

EXHIBIT 'A'

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE CITY OF KERMAN AND PBK ARCHITECTS INC.**

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is made and entered into this July 24, 2024 (hereinafter, the "Effective Date"), by and between the CITY OF KERMAN, a municipal corporation ("CITY") and PBK ARCHITECTS INC. ("CONSULTANT"). For the purposes of this Agreement, CITY and CONSULTANT may be referred to collectively by the capitalized term "Parties." The capitalized term "Party" may refer to CITY or CONSULTANT interchangeably.

RECITALS

WHEREAS, the CITY authorized the Purchase of Real Property 15061 West "C" Street, for the development of a new Community Public Safety center; and

WHEREAS, CONSULTANT, was competitively selected through a qualifications process to conduct a Needs Assessment and Alternatives study, followed by a detailed examination of the preferred site and buildings which included a preliminary space planning exercise; and

WHEREAS, CONSULTANT was the designer of the original buildings acquired by the CITY that are proposed for alternation; and

WHEREAS, CONSULTANT'S familiarity, expertise and intimate knowledge of the property and the city's' needs make them uniquely qualified to undertake this work; and

WHEREAS, building upon the totality of that previous work is logical and economical, and

WHEREAS, CONSULTANT has presented a professional services proposal (Exhibit "A") that is responsive to the specific needs of the City for with they are uniquely qualified, and

WHEREAS, the CITY thoroughly reviewed the proposal and now recommends its approval as the Scope of Services which is part of this Agreement.

NOW, THEREFORE, for and in consideration of the foregoing recitals and mutual covenants and conditions herein contained, CITY and CONSULTANT agree as follows:

**I.
ENGAGEMENT TERMS**

1.1 SCOPE OF SERVICES:

- A. Subject to the terms and conditions set forth in this Agreement and all exhibits attached and incorporated hereto, CONSULTANT agrees to perform the services and tasks set forth in **Exhibit "A"** (hereinafter referred to as the "Scope of Services").

- B. CONSULTANT agrees to furnish to CITY all labor, materials, tools, supplies, equipment, services, tasks and incidental and customary work necessary to competently perform and timely complete the services and tasks set forth in the Scope of Services.
- C. For the purposes of this Agreement the aforementioned services and tasks set forth in the Scope of Services shall hereinafter be referred to generally by the capitalized term "Work."
- D. Work performed by CONSULTANT under this Agreement shall be limited to the tasks assigned to CONSULTANT pursuant to CITY.
- E. CONSULTANT will provide its best efforts to deliver design and bidding work products necessary for bidding and contractor selection by January 31, 2025 and will be fully cooperative with CITY on any CITY requested schedule change(s) as proposed in draft schedule in Exhibit "C".
- F. CONSULTANT will work with the City and selected Construction Manager to develop a construction schedule that meets the CITY'S and Police Department's operational requirements.

1.2 TERM:

- A. This Agreement shall have a term commencing on the Effective Date and expiring on December 31, 2025.
- B. CONSULTANT may ask and CITY may grant an extension(s) based on extenuating circumstances, notwithstanding provisions provided under Section 5 below.
- C. Nothing in this Subsection 1.2 shall operate to prohibit or otherwise restrict CITY right to terminate this Agreement at any time for convenience or for cause as provided in Section 5 of this Agreement.

1.3 COMPENSATION:

- A. CONSULTANT shall be paid in accordance with the Fee Schedule set forth in **Exhibit "B."**
- B. As set forth in **Exhibit "B"**, CONSULTANT's total compensation during the Term of this Agreement shall not exceed the budgeted aggregate sum of Six Hundred and Fifty Thousand Dollars (\$650,000.00), (hereinafter, the "Not-to-Exceed Sum"), unless such added expenditure is first approved by the CITY.
- C. In the event CONSULTANT's charges are projected to exceed the Not-to-Exceed Sum prior to the expiration of the Term or any single extension term, CONSULTANT shall give notice to CITY of such projection. CITY may suspend CONSULTANT's performance pending CITY approval of any anticipated expenditures in excess of the Not-to-Exceed Sum or any other CITY-approved amendment to the compensation terms of this Agreement.

