

PROFESSIONAL SERVICES AGREEMENT FOR
Architectural Services for the Downtown Library Building Programs

THIS AGREEMENT for professional services is made by and between the City of Santa Cruz ("City") and Noll & Tam ("Consultant") (together referred to as the "Parties") as of June 15, 2017 (the "Effective Date").

SECTION 1: SCOPE OF WORK

The services to be performed under this Agreement are set forth in Exhibit A.

SECTION 2: RESPONSIBILITIES OF CONSULTANT

Consultant shall exercise due professional care to provide all work performed by Consultant, or under its direction, shall satisfy the City's objectives for entering into this Agreement and shall be rendered in accordance with the generally accepted practices, and to the standards of, Consultant's profession.

Consultant shall not undertake any work beyond the Scope of Work set forth in Exhibit A unless such additional work is approved in advance and in writing by City. The cost of such additional work shall be reimbursed to Consultant by City on the same basis as provided for in Section 4.

If, in the prosecution of the work, it is necessary to conduct field operations, security and safety of the job site will be the Consultant's responsibility excluding, nevertheless, the security and safety of any facility of City within the job site which is not under the Consultant's control.

Consultant shall meet with Susan Nemitz, Library Director, hereinafter called "Director", or other City personnel, or third parties as necessary. Such meetings shall be held at the request of any party.

SECTION 3: RESPONSIBILITIES OF THE CITY

City shall make available to Consultant all necessary data and information in the City's possession and shall actively assist Consultant in obtaining such information from other agencies and individuals as needed.

The Director may authorize a staff person to serve as his or her representative. The work in progress shall be reviewed at such intervals as may be mutually agreed upon between the parties. The City will be the sole judge of acceptable work. If the work is not acceptable, City will inform Consultant of the changes or revisions necessary to secure approval.

SECTION 4: FEES AND PAYMENT

For the services performed, the City will pay the Consultant on a time-charge plus expense basis, monthly as charges accrue, the sum of consultant's salary expenses and non-salary expenses. Payment for the Consultant's services shall be made upon a schedule and within the limit, or limits shown, upon Exhibit B. Such payment shall be considered the full compensation for all personnel, materials, supplies, and equipment used by Consultant in carrying out the work.

Salary expenses include the actual direct pay of personnel assigned to the project (except for routine secretarial and accounting services) plus payroll taxes, insurance, sick leave, holidays, vacation, and other fringe benefits. The percentage of compensation attributable to salary expenses includes all of Consultant's indirect overhead costs and fees. For purposes of this Agreement, Consultant's salary expenses and non-salary expenses will be compensated at the rates set forth in the fee schedule attached as Exhibit B and in accordance with the terms set forth therein. Non-salary expenses include travel, meals and lodging while traveling, materials other than normal office supplies, reproduction and printing costs, equipment rental, computer services, service of sub-consultants or subcontractors, and other identifiable job expenses. The use of Consultant's vehicles for travel shall be paid at the maximum rate of the current standard business mileage rate as established by the U.S. Internal Revenue Service.

Salary payment for personnel time will be made at the rates set forth in the attached fee schedule for all time charged to the project. Normal payroll rates are for 40 hours per week. Consultant shall not charge the City for personnel overtime salary at rates higher than those set forth in the attached fee schedule without the City's prior written authorization.

Budget estimates of the cost of each phase of the project are as follows:

Phase One

- A. Kick-Off Meeting
- B. Evaluation of Existing Building
- C. Needs Assessment and Library Building Program
- D. Current Facility Review
- E. Conceptual Space Planning Alternatives
- F. Development of Site and Space Plans for (3) Three Alternatives
- G. Cost Estimates for (3) Conceptual Alternatives
- H. (4) Four Staff Meetings
- I. Up to (6) Six Community Meetings
- J. (1) One City Council/Public Meeting

Variations from the costs for each phase which are justified by statements indicating personnel time expended are allowed after advance written City approval is obtained, in the manner set forth in the Agreement; however, in no event shall the total fee charged for the scope of work set forth in Exhibit A exceed the budget of \$95,000 without additional advance written City authorization.

Payments shall be made monthly by the City based on itemized invoices from the Consultant which list actual costs and expenses. Such payments shall be for the invoice amount.

Invoices shall indicate the percentage completion of each work task as identified in the Scope of Work (Exhibit A), the overall percentage of completion of the total required services and the hours worked by Consultant's staff.

