

Contract No. 18D0250**INDEPENDENT CONTRACTOR AGREEMENT**
(DESIGN PROFESSIONALS)

This Contract is entered into this 24th day of April, 2018, by and between the COUNTY OF SANTA CRUZ, hereinafter called COUNTY, and Noll & Tam Architects, hereinafter called CONTRACTOR. The parties agree as follows:

1. **DUTIES.** CONTRACTOR agrees to exercise special skill, in accordance with customary and ordinary professional practices and principles accepted in the industry, to accomplish the following results: provide architectural engineering services for the County of Santa Cruz Public Works Department in relation to the Live Oak Library Annex at Simpkins Swim and Community Center Project (hereinafter "the project").

2. **COMPENSATION.** In consideration for CONTRACTOR accomplishing said result, COUNTY agrees to pay CONTRACTOR as follows: Payment not to exceed \$148,738, after receipt and project manager approval of monthly invoices based upon the amount of actual progress achieved during the preceding month.

3. **TERM.** The term of this Contract shall be: April 24, 2018 through: June 30, 2019 or project completion, whichever occurs first.

4. **DESIGN DOCUMENTS.** All design documents prepared by CONTRACTOR shall comply with applicable laws, statutes, ordinances, codes, rules and regulations. Original design drawings and specifications are the property of CONTRACTOR; however, COUNTY shall be furnished with reproductions of drawings and specifications produced pursuant to this Contract. Reproductions shall be the property of the COUNTY, which may use them without CONTRACTOR's permission for any purpose relating to the project, including construction, maintenance, repair or expansion of the work of improvement.

5. **SCHEDULE.** CONTRACTOR shall complete the project as expeditiously as is consistent with professional skill and care, and the prompt, orderly progress of the project. The total amount of compensation accounts for time necessary for review and revision of design drawings and specifications by COUNTY and other entities or authorities with jurisdiction over the project, if any, and no additional compensation shall be due for delays attributable thereto. No additional services or work made necessary, in whole or in part, by any fault or omission of CONTRACTOR to perform its duties, responsibilities or obligations under this Contract, shall be compensated as extra work.

6. **EARLY TERMINATION.** COUNTY may terminate this Contract at any time by giving thirty (30) days' written notice to the CONTRACTOR. CONTRACTOR may terminate this Contract only for cause, after providing COUNTY thirty (30) days' written notice and opportunity to cure, specifying in detail the cause for termination.

7. **INDEMNIFICATION FOR DAMAGES, TAXES AND CONTRIBUTIONS.** To the fullest extent permitted by applicable law, CONTRACTOR shall exonerate, indemnify, defend, and hold harmless COUNTY (which for the purpose of paragraphs 7 and 8 shall include, without limitation, its officers, agents, employees and volunteers) from and against:

4/24/18

A. Any and all claims, demands, losses, damages, defense costs, or liability of any kind or nature which COUNTY may sustain or incur or which may be imposed upon it to the extent they arise out of, pertain to, or relate to CONTRACTOR'S negligence, recklessness, or willful misconduct under the terms of this Agreement. Such indemnification includes any damage to the person(s), or property(ies) of CONTRACTOR and third persons. Unless this Contract falls within Section 2782.8(e) of the Civil Code: (1) in no event shall the cost to defend charged to CONTRACTOR exceed the CONTRACTOR's proportionate percentage of fault; and (2) in the event one or more defendants is unable to pay its share of defense costs due to bankruptcy or dissolution of the business, the CONTRACTOR shall meet and confer with other parties regarding unpaid defense costs.

B. Any and all Federal, State and Local taxes, charges, fees, or contributions required to be paid with respect to CONTRACTOR and CONTRACTOR'S officers, employees and agents engaged in the performance of this Contract (including, without limitation, unemployment insurance, social security and payroll tax withholding).

8. **INSURANCE.** CONTRACTOR, at its sole cost and expense, for the full term of this Contract (and any extensions thereof), shall obtain and maintain, at minimum, compliance with all of the following insurance coverage(s) and requirements. Such insurance coverage shall be primary coverage as respects COUNTY and any insurance or self-insurance maintained by COUNTY shall be considered in excess of CONTRACTOR'S insurance coverage and shall not contribute to it. If CONTRACTOR normally carries insurance in an amount greater than the minimum amount required by the COUNTY for this Contract, that greater amount shall become the minimum required amount of insurance for purposes of this Contract. Therefore, CONTRACTOR hereby acknowledges and agrees that any and all insurances carried by it shall be deemed liability coverage for any and all actions it performs in connection with this Contract. Insurance is to be obtained from insurers reasonably acceptable to the COUNTY.