- 1.4 PAYMENT OF COMPENSATION: Following the conclusion of each calendar month, CONSULTANT shall submit to CITY an itemized invoice indicating the services and tasks performed during the recently concluded calendar month, including services and tasks performed and the reimbursable out-of-pocket expenses incurred. If the amount of CONSULTANT's monthly compensation is a function of hours worked by CONSULTANT's personnel, the invoice shall indicate the number of hours worked in the recently concluded calendar month, the persons responsible for performing the Work, the rate of compensation at which such services and tasks were performed, the subtotal for each task and service performed and a grand total for all services performed. Within thirty (30) calendar days of receipt of each invoice, CITY shall notify CONSULTANT in writing of any disputed amounts included in the invoice. Within forty-five (45) calendar day of receipt of each invoice, CITY shall pay all undisputed amounts included on the invoice. CITY shall not withhold applicable taxes or other authorized deductions from payments made to CONSULTANT.
- 1.5 ACCOUNTING RECORDS: CONSULTANT shall maintain complete and accurate records with respect to all matters covered under this Agreement for a period of three (3) years after the expiration or termination of this Agreement. CITY shall have the right to access and examine such records, without charge, during normal business hours. CITY shall further have the right to audit such records, to make transcripts therefrom and to inspect all program data, documents, proceedings, and activities.

II. PERFORMANCE OF AGREEMENT

- 2.1 CITY'S REPRESENTATIVES: The CITY hereby designates the City Manager or Designee (hereinafter, the "CITY Representatives") to act as its representatives for the performance of this Agreement. The City Manager shall be the chief CITY Representative. The CITY Representatives or their designee shall act on behalf of the CITY for all purposes under this Agreement. CONSULTANT shall not accept directions or orders from any person other than the CITY Representatives or their designee.
- 2.2 CONSULTANT REPRESENTATIVE: CONSULTANT hereby designates Max Medina, AIA, Senior Principal to act as its representative for the performance of this Agreement (hereinafter, "CONSULTANT Representative"). CONSULTANT Representative shall have full authority to represent and act on behalf of the CONSULTANT for all purposes under this Agreement. CONSULTANT Representative or his designee shall supervise and direct the performance of the Work, using his best skill and attention, and shall be responsible for all means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the Work under this Agreement. Notice to the CONSULTANT Representative shall constitute notice to CONSULTANT.
- 2.3 COORDINATION OF SERVICE: CONFORMANCE WITH REQUIREMENTS: CONSULTANT agrees to work closely with CITY staff in the performance of the Work and this Agreement and shall be available to CITY staff and the CITY Representatives at all reasonable times. All work prepared by CONSULTANT shall be subject to inspection and approval by CITY Representatives or their designees.
- 2.4 STANDARD OF CARE; PERFORMANCE OF EMPLOYEES: CONSULTANT represents, acknowledges and agrees to the following:

- A. CONSULTANT shall perform all Work skillfully, competently and to the highest standards of CONSULTANT's profession;
- B. CONSULTANT shall perform all Work in a manner reasonably satisfactory to the CITY
- C. CONSULTANT shall comply with all applicable federal, state and local laws and regulations, including the conflict of interest provisions of Government Code Section 1090 and the Political Reform Act (Government Code Section 81000 et seq.);
- D. CONSULTANT understands the nature and scope of the Work to be performed under this Agreement as well as any and all schedules of performance;
- E. All of CONSULTANT's employees and agents possess sufficient skill, knowledge, training and experience to perform those services and tasks assigned to them by CONSULTANT; and
- F. All of CONSULTANT's employees and agents (including but not limited to subcontractors and sub-consultants) possess all licenses, permits, certificates, qualifications and approvals of whatever nature that are legally required to perform the tasks and services contemplated under this Agreement and all such licenses, permits, certificates, qualifications and approvals shall be maintained throughout the term of this Agreement and made available to CITY for copying and inspection. The Parties acknowledge and agree that CONSULTANT shall perform, at CONSULTANT's own cost and expense and without any reimbursement from CITY, any services necessary to correct any errors or omissions caused by CONSULTANT's failure to comply with the standard of care set forth under this Section or by any like failure on the part of CONSULTANT's employees, agents, contractors, subcontractors and sub-consultants. Such effort by CONSULTANT to correct any errors or omissions shall be commenced immediately upon their discovery by either Party and shall be completed within seven (7) calendar days from the date of discovery or such other extended period of time authorized by the CITY Representatives in writing and in their sole and absolute discretion. The Parties acknowledge and agree that CITY's acceptance of any work performed by CONSULTANT or on CONSULTANT's behalf shall not constitute a release of any deficiency or delay in performance. The Parties further acknowledge, understand and agree that CITY has relied upon the foregoing representations of CONSULTANT, including but not limited to the representation that CONSULTANT possesses the skills, training, knowledge and experience necessary to perform the Work skillfully, competently and to the highest standards of CONSULTANT's profession.

2.5 ASSIGNMENT: The skills, training, knowledge and experience of CONSULTANT are material to CITY's willingness to enter into this Agreement. Accordingly, CITY has an interest in the qualifications and capabilities of the person(s) who will perform the services and tasks to be undertaken by CONSULTANT or on behalf of CONSULTANT in the performance of this Agreement. In recognition of this interest, CONSULTANT agrees that it shall not assign or transfer, either directly or indirectly or by operation of law, this Agreement or the performance of any of CONSULTANT's duties or obligations under this Agreement without the prior written assignment or transfer shall be ineffective, null and void and shall constitute a material breach of this Agreement.

