

AGREEMENT FOR PROFESSIONAL SERVICES

On-Call Architecture and Structural Engineering Professional Services

This Agreement is made on February 7, 2023, by and between Omni Design Incorporated, a California Corporation (“Contractor”), and the City of Santa Maria, a California Municipal Corporation and charter city (“City”), in Santa Maria, California, based on the following recitals:

WHEREAS, City has determined it is in the public interest to proceed with the work hereinafter described as "Project"; and

WHEREAS, City has determined the Project involves the performance of engineering services of a temporary nature; and

WHEREAS, City does not have available employees to perform the services for the Project; and

WHEREAS, City has requested the Contractor to provide manpower to complete the Project; and

WHEREAS, Contractor is registered or licensed in California to perform construction services for the Project.

NOW, THEREFORE, IT IS AGREED:

1. **Recitals true.** The above recitals are true.

2. **General.**
 - 2.01. **Term and Termination.** The term of this contract is two (2) year, beginning on the date first written above. This contract may be extended by mutual consent of the parties. This contract may be terminated for breach of its terms or conditions, or because of discovery of any act which violates local, state, or federal law. Termination is effective 14 days after deposit of notice as specified in this Agreement.

 - 2.02. **Services to be Performed.** Contractor shall determine the method, details, and means of providing On-Call Architecture and Structural Engineering services. More specifically, Contractor agrees to perform the specific services listed in Exhibit “A.”

 - 2.03. **City’s Duties.** City’s duties under this Agreement are to cooperate with Contractor in the performance of the contract and timely pay invoices.

 - 2.04. **Payment.** Payment terms under this Agreement are listed in Exhibit “B.”

 - 2.05. **Insurance.** Contractor shall provide insurance as listed in Exhibit “C.”

2.06. Exhibits. Exhibits “A,” “B,” and “C” are attached and incorporated.

3. Contractor’s Obligations.

3.01. Minimum Amount of Service. Contractor shall devote sufficient time to perform services under this agreement efficiently and effectively. Contractor may represent, perform services for, and be employed by additional individuals or entities, in Contractor’s sole discretion, as long as the performance of these extra-contractual services does not interfere with or present a conflict with City’s business.

3.02. Tools and Equipment. Except as otherwise stated in this Agreement, Contractor will supply all tools and equipment necessary to perform this Agreement.

3.03. Status. Contractor (including its employees) is an independent contractor. No employer/employee relationship exists between Contractor and the City. Contractor’s assigned personnel shall not be entitled to any benefits payable to employees of the City. The City is not required to make any deductions or withholdings from the compensation payable to Contractor under this agreement. Contractor (as a business entity, including its employees) is a “design professional” as defined by California Civil Code section 2782.8(c)(3).

3.04. Indemnification. To the fullest extent permitted by law, the Contractor shall indemnify, defend (with independent counsel approved by the City) and hold harmless the City, and its directors, officers, and employees from and against all liabilities (including without limitation all claims, losses, damages, penalties, fines, and judgments, associated investigation and administrative expenses, and defense costs, including but not limited to reasonable attorneys’ fees, court costs and costs of alternative dispute resolution) regardless of nature or type that arise out of, pertain to, or relate to the negligence, reckless, or willful misconduct of the Contractor including its agents, subcontractors and employees. The provisions of this paragraph survive completion of the services or the termination of this contract. The provisions of this Section are not limited by the provisions of the Section relating to insurance.

3.05. Use of Subcontractors. CONTRACTOR may subcontract with third party providers that were listed in CONTRACTOR’s Response to Request for Proposals and whose rate sheets have been included in this Agreement. Subcontractors shall be billed at the rates listed in Exhibit B. CONTRACTOR is fully responsible for the actions and omissions of any subcontractor. CONTRACTOR must ensure subcontractor adherence to the same quality standards and assurances required of CONTRACTOR. CONTRACTOR shall ensure that this Agreement is incorporated by reference into any Agreement

with a subcontractor and that subcontractor complies with the insurance requirements of **EXHIBIT C**.