Unless otherwise specified in the attached fee schedule, Consultant's fees shall be payable on monthly statements. The monthly statements shall detail the time worked by each class of employee and the expenses incurred for which billing is made. The monthly statements shall contain the following affidavit signed by a principal of the Consultant's firm:

"I hereby certify as principal of the firm of (Insert Firm Name), that the charge of (Insert invoice amount) as summarized above and shown in detail on the attachments is a fair and reasonable use of public funds, is in accordance with the terms of Agreement dated (Insert Agreement Date), and has not been previously paid."

SECTION 5: CHANGES IN WORK

City may negotiate changes in the Scope of Work. No changes in the Scope of Work shall be made without the City's written approval. Any change requiring compensation in excess of the sum specified in Exhibit B shall be approved in advance in writing by the City.

SECTION 6: TIME OF BEGINNING AND SCHEDULE FOR COMPLETION

Consultant shall begin work upon its receipt of a written Notice to Proceed from Director. The Notice to Proceed shall not be issued until after this Agreement has been approved and authorized by the Department Head.

The schedule for completion of the work shall be as shown upon Exhibit C. In the event that major changes are ordered, the schedule for completion as stated in Exhibit C will be adjusted by City so as to allow Consultant a reasonable period of time within which to complete any additional work which may be required as a result of the ordered changes.

Neither party will be held responsible for delay or default caused by declared emergencies, natural disasters, or any other cause which is beyond the party's reasonable control. Vendor will, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and will, upon the cessation of the cause, diligently pursue performance of its obligations in this agreement.

The City reserves the right to obtain the item(s) covered by this contract from another source during any on-going suspension of service due to the circumstances outlined above.

Consultant acknowledges that it is necessary for Consultant to complete its work on or before the completion date set forth in Exhibit C in order to allow the City to achieve its objectives for entering into this Agreement. The parties therefore agree that time is of the essence in the performance of this Agreement.

SECTION 7: TERMINATION

The City or Consultant may terminate the agreement for convenience by providing written notice to the other party not less than 30 calendar days prior to an effective termination date.

The City or Consultant may terminate the agreement for material breach of agreement by providing written notice to the other party not less than 14 calendar days prior to an effective termination date.

Upon notice of termination, the Consultant will immediately take action not to incur any additional obligations, costs or expenses, except as may be reasonably necessary to terminate its activities. The City's only obligation to the Consultant will be just and equitable payment for services authorized by, and received to the satisfaction of, the City up to and including the effective date of termination. All finished or unfinished work or documents procured or produced under the agreement will become property of the City upon the termination date. The City reserves the right to obtain project management services elsewhere, and the defaulting Consultant will be liable for the difference between the prices set forth in the terminated agreement and the actual cost to the City. In no event will the City be liable for any loss of profits on the resulting agreement or portion thereof so terminated. After the effective date of termination, Consultant will have no further claims against the City under the agreement. Termination of the agreement pursuant to this paragraph may not relieve the Consultant of any liability to City for damages sustained by City because of any breach of agreement by Consultant, and City may withhold any payments to Consultant for the purpose of set-off until such time as the exact amount of damages due City from Consultant is determined.

The rights and remedies provided in this section will not be exclusive and are in addition to any other rights and remedies provided by law or under the agreement.

- **SUBCONTRACTORS:** Subcontracting of work without prior approval of the City, may result in contract termination. If at any time, the City determines any subcontractor is incompetent or undesirable, Vendor will be notified and will be expected to immediately cancel the subcontract.

SECTION 8: INSURANCE

Prior to the beginning of and throughout the duration of the agreement, Consultant will maintain insurance in conformance with the requirements set forth below. Consultant will insure the City against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by Consultant, his agents, representatives, employees, or subcontractors.

CERTIFICATE REQUIREMENTS

The City will be issued a Certificate of Insurance (a Memorandum of Understanding will not be accepted) with the following minimum requirements:

- Certificate(s) will show current policy number(s) and effective dates;
- Coverage and policy limits will meet, or exceed, requirements below;
- The Certificate Holder will be City of Santa Cruz, Risk Manager, 877 Cedar St, Suite 100, Santa Cruz, CA 95060;
- Certificate will be signed by an authorized representative;
- An endorsement will be provided to show the City, its officers, officials, agents, employees, and volunteers as additional insureds.