If CONTRACTOR utilizes one or more subcontractors in the performance of this Contract, CONTRACTOR shall obtain and maintain Contractor's Protective Liability insurance as to each subcontractor or otherwise provide evidence of insurance coverage from each subcontractor equivalent to that required of CONTRACTOR in this contract, unless CONTRACTOR and COUNTY both initial here ____ / ____.

A. Types of Insurance and Minimum Limits

(1) Worker's Compensation in the minimum statutorily required coverage amounts. This insurance coverage shall be required unless the CONTRACTOR has no employees and certifies to this fact by initialing here

(2) Automobile Liability Insurance for each of CONTRACTOR'S vehicles used in the performance of this Contract, including owned, non-owned (e.g. owned by CONTRACTOR'S employees), leased or hired vehicles, in the minimum amount of \$500,000 combined single limit per occurrence for bodily injury and property damage. This insurance coverage is required unless the CONTRACTOR does not drive a vehicle in conjunction with any part of the performance of this Contract and CONTRACTOR and COUNTY both certify to this fact by initialing here ____ / ____.

(3) Comprehensive or Commercial General Liability Insurance coverage at least as broad as the most recent ISO form CG 00 01, with a minimum limit of \$1,000,000 per occurrence and \$2,000,000 aggregate, including coverage for: (a) products and completed operations; (b) bodily and personal injury, (c) broad form property damage, (d) contractual liability, and (e) cross-liability.

(4) Professional Liability Insurance in the minimum amount of \$ 2,000,000

combined single limit, if, and only if, this Subparagraph is initialed by CONTRACTOR and COUNTY

CA/1/2/2017

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B. Other Insurance Provisions

(1) If any insurance coverage required in this Contract is provided on a "Claims Made" rather than "Occurrence" form, CONTRACTOR agrees that the retroactive date thereof shall be no later than the date first written above (in the first paragraph on page 1), and that it shall maintain the required coverage for a period of three (3) years after the expiration of this Contract (hereinafter "post Contract coverage") and any extensions thereof. CONTRACTOR may maintain the required post Contract coverage by renewal or purchase of prior acts or tail coverage. This provision is contingent upon post Contract coverage being both available and reasonably affordable in relation to the coverage provided during the term of this Contract. For purposes of interpreting this requirement, a cost not exceeding 100% of the last annual policy premium during the term of this Contract in order to purchase prior acts or tail coverage for post Contract coverage shall be deemed to be reasonable.

(2) All policies of Comprehensive or Commercial General Liability Insurance shall be endorsed to cover the County of Santa Cruz, its officials, employees, agents and volunteers as additional insureds with respect to liability arising out of the work or operations and activities performed by or on behalf of CONTRACTOR, including materials, parts or equipment furnished in connection with such work or operations. Endorsements shall be at least as broad as ISO Form CG 20 10 11 85, or both CG 20 10 10 01 and CG 20 37 10 01, covering both ongoing operations and products and completed operations.

Should CONTRACTOR fail to obtain such an endorsement to any policy required hereunder, CONTRACTOR shall be responsible to provide at least thirty (30) days' notice (10 days for nonpayment of premium) of cancellation of such policy to the COUNTY as a material term of this Contract.

(3) All required insurance policies shall be endorsed to contain the following clause: "This insurance shall not be canceled until after thirty (30) days' (10 days for nonpayment of premium) prior written notice has been given to:

**Santa Cruz County
Department of Public Works
Attn: Betsey Lynberg
701 Ocean Street, Room 410
Santa Cruz, CA 95060**

Should CONTRACTOR fail to obtain such an endorsement to any policy required hereunder, CONTRACTOR shall be responsible to provide at least thirty (30) days' notice (10 days for nonpayment of premium) of cancellation of such policy to the COUNTY as a material term of this Contract.