4. Miscellaneous

4.01. Notices. All communication relating to the day-to-day activities of this Agreement shall be exchanged between a designated representative of the CITY and a representative of CONTRACTOR, listed below. All notices shall be addressed as follows unless a written change is filed with the City:

To City:
Thomas M. Korman, P.E., P.L.S.
Principal Civil Engineer
110 East Cook Street
Santa Maria, CA 93454

To Contractor:
Omni Design Incorporated
Attn: Suzanne Winslow
1326 Chorro Street
San Luis Obispo, CA 93401

If the designated Representative or address of either party changes during the term of this agreement, a written notice shall be given to the other party prior to the effective date of change. Any written notices required under this agreement shall be effective five (5) days after deposit into United States mail, postage prepaid, addressed to the designated Representative, or upon confirmation of receipt of delivery if another notification process is used.

4.02. Compliance With Laws, etc. Contractor shall comply with all laws, including but not limited to the rules and policies of the City, in performing this agreement.

4.03. Integration. This agreement constitutes the entire agreement of the parties with respect to the subject matter. All modifications, amendments, or waivers of the terms of this agreement must be in writing and signed by the appropriate representatives of the parties.

4.04. Interpretation. This agreement shall be interpreted in accordance with the laws of the State of California.

4.05. Jurisdiction. Jurisdiction and venue of all disputes over the terms of this agreement shall be in the County of Northern Santa Barbara, State of California.

4.06. Warranty of authority. Each person signing this agreement on behalf of a party warrants that he or she has authority to do so.

4.07. No Waiver. Failure to enforce with respect to a default shall not be construed as a waiver.

4.08. Severability. The provisions of this agreement are severable. If any part

of this agreement is held invalid by a court of competent jurisdiction, the remainder of the agreement shall remain in full force and effect unless amended or modified by mutual written consent of the parties.

4.09. Submittals. In addition to any other submittals required by this agreement, Contractor shall submit copies of its current business license and current certificate of workers' compensation coverage to the City before beginning work on this project.

4.10. Prevailing Wage. Prevailing Wage. If applicable, Contractor and all Subcontractors are required to pay the general prevailing wage rates of per diem wages and overtime and holiday wages determined by the Director of the Department of Industrial Relations under Section 1720 et seq. of the California Labor Code. The Director's determination is on file and open to inspection at www.dir.ca.gov and is referred to and made a part hereof; the wage rates therein ascertained, determined, and specified are referred to and made a part hereof as though fully set forth herein.

IN WITNESS WHEREOF, this agreement is executed by the parties on the date first written above.

OMNI DESIGN, A California Corporation

CITY OF SANTA MARIA, a political
subdivision of the State of California

By: **THOMAS G. REAY, AIA**
Principal

By: **JASON STILWELL**
City Manager

ATTEST:

Rhonda M. White, CMC
Chief Deputy City Clerk

APPROVED AS TO FORM:

City Attorney

Risk Manager

EXHIBIT "A"

SERVICES TO BE PERFORMED

1. Building Design: Professional and efficient development of new construction or renovation plans that successfully resolve a client's space planning and design requirements.
2. Facility/Building Analysis/Existing Conditions Report: Evaluation of an existing building including components such as walls, windows, roofs, floor plans, room layouts, building science audits and equipment resulting in a summary report of the findings.
3. Code Analysis: Project-specific review of applicable codes including building codes, accessibility standards, energy standards, local zoning ordinances, land use plans, and other regulations.
4. Energy-Efficiency Assessments: Review of building components, insulation levels, heating and lighting systems, and operational features to assess current performance levels and opportunities for energy savings.
5. Feasibility Study with Cost Estimating: A report outlining options and associated costs for potential solutions to a stated project goal, for example, change of use for an existing structure. Often includes basic drawings or sketches explaining the solutions.
6. Space Planning: Graphic study showing arrangement of spaces, room layouts, and activities making up a floor plan. Studies will show room dimensions, shapes, number and types of spaces, and relationships (adjacencies) for all desired spaces. Multiple arrangements can be developed and evaluated for efficiency and functional success.
7. Site Planning: Development of site plan options showing boundary lines, potential development boundaries, building location(s), pedestrian access, sidewalks, parking, landscaping, lighting, surrounding context and other features.
8. Permitting: Production of drawings and permit applications necessary to submit for zoning or building permits. May include formal presentations to review boards or informal negotiation with regulators, zoning/planning administrators, fire marshals, and other officials.
9. Contractor Selection/Construction Administration Assistance: Professional and experienced assistance with the selection of qualified General Contractors or Construction Managers. This may include the preparation of competitive bid packages, review of bids, recommendations for award of bids, preparing owner-contractor agreements, and construction administration.
10. Creative, Artistic & Technological Design: Imaginative, functional and aesthetic solutions to a client's stated needs. Assistance with envisioning new, creative solutions to problems that have been difficult to solve.