- 2.6 **CONTROL AND PAYMENT OF SUBORDINATES; INDEPENDENT CONTRACTOR:** The Work shall be performed by CONSULTANT or under CONSULTANT's strict supervision. CONSULTANT will determine the means, methods and details of performing the Work subject to the requirements of this Agreement. CITY retains CONSULTANT on an independent consultant basis and not as an employee. CONSULTANT reserves the right to perform similar or different services for other principals during the term of this Agreement, provided such work does not unduly interfere with CONSULTANT's competent and timely performance of the Work contemplated under this Agreement and provided the performance of such services does not result in the unauthorized disclosure of CITY's confidential or proprietary information. Any additional personnel performing the Work under this Agreement on behalf of CONSULTANT are not employees of CITY and shall at all times be under CONSULTANT's exclusive direction and control. CONSULTANT shall pay all wages, salaries and other amounts due such personnel and shall assume responsibility for all benefits, payroll taxes, Social Security and Medicare payments and the like. CONSULTANT shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: Social Security taxes, income tax withholding, unemployment insurance, disability insurance, workers' compensation insurance and the like.
- 2.7 **REMOVAL OF EMPLOYEES OR AGENTS:** If any of CONSULTANT's officers, employees, agents, contractors, subcontractors or sub-consultants is determined by the CITY Representatives to be uncooperative, incompetent, a threat to the adequate or timely performance of the tasks assigned to CONSULTANT, a threat to persons or property, or if any of CONSULTANT's officers, employees, agents, contractors, subcontractors or sub-consultants fail or refuse to perform the Work in a manner acceptable to the CITY, at CITY's request such officer, employee, agent, contractor, sub-consultant or sub-consultant shall be promptly removed by CONSULTANT and shall not be re-assigned to perform any of the Work.
- 2.8 **COMPLIANCE WITH LAWS:** CONSULTANT shall keep itself informed of and in compliance with all applicable federal, State or local laws to the extent such laws control or otherwise govern the performance of the Work. CONSULTANT's compliance with applicable laws shall include without limitation compliance with all applicable Cal/OSHA requirements.
- 2.9 **NON-DISCRIMINATION:** In the performance of this Agreement, CONSULTANT shall not discriminate against any employee, subcontractor, sub-consultant, or applicant for employment because of race, color, creed, religion, sex, marital status, sexual orientation, national origin, ancestry, age, physical or mental disability or medical condition. that CONSULTANT and all persons retained or employed by CONSULTANT are, and shall at all times remain, wholly independent contractors and are not officials, officers, employees, departments or subdivisions of CITY. CONSULTANT shall be solely responsible for the negligent acts and/or omissions of its employees, agents, contractors, subcontractors and sub-consultants. CONSULTANT and all persons retained or employed by CONSULTANT shall have no authority, express or implied, to bind CITY in any manner, nor to incur any obligation, debt or liability of any kind on behalf of, or against, CITY, whether by contract or otherwise, unless such authority is expressly conferred to CONSULTANT under this Agreement or is otherwise expressly conferred by CITY in writing.