(4) CONTRACTOR agrees to provide its insurance broker(s) with a full copy of these insurance provisions and provide COUNTY on or before the effective date of this Contract with Certificates of Insurance and endorsements for all required coverages. However, failure to obtain the required documents prior to the work beginning shall not waive the CONTRACTOR's obligation to provide them. All Certificates of Insurance and endorsements shall be delivered or sent to:

**Santa Cruz County
Department of Public Works**

Attn: Betsey Lynberg
 701 Ocean Street, Room 410 -
 Santa Cruz, CA 95060

(5) CONTRACTOR hereby grants to COUNTY a waiver of any right of subrogation which any insurer of said CONTRACTOR may acquire against the COUNTY by virtue of the payment of any loss under such insurance. CONTRACTOR 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 COUNTY has received a waiver of subrogation endorsement from the insurer.

9. EQUAL EMPLOYMENT OPPORTUNITY. During and in relation to the performance of this Contract, CONTRACTOR agrees as follows:

A. The CONTRACTOR shall not discriminate against any employee or applicant for employment because of race, color, creed, religion, national origin, ancestry, physical or mental disability, medical condition (including cancer-related and genetic characteristics), marital status, sexual orientation, age (over 18), veteran status, gender, pregnancy, or any other non-merit factor unrelated to job duties. Such action shall include, but not be limited to, the following: recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, selection for training (including apprenticeship), employment, upgrading, demotion, or transfer. The CONTRACTOR agrees to post in conspicuous places, available to employees and applicants for employment, notice setting forth the provisions of this non-discrimination clause.

B. If this Contract provides compensation in excess of \$50,000 to CONTRACTOR and if CONTRACTOR employees fifteen (15) or more employees, the following requirements shall apply:

(1) The CONTRACTOR shall, in all solicitations or advertisements for employees placed by or on behalf of the CONTRACTOR, state that all qualified applicants will receive consideration for employment without regard to race, color, creed, religion, national origin, ancestry, physical or mental disability, medical condition (including cancer-related and genetic characteristics), marital status, sexual orientation, age (over 18), veteran status, gender, pregnancy, or any other non-merit factor unrelated to job duties. Such action shall include, but not be limited to, the following: recruitment; advertising, layoff or termination, rates of pay or other forms of compensation, selection for training (including apprenticeship), employment, upgrading, demotion, or transfer. In addition, the CONTRACTOR shall make a good faith effort to consider Minority/Women/Disabled Owned Business Enterprises in CONTRACTOR'S solicitation of goods and services. Definitions for Minority/Women/Disabled Business Enterprises are available from the COUNTY General Services Purchasing Division.

(2) In the event of the CONTRACTOR'S non-compliance with the non-discrimination clauses of this Contract or with any of the said rules, regulations, or orders said CONTRACTOR may be declared ineligible for further contracts with the COUNTY.

(3) The CONTRACTOR shall cause the foregoing provisions of subparagraphs 9B(1) and 9B(2) to be inserted in all subcontracts for any work covered under this Contract by a subcontractor compensated more than \$50,000 and employing more than fifteen (15) employees, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

10. INDEPENDENT CONTRACTOR STATUS. CONTRACTOR and COUNTY have reviewed and considered the principal test and secondary factors below and agree that CONTRACTOR is an independent contractor and not an employee of COUNTY. CONTRACTOR is responsible for all insurance (workers compensation, unemployment, etc.) and all payroll related taxes. CONTRACTOR is

not entitled to any employee benefits. COUNTY agrees that CONTRACTOR shall have the right to control the manner and means of accomplishing the result contracted for herein.

PRINCIPAL TEST: The CONTRACTOR rather than COUNTY has the right to control the manner and means of accomplishing the result contracted for.

SECONDARY FACTORS: (a) The extent of control which, by agreement, COUNTY may exercise over the details of the work is slight rather than substantial; (b) CONTRACTOR is engaged in a distinct occupation or business; (c) In the locality, the work to be done by CONTRACTOR is usually done by a specialist without supervision, rather than under the direction of an employer; (d) The skill required in the particular occupation is substantial rather than slight; (e) The CONTRACTOR rather than the COUNTY supplies the instrumentalities, tools and work place; (f) The length of time for which CONTRACTOR is engaged is of limited duration rather than indefinite; (g) The method of payment of CONTRACTOR is by the job rather than by the time; (h) The work is part of a special or permissive activity, program, or project, rather than part of the regular business of COUNTY; (i) CONTRACTOR and COUNTY believe they are creating an independent contractor relationship rather than an employer-employee relationship; and (j) The COUNTY conducts public business.

