, or an electronically signed contract, has the same force and legal effect as a contract executed with an original ink signature. The term "electronic copy of a signed contract" refers to a transmission by facsimile, electronic mail, or other electronic means of a copy of an original signed contract in a portable document format. The term "electronically signed contract" means a contract that is executed by applying an electronic signature using technology approved by the County. If Contractor provides an electronic copy of a signed contract to the County, Contractor shall provide the original signed contract to the County within 10 days of providing the electronic copy to the County in order to enforce its rights under the contract.


SIGNATURES ON FOLLOWING PAGE.

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IN WITNESS WHEREOF, the parties hereby execute this First Amendment to be executed effective as of the last date signed by all parties below ("Effective Date").

CONSULTANT: GHD Inc.

Name:  7/12/16
Anthony A. Petrocchio Date
Title: Project Director


OWNER: COUNTY OF SANTA CLARA, a political subdivision of the State of California

 7/21/16
Owner's Authorized Representative Date
Santa Clara County Parks & Recreation Department

APPROVED:

 7/20/16
FOR Sylvia Gallegos *MARTHA WAPENSKI* Date
Deputy County Executive

APPROVED AS TO FORM AND LEGALITY:


Sara J. Ponzio
Deputy County Counsel

**ATTACHMENT 1
TO
FIRST AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT (PSA)
BETWEEN
THE COUNTY OF SANTA CLARA AND
GHD Inc. FOR**

**COMPREHENSIVE ENGINEERING CONSULTANT SERVICES
NON-DISCLOSURE AGREEMENT**

This Non-Disclosure Agreement ("NDA") by and between GHD Inc. ("Receiving Party") and the County of Santa Clara (referred to interchangeably as "County" or "Owner") relates to the disclosure of certain confidential information. In consideration of the mutual covenants and agreements hereinafter set forth, the adequacy of which are acknowledged, the parties agree as follows:

1. This NDA will commence following full execution by both parties and will continue in full force and effect until the conclusion of the relationship between the County and the Receiving Party, or for a period of one year following execution of this NDA, whichever is longer. The Receiving Party's obligations with respect to the treatment of all Confidential Information that is received under this NDA will survive termination or expiration of this NDA.
2. The Receiving Party will return all Confidential Information received from the County upon termination or conclusion of this NDA. The Confidential Information will remain the exclusive property of the County, and no copies will be made or retained without the written consent of the County.
3. "Confidential Information" means any and all tangible and intangible information, whether written, oral or in any other medium, originated by or uniquely within the knowledge of the County or its consultants and not generally available to third parties. Confidential Information includes, without limitation, any and all real property appraisals, diagrams, schematics, documentation, maps, address information, system and device configurations, trade secrets, data captured from a County network or information system, financial information, know-how, designs, methodologies, processes, manuals, marketing information, price lists, customer lists, supplier lists, employee information, facility infrastructure, computer programs, and systems designs. Confidential Information also includes all County Property as defined below. All Confidential Information is County Property.
 - (a) All "County Property" is Confidential Information, and as used in this NDA, means and includes, collectively and singularly, all of the following County property: information, appraisals, data or materials provided to or accessible by Receiving Party; Customer Data and PII (as defined below); County documents, materials, specifications, lists, maps, outlines, emails, electronic communications; copyrights, trade names, trade dress, domain names, patents, trade secrets, moral rights, termination rights, ownership rights, authorship and other proprietary rights of County including, without limitation, all goodwill, all information and materials provided by, developed for, developed by or on behalf of County and all derivative work thereto; and, all County rights necessary for any and all local, national, or worldwide development, manufacture, modification, enhancement, sale, licensing, use, reproduction, publication or display.
 - (b) Personally Identifiable Information and Customer Data (collectively the "Customer Data and PII") includes but is not limited to any and all information pertaining to or about persons and/or entities receiving County services, accessing County links or websites (including but not limited links and websites developed for the benefit of County), or participating in any County held or sponsored activities, regardless of whether County provided these links, websites, services, contests or games directly. Customer Data and PII also includes but is not limited to any and all

names, addresses, emails, phone numbers, social security numbers, bank account or credit card information, driver license numbers, age, sex, religion, physical descriptions and website or internet use data or metadata. All Customer Data and PII is exclusively and solely County Property. All Customer Data and PII is always County Confidential Information, except as otherwise determined solely by the County in writing.