Other services provided by architects:

- Historic preservation research, evaluation and design
- Existing building measurement; preparation of existing building drawings
- As-Built record drawings documenting existing or recently completed work
- Master planning research and analysis
- Cost estimating related to design options
- Project information surveys
- Design team and process/integration management
- Conceptual design and regional/cultural context
- Sustainability and energy use/production analysis and design
- Water and wastewater use analysis and design
- Project programming, pre-design planning
- Rating system (LEED, WELL, Passive House, etc.) coordination and management
- Space utilization, functionality, economic and pre-design analysis
- Indoor air quality and interior analysis
- Interior design
- Accessibility reviews and design

- Site selection, studies and design
- Land use analysis and design
- Landscape design
- Specifications writing, bid package preparation
- Consultant coordination and management
- Construction administration, time, cost and quality management
- Public hearing and data collection assistance
- Contractor bidding, negotiation, contract and process assistance to the owner
- Project-related public agency coordination and management
- Illustration rendering and 3D design modeling

EXHIBIT "B"

PAYMENT

I. Progress Authorization

This contract is subject to the requirements of Page G-9 of the Purchasing Guidelines for the City of Santa Maria.

Individual task orders will be created under this Master Agreement for the completion of each task and billed according to the attached rate sheet.

During the duration of this Master Agreement the City will identify individual task, and upon agreed scope of work, schedule, and cost, a Notice to Proceed and Purchase Ordered will be issued for each task not to exceed \$75,000 per task as indicated in Section 1.1B.

The aggregate not-to-exceed fee for all tasks provided during the initial two-year term of the Agreement shall be \$300,000.

II. Invoice procedure.

- A. Payment shall be at the conclusion of the Project based on the billable charges.
- B. The Contractor shall present the bill for charges by the second day of the month.
- C. The Contractor's bill shall be substantiated by appropriate documentation, and include an itemized listing of personnel, subcontractors, and other direct costs incurred.

III. Maximum billable amounts

Under no circumstance shall the total of all payments to the Contractor exceed ninety percent (90%) of the maximum not-to-exceed cost, prior to acceptance by the City of all items to be completed as noted within Exhibit "A".



ON-CALL ARCHITECTURE PROFESSIONAL DESIGN SERVICES

FEE SCHEDULE AND BILLING TERMS



for the
City of Santa Maria



Submitted by:

OMNI DESIGN INCORPORATED
1326 Chorro Street
San Luis Obispo, California 93401

December 15th, 2022



FEE SCHEDULE



PROFESSIONAL & ADMINISTRATIVE SERVICES

PER HOUR

Principal, Licensed Engineer, Architect, Land Surveyor _____	\$195
Project Manager/Architect _____	\$170
QSD & QSP Storm Water Design & Inspection _____	\$170
Designer/Office Surveyor/Permit Processor _____	\$140
Draftsperson _____	\$130
Clerical _____	\$85
Expert Witness/Court Appearances _____	\$300

FIELD/SITE SERVICES

PER HOUR

Field Monitoring Services _____	\$170
1 -Person GPS/Robot/Field Survey Crew _____	\$160
2-Person Survey/GPS/Field Survey Crew _____	\$240
2-Person Prevailing Wage Survey/GPS/Field Survey Crew _____	\$375

- Minimum field survey time shall be four (4) hours.
- Standard Mileage rate is .56 per business mile.

PRINTING CHARGES/UNIT COST EACH

24X36 Bond Plots	\$5.00
30x42 Bond Plots	\$7.50
8.5x11 Copies	\$0.25
11x17 Copies	\$0.50
Mylar Plot	\$10.00

All bills are due and payable upon receipt, past due after (30) days from date of invoicing. A finance charge of 1.5% per month (18% annum) will be assessed on all balances that are thirty days past due.