It is recognized that it is not necessary that all secondary factors support creation of an independent contractor relationship, but rather that overall there are significant secondary factors that indicate that CONTRACTOR is an independent contractor.

By their signatures on this Contract, each of the undersigned certifies that it is his or her considered judgment that the CONTRACTOR engaged under this Contract is in fact an independent contractor.

11. NONASSIGNMENT. CONTRACTOR shall not assign the Contract without the prior written consent of the COUNTY.

12. ACKNOWLEDGMENT. CONTRACTOR shall acknowledge in all reports and literature that the Santa Cruz County Board of Supervisors has provided funding to the CONTRACTOR.

13. RETENTION AND AUDIT OF RECORDS. CONTRACTOR shall retain records pertinent to this Contract for a period of not less than five (5) years after final payment under this Contract or until a final audit report is accepted by COUNTY, whichever occurs first. CONTRACTOR hereby agrees to be subject to the examination and audit by the Santa Cruz County Auditor-Controller, the Auditor General of the State of California, or the designee of either for a period of five (5) years after final payment under this Contract.

14. PRESENTATION OF CLAIMS. Presentation and processing of any or all claims arising out of or related to this Contract shall be made in accordance with the provisions contained in Chapter 1.05 of the Santa Cruz County Code, which by this reference is incorporated herein.

15. ATTACHMENTS. This Contract includes the following attachments:

- Exhibit A – Scope of Work
- Exhibit B – Fee Proposal and Hourly Rates

16. LIVING WAGE. This Contract is covered under Living Wage provisions if this section is initialed by COUNTY

If Item # 16 above is initialed by the COUNTY, then this Contract is subject to the provisions of Santa Cruz County Code Chapter 2.122, which requires payment of a living wage to covered employees.

Non-compliance during the term of the Contract with these Living Wage Provisions will be considered a material breach, and may result in termination of the Contract and/or pursuit of other legal or administrative remedies.

CONTRACTOR agrees to comply with Santa Cruz County Code section 2.122.140, if applicable.

17. **NON-BINDING UNTIL APPROVED.** Regardless of whether this Contract has been signed by all parties, if the total compensation identified in Paragraph 2 of this Contract is greater than \$15,000, this Contract is not binding on any party until the Contract has been approved by the Santa Cruz County Board of Supervisors.

18. **MISCELLANEOUS.** This written Contract, along with any attachments, is the full and complete integration of the parties' agreement forming the basis for this Contract. The parties agree that this written Contract supersedes any previous written or oral agreements between the parties, and any modifications to this Contract must be made in a written document signed by all parties. The unenforceability, invalidity or illegality of any provision(s) of this Contract shall not render the other provisions unenforceable, invalid or illegal. Waiver by any party of any portion of this Contract shall not constitute a waiver of any other portion thereof. Any arbitration, mediation, or litigation arising out of this Contract shall occur only in the County of Santa Cruz, notwithstanding the fact that one of the contracting parties may reside outside of the County of Santa Cruz. This Contract shall be governed by, and interpreted in accordance with, California law.

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Attachment: Contract 18D0250 - Noll and Tam (5201 : Live Oak Library Annex Consultant Contract Agreement #18D0250)


SIGNATURE PAGE

Contract No. 18D0250

INDEPENDENT CONTRACTOR AGREEMENT
(DESIGN PROFESSIONALS)

IN WITNESS WHEREOF, the parties hereto have set their hands the day and year first above written.

2. **NOLL & TAM ARCHITECTS**

By: 
SIGNED

Chris Noll, Principal
PRINTED

4. **COUNTY OF SANTA CRUZ**

By: 
SIGNED

Marcela Tavantzis
PRINTED

Company Name: Noll & Tam Architects

Address: 729 Heinz Avenue
Berkeley, CA 94710

Telephone: (510) 542-2200

Fax: (510) 542-2201

Email: chris.noll@nollandtam.com

3. **APPROVED AS TO INSURANCE:**



Risk Management

DISTRIBUTION:

- Public Works
- Parks
- Auditor-Controller
- Risk Management
- Contractor

1. **APPROVED AS TO FORM:**



Asst. County Counsel

Attachment: Contract 18D0250 - Noll and Tam (5201 : Live Oak Library Annex Consultant Contract Agreement #18D0250)