- (c) Should Confidential Information be divulged to unauthorized third parties, Receiving Party shall comply with all applicable federal and state laws and regulations, including but not limited to California Civil Code Sections 1798.29 and 1798.82 at Receiving Party's sole expense (if applicable). Receiving Party shall not charge the County for any expenses associated with Receiving Party's compliance with the obligations set forth in this section.
4. Receiving Party shall review and maintain the Confidential Information in accordance with the following terms and conditions:
- (a) Receiving Party agrees to treat all Confidential Information (as defined above) as confidential and not to disclose the same to any third party. The Receiving Party shall keep the Confidential Information in strict confidence, using the same standard of care as it does with respect to its own Confidential Information, but in no event less than a reasonable degree of care.
 - (b) No copies of the Confidential Information shall be made, unless agreed to in writing by the County.
 - (c) All of the Confidential Information shall be kept and maintained in a safe and secure place with adequate safeguards to insure that unauthorized persons do not have access to the Confidential Information and shall not leave County property unless authorized in advance by County. Receiving Party shall, at all times, keep the County informed in writing of the location of the Confidential Information.
 - (d) The Receiving Party will permit access to Confidential Information only to individuals authorized in writing by the County and who have a bona fide need to know, provided that all such persons must be required to comply with the terms of this NDA with respect to such Confidential Information.
 - (e) The Confidential Information shall be used solely by Receiving Party for the limited purpose expressly authorized by County or as stated in this NDA.
 - (f) Any oral discussions between the County and Receiving Party that relate to the Confidential Information shall be kept secret and confidential and are deemed to be Confidential Information.
 - (g) Upon the request of the County or after the termination of this NDA, Receiving Party shall promptly return all of the Confidential Information including all work products of Receiving Party containing Confidential Information to the County. Receiving Party shall certify that all Confidential Information and copies or extracts thereof have been returned or destroyed.
 - (h) Receiving Party shall immediately notify the County in writing of any misuse or misappropriation of the Confidential Information or violation of this NDA that may come to its attention.
 - (i) Receiving Party, its agents, employees, representatives, subsidiaries, affiliated, or parent companies shall not, for themselves or for the benefit of any person or entity, other than the County, use, or disclose the Confidential Information whether written or oral, software technology, or otherwise or any portion thereof, for any purpose, at any time or in any place, without the express prior written approval of the County.
5. Confidential Information will not include any information that the Receiving Party can demonstrate that, absent breach of this NDA, was/is:
- (a) Publicly known at the time of disclosure by the Disclosing Party, or becomes publicly known through no fault of the Receiving Party;
 - (b) Rightfully received from a third party without a duty of confidentiality;

- (c) Already known to the Receiving Party at the time of receiving such Confidential Information or is independently developed by the Receiving Party without reference to the Confidential Information;
- (d) Permitted to be disclosed by written consent of the County; or;
- (e) Required to be disclosed by law or by an order of a governmental agency, legislative body or court of competent jurisdiction; provided that the Receiving Party provides the County with prompt notice of such requirement, so that the County may seek an appropriate protective order and/or waive compliance with this NDA.