MINIMUM SCOPE AND LIMITS OF INSURANCE

Consultant acknowledges that the insurance coverage and policy limits set forth in this section constitute the minimum amount of coverage required. The City will be entitled to coverage for the highest limits maintained by Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

Coverage will be at least as broad as:

- **PROFESSIONAL LIABILITY (ERRORS AND OMISSIONS):** \$1,000,000 PER OCCURRENCE OR CLAIM, \$2,000,000 AGGREGATE.
Consultant will maintain insurance appropriate to Consultant's profession, with limit no less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate. Insurance must be maintained and evidence of insurance must be provided for at least five years after date of completion of the agreement work. Also see "Claims Made Policies" section below.
- **COMMERCIAL GENERAL LIABILITY (CGL):** \$1,000,000 (Including products and completed operations) Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **\$1,000,000** 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.
- **AUTOMOBILE LIABILITY:** \$1,000,000
Proof of coverage for \$1 Million will be provided on 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), per accident for bodily injury and property damage.
- **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.

OTHER INSURANCE PROVISIONS

The insurance policies are to contain, or be endorsed to contain, the following provisions:

- **ADDITIONAL INSURED STATUS**
The City, its officers, officials, agents, 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 Consultant including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage will be provided in the form of an endorsement to Consultant's insurance at least as broad as ISO Form CG 20 10 11 85 or through the addition of both CG 20 10 and CG 20 37 forms if later revisions used.
- **PRIMARY COVERAGE**
For any claims related to this agreement, Consultant's insurance coverage will be primary insurance as respects the City, its officers, officials, agents, employees, and volunteers. Any insurance or self-

insurance maintained by the City, its officers, officials, agents, employees, or volunteers will be excess of Consultant's insurance and will not contribute with it.

- NOTICE OF CANCELLATION

Each insurance policy required above shall state that coverage shall not be canceled, except with notice to the City.

- WAIVER OF SUBROGATION

Consultant hereby grants to the 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.

The Worker's Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by Consultant, its employees, agents, and subcontractors.

- DEDUCTIBLES AND SELF-INSURED RETENTIONS

Any deductibles or self-insured retentions must be declared to and approved by the City. The City may at its option allow the Consultant to purchase coverage with a lower deductible or retention, or require the Consultant to provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

- 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.

- CLAIMS MADE POLICIES

If any of the required polices provide coverage on a claims-made basis:

1. The Retroactive Date must be shown and must be before the date of the agreement or the beginning of work performed under the agreement.
2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the work performed under the agreement.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the agreement effective date, the Consultant must purchase "extended reporting" coverage for a minimum of five (5) years after completion of work performed under the agreement.

- VERIFICATION OF COVERAGE

Consultant will 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 will not waive 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.

- SUBCONTRACTORS

Consultant shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that City is an additional insured on insurance required from subcontractors.

- SPECIAL RISKS OR CIRCUMSTANCES

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.

SECTION 9: INDEMNIFICATION

Consultant agrees to indemnify, defend, and hold harmless the City, its officials, officers, agents, employees, and volunteers from and against any and all claims, demands, actions, damages, judgments, liability or costs (including associated legal fees and costs of investigation and defense) to the extent that such claims, demands, actions, damages, judgments, liability or costs (including associated legal fees and costs of investigation and defense) arise in any manner from the negligence, recklessness, or willful misconduct of Consultant, its employees, subcontractors, or agents in the performance or failure to perform the obligations under this agreement. In no event, however, shall the cost to defend exceed Consultant's proportionate percentage of fault.

SECTION 10: EQUAL EMPLOYMENT OPPORTUNITY

The City of Santa Cruz strongly supports equal employment opportunities for all and requires its Consultants to ensure that effective policies and procedures concerning the prevention of illegal discrimination and harassment exist in their companies. In addition, all Consultants must be in compliance with all applicable Federal and State and local equal employment opportunity acts, laws, and regulations. The City's current Equal Employment Opportunity and Anti-Discrimination policies to which this provision applies may be viewed at <http://www.codepublishing.com/CA/SantaCruz/?SantaCruz09/SantaCruz0983.html>.

SECTION 11: LEGAL ACTION/ATTORNEYS' FEES

If any action at law or in equity is brought to enforce or interpret the provisions of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which he or she may be entitled. The laws of the State of California shall govern all matters relating to the validity, interpretation, and effect of this Agreement and any authorized or alleged changes, the performance of any of its terms, as well as the rights and obligations of Consultant and the City.

The parties agree, in any action or claim, to enter into mediation prior to litigation.

SECTION 12: ASSIGNMENT

This Agreement shall not be assigned without first obtaining the express written consent of the Director after approval of the Santa Cruz City Council.