BILLING TERMS



Notes:

- The attached fee schedule identifies hourly rates and are no higher than Omni Design Inc.'s standard commercial rates for the same services.
- The attached fee schedule may be used as a basis of negotiation with the successful consultant.
- No "mark-up" will be allowed for direct costs.
- If applicable, per diem shall be billed at a maximum of the GSA rate and mileage shall be billed at the IRS mileage rate in place at the time of billing. No "mark-up" will be allowed for per diem or mileage.
- Sub-consultant services are to be billed at cost plus ten percent (10%) maximum.
- Maximum Billing Amount. Under no circumstance shall the total of all payments to the Contractor exceed ninety percent (90%) of the maximum "not-to-exceed" cost, prior to acceptance by the City of all items to be completed as noted within Exhibit "A" or any Assigned Task.

Invoice procedures:

- Payment shall be at the conclusion of the Assigned Task based on the billable charges.
- The Contractor shall present the bill for charges by the second day of the month.
- The Contractor's bill shall be substantiated by appropriate documentation, and include an itemized listing of personnel, subcontractors, and other direct costs incurred.

EXHIBIT "C"

INSURANCE

INSURANCE REQUIREMENTS

Provider shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Provider, his/her agents, representatives, or employees. If the Provider maintains broader coverage and/or higher limits than the minimums shown above, the City requires and shall be entitled to the broader coverage and/or higher limits maintained by the Provider.

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001), including products and completed operations, property damage, bodily injury and personal & advertising injury.
2. Insurance Services Office Business Auto Coverage Form Number CA 00 01 covering any auto (Code 1), or if Provider has no owned autos, covering hired (Code 8) and non-owned autos (Code 9).
3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.
4. Errors and Omissions liability insurance appropriate to the Provider's profession. Architects' and engineers' coverage is to be endorsed to include contractual liability.
5. Cyber Liability Insurance, Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Vendor in this agreement and shall include, but not be limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations.

B. Minimum Limits of Insurance

Provider shall maintain limits no less than:

1. General Liability - \$2,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.

2. Automobile Liability - \$1,000,000 per accident for bodily injury and property damage.
3. Workers' Compensation: Statutory limits.
4. Employer's Liability - \$1,000,000 per accident for bodily injury or disease.
5. Errors and Omissions Liability - \$1,000,000 per occurrence or claim, \$2,000,000 aggregate.
6. Cyber Liability- \$2,000,000 per occurrence or claim, \$2,000,000 aggregate.

C. Self-insured Retentions

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

D. Other Insurance Provisions

The commercial general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. The City, its officers, officials, employees and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Provider 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 Provider's insurance (at least as broad as ISO Form CG 20 10 11 85 or **both** CG 20 10, CG 20 26, CG 20 33, or CG 20 38 **and** CG 20 37 forms if later revisions are used).
2. For any claims related to this project, the Provider's insurance coverage shall be primary insurance coverage at least as broad as ISO CG 20 01 04 13 as respects the City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees or volunteers shall be excess of the Provider's insurance and shall not contribute with it.
3. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled or reduced, except with notice **stating the title of this contract** to the City. **All notices provided pursuant to this Agreement shall be given to the City representative listed for notice in this agreement and shall specify the title of this Agreement.** Notice may be given by overnight mail, facsimile with confirmation of receipt, or certified mail with return-receipt requested.
4. Provider hereby grants to City a waiver of any right to subrogation which any insurer of said Provider may acquire against the City by virtue of the payment of any loss under such insurance. Provider agrees to obtain any endorsement that may be necessary to affect 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.
5. If any of the required policies provide claims-made coverage:

a. The Retroactive Date must be shown, and must be before the date of the contract or the beginning of contract work.

b. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work.

c. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Provider must purchase "extended reporting" coverage for a minimum of five (5) years after completion of work.

E. 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.

F. Verification of Coverage

Provider shall furnish the City with original certificates and amendatory endorsements 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 Provider's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications at any time.

G. Special Risks or Circumstances

The City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.