6. Disclosure by the County of the Confidential Information does not constitute a warranty that the Confidential Information is accurate, complete, or adequate for the purposes contemplated by the Receiving Party. Confidential Information is provided "AS IS". COUNTY DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY, ANY IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, ANY IMPLIED WARRANTY OF NON-INFRINGEMENT, AND ANY EXPRESS WARRANTY WITH RESPECT TO ANY OF THE CONFIDENTIAL INFORMATION AND DOCUMENTATION DISCLOSED HEREUNDER. County accepts no responsibility as a result of any expenses, losses, damages, or actions incurred or undertaken by the Receiving Party as a result of the Receiving Party's receipt or use of any Confidential Information or documentation.

7. County may in its sole discretion terminate this NDA in whole or in part by providing three (3) calendar days written notice to Receiving Party. Termination under this provision shall not relieve Receiving Party of any obligation occurring prior to termination, such as confidentiality, payments, and other provisions which by their nature would survive termination.

8. Upon the end of term of this NDA, or its termination, or at any time upon written demand by the County, all Confidential Information, together with any copies, memoranda, working papers, notes and photographs thereof, will, at the County's option, be returned or destroyed by the Receiving Party. The return of any Confidential Information will not relieve the Receiving Party of its obligation to maintain the confidentiality of the Confidential Information for the full period contemplated by this NDA; said confidentiality obligation shall survive termination of this NDA.

9. This NDA contains the entire understanding and agreement of the parties with respect to the disclosure of the Confidential Information, and supersedes all prior agreements and discussions concerning the subject matter hereof, whether oral or written.

10. The parties agree that a breach of this NDA is likely to cause irreparable harm to the County for which money damages alone would be an inadequate remedy. Accordingly, the County will be entitled to seek specific performance and injunctive or other equitable relief as a remedy for breaches of this NDA.

11. If any provision of this NDA is held illegal, invalid, or unenforceable by any court of competent jurisdiction, such provision will be deemed separable from the remaining provisions hereof and the remaining portions shall remain in full force and effect. All sections of this NDA shall survive termination, cancellation and expiration of this NDA regardless of the reason for termination, cancellation or expiration.

12. Receiving Party shall indemnify, defend, and hold harmless the County, its officers, agents and employees from any claim, liability, loss, injury or damage (collectively, "Litigation") arising out of, or in connection with, performance of this NDA due to the negligence, recklessness, or willful misconduct of Receiving Party and/or its agents, employees or sub-contractors, excepting only to the extent such loss,

injury or damage is directly caused by the actual gross negligence, recklessness or willful misconduct of personnel employed by the County. It is the intent of the parties to this NDA to provide the broadest possible coverage for the County.


13. Unless where preempted by Federal laws such as in Copyright Laws, this NDA shall be enforced and interpreted under the laws of the State of California and the County of Santa Clara, without any regards to the conflict of law principles. The parties to this NDA hereby agree to submit to the exclusive jurisdiction of and venue in the courts of competent jurisdiction, federal or state, in the County of Santa Clara in any disputes related to or arising out of this NDA.

14. No delay or failure to require performance of any provision of the NDA shall constitute a waiver of that provision as to that or any other instance. Any waiver granted by a party must be in writing and shall apply to the specific instance expressly stated.

15. Receiving Party shall not assign or transfer this NDA, or all or any part of its rights hereunder, by operation of law or otherwise, without the prior written consent of County. Any unauthorized assignment or transfer shall be null and void and shall constitute grounds for immediate termination of this NDA by County. This NDA shall inure to the benefit of and be binding upon any permitted successor or assign.


16. Each party acknowledges that it has read and understands this NDA and agrees to be bound by its terms. By signing below, signatory warrants and represents that he/she executed this NDA in his/her authorized capacity and that by his/her signature on this NDA, he/she or the entity upon behalf of which he/she acted, executed this NDA.

County of Santa Clara:

Signature: 
Name: DON ROCHA
Title: DEPUTY DIRECTOR
Date: 7-21-16

GHD Inc.

Consultant (Receiving Party):

Signature: 
Name: ANTHONY A. PETROCCHIO
Title: Project Director
Date: 7/12/16