SECTION 13: MISCELLANEOUS PROVISIONS

1. Project Manager. Director reserves the right to approve the project manager assigned by Consultant to said work. No change in assignment may occur without prior written approval of the City.
2. Consultant Services Only. Consultant is employed to render professional services only and any payments made to Consultant are compensation solely for such professional services.
3. Licensure. Vendor warrants that it has complied with any and all federal, state, and local licensing requirements and agrees to provide proof of a current City of Santa Cruz Business Tax Certificate if:

- Vendor is located in the City of Santa Cruz;
- Will perform physical work in the City of Santa Cruz for 6 or more days annually; or
- Will use company vehicles to deliver within the City of Santa Cruz for 6 or more days annually.

For additional information and licensing requirements, view the City's [Business Licenses and Permits webpage](#) or call the Revenue and Taxation division at 831/420-5070.

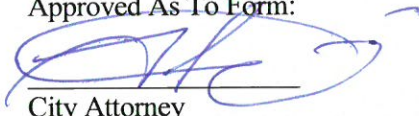
4. Other Agreements. This Agreement supersedes any and all other agreements, either oral or in writing, between the parties with respect to the Scope of Work specified in Exhibit A..
5. City Property. The work, or any portion, of Consultant in performing this Agreement shall become the property of City. The Consultant shall be permitted to retain copies or such work for information and reference in connection with the City use, as well as for internal and publicity purposes; however, such work shall not be used by the Consultant on other projects, except by agreement in writing by the City. Should the Owner or any other persons, firms or other legal entities use, reuse, or modify Consultant's Instruments of Services prepared under this Agreement on other projects or if the Owner uses the Instruments of Service to complete the Project without Consultant's full participation, the Owner agrees to indemnify, defend and hold Consultant harmless from and against any and all claims, liabilities, suits, demands, losses, costs and expenses arising out of such use, reuse or modification of the Architect's Instruments of Service.
6. Consultant's Records. Consultant shall maintain accurate accounting records and other written documentation pertaining to the costs incurred for this project. Such records and documentation shall be kept available at Consultant's office during the period of this Agreement, and after the term of this Agreement for a period of three years from the date of the final City payment for Consultant's services.
7. Independent Contractor. In the performance of its work, it is expressly understood that Consultant, including Consultant's agents, servants, employees, and subcontractors, is an independent contractor solely responsible for its acts and omissions, and Consultant shall not be considered an employee of the City for any purpose.
8. Consultant Not an Agent. Except as City may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.
9. Conflicts of Interest. Consultant stipulates that corporately or individually, its firm, its employees and subcontractors have no financial interest in either the success or failure of any project which is, or may be, dependent on the results of the Consultant's work product prepared pursuant to this Agreement.
10. MacBride Principles/Peace Charter. City of Santa Cruz Resolution NS-19,378 (7/24/90) encourages all companies doing business in Northern Ireland to abide by the MacBride Principles and Peace Charter.
11. Storm Water Requirements. The Contractor, and all subcontractors, are required to abide by the applicable City of Santa Cruz Storm Water Best Management Practices (BMPs) for the duration of the work. The City's mandatory Storm Water BMPs, which are listed according to the type of work, operations, or business, are located on the City website at: <http://www.Cityofsantacruz.com/index.aspx?page=138>.
12. Notices. If either party shall desire or is required to give notice to the other such notice shall be given in writing, via facsimile and concurrently by prepaid U.S. certified or registered postage, addressed to recipient as follows:

To CITY:
Santa Cruz Public Libraries
Susan Nemitz
117 Union Street
Santa Cruz, CA 95060

To CONSULTANT:
Noll & Tam
Chris Noll
729 Heinz Avenue, #7
Berkeley, CA 94710

Changes to the above information shall be given to the other party in writing ten (10) business days before the change is effective.

Approved As To Form:



City Attorney

Date: 6-19-17

CONSULTANT
NOLL & TAM
729 HEINZ AVENUE, #7
BERKELEY, CA 94710

By: Chris Noll

Printed: Chris Noll

Title: Principal

Date: 6/22/17

CITY OF SANTA CRUZ

By: Susan Nemitz

SUSAN NEMITZ

DIRECTOR

Date: 6/19/17

EXHIBIT A: SCOPE OF WORK

1. Kick-Off Meeting
2. Evaluation of Existing Building
3. Needs assessment and City building program
4. Current facility review
5. Conceptual space planning alternatives
6. Development of site and space plans for three alternatives (includes costing)
7. Two days of staff meetings
8. Six Advisory Committee/community meetings
9. One City Council Meeting

*Additional community presentations may be added at \$3,600 each.

EXHIBIT B: FEE SCHEDULE

Total amount of contract will not exceed \$95,000.

EXHIBIT C: WORK SCHEDULE

Work to be complete by December 31, 2017.