III.
INSURANCE

- 3.1 DUTY TO PROCURE AND MAINTAIN INSURANCE: Prior to the beginning of and throughout the duration of the Work, CONSULTANT will procure and maintain policies of insurance that meet the requirements and specifications set forth under this Article. CONSULTANT shall procure and maintain the following insurance coverage, at its own expense:
- A. Commercial General Liability Insurance: CONSULTANT shall procure and maintain Commercial General Liability Insurance ("CGL Coverage") as broad as Insurance Services Office Commercial General Liability coverage (occurrence Form CG 0001) or its equivalent. Such CGL Coverage shall have minimum limits of no less than One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) in the general aggregate for bodily injury, personal injury, property damage, operations, products and completed operations, and contractual liability.
 - B. Automobile Liability Insurance: CONSULTANT shall procure and maintain Automobile Liability Insurance as broad as Insurance Services Office Form Number CA 0001 covering Automobile Liability, Code 1 (any auto). Such Automobile Liability Insurance shall have minimum limits of no less than One Million Dollars (\$1,000,000.00) per accident for bodily injury and property damage.
 - C. Workers' Compensation Insurance/ Employer's Liability Insurance: A policy of workers' compensation insurance in such amount as will fully comply with the laws of the State of California and which shall indemnify, insure and provide legal defense for both CONSULTANT and CITY against any loss, claim or damage arising from any injuries or occupational diseases occurring to any worker employed by or any persons retained by CONSULTANT in the course of carrying out the Work contemplated in this Agreement. three (3) years thereafter, CONSULTANT shall procure and maintain Errors and Omissions Liability Insurance appropriate to CONSULTANT's profession. Such coverage shall have minimum limits of no less than One Million Dollars (\$1,000,000.00) per occurrence and shall be endorsed to include contractual liability.
- 3.2 ADDITIONAL INSURED REQUIREMENTS: The CGL Coverage and the Automobile Liability Insurance shall contain an endorsement naming the CITY and CITY's elected and appointed officials, officers, employees, agents and volunteers as additional insureds.
- 3.3 REQUIRED CARRIER RATING: All varieties of insurance required under this Agreement shall be procured from insurers admitted in the State of California and authorized to issue policies directly to California insureds. Except as otherwise provided elsewhere under this Article, all required insurance shall be procured from insurers who, according to the latest edition of the Best's Insurance Guide, have an A.M. Best's rating of no less than A: VII. CITY may also accept policies procured by insurance carriers with a Standard & Poor's rating of no less than BBB according to the latest published edition the Standard & Poor's rating guide. As to Workers' Compensation Insurance/ Employer's Liability Insurance, the CITY Representatives are authorized to authorize lower ratings than those set forth in this Section.

- 3.4 PRIMACY OF CONSULTANT'S INSURANCE: All policies of insurance provided by CONSULTANT shall be primary to any coverage available to CITY or CITY's elected or appointed officials, officers, employees, agents or volunteers. Any insurance or self-insurance maintained by CITY or CITY's elected or appointed officials, officers, employees, agents or volunteers shall be in excess of CONSULTANT's insurance and shall not contribute with it.
- 3.5 WAIVER OF SUBROGATION: All insurance coverage provided pursuant to this Agreement shall not prohibit CONSULTANT or CONSULTANT's officers, employees, agents, subcontractors or sub-consultants from waiving the right of subrogation prior to a loss. CONSULTANT hereby waives all rights of subrogation against CITY.
- 3.6 VERIFICATION OF COVERAGE: CONSULTANT acknowledges, understands and agrees, that CITY's ability to verify the procurement and maintenance of the insurance required under this Article is critical to safeguarding CITY's financial well-being and, indirectly, the collective well-being of the residents of the CITY. Accordingly, CONSULTANT warrants, represents and agrees that it shall furnish CITY with original certificates of insurance and endorsements evidencing the coverage required under this Article on forms satisfactory to CITY in its sole and absolute discretion. The certificates of insurance and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms provided by the CITY if requested. All certificates of insurance and endorsements shall be received and approved by CITY as a condition precedent to CONSULTANT's commencement of any work or any of the Work. Upon CITY's written request, CONSULTANT shall also provide CITY with certified copies of all required insurance policies and endorsements.

IV. INDEMNIFICATION

- 4.1 The Parties agree that CITY and CITY's elected and appointed officials, officers, employees, agents and volunteers (hereinafter, the "CITY indemnitees") shall, to the fullest extent permitted by law, be protected from any and all loss, injury, damage, claim, lawsuit, cost, expense, attorneys' fees, litigation costs, or any other cost arising out of or in any way related to the performance of this Agreement. Accordingly, the provisions of this indemnity provision are intended by the Parties to be interpreted and construed to provide the CITY indemnitees with the fullest protection possible under the law. CONSULTANT acknowledges that CITY would not enter into this Agreement in the absence of CONSULTANT's commitment to indemnify, defend and protect CITY as set forth herein.
- 4.2 To the fullest extent permitted by law, CONSULTANT shall indemnify, hold harmless and defend the CITY indemnitees from and against all liability, loss, damage, expense, cost (including without limitation reasonable attorneys' fees, expert fees and all other costs and fees of litigation) of every nature arising out of or in connection with CONSULTANT's performance of work hereunder or its failure to comply with any of its obligations contained in this Agreement, except such loss or damage which is caused by the sole negligence or willful misconduct of the CITY.
- 4.3 CITY shall have the right to offset against the amount of any compensation due CONSULTANT under this Agreement any amount due CITY from CONSULTANT as a result of CONSULTANT's failure to pay CITY promptly any indemnification arising under

this Article and related to CONSULTANT's failure to either (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.

- 4.4 The obligations of CONSULTANT under this Article will not be limited by the provisions of any workers' compensation act or similar act. CONSULTANT expressly waives its statutory immunity under such statutes or laws as to CITY and CITY's elected and appointed officials, officers, employees, agents and volunteers.
- 4.5 CONSULTANT agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this Article from each and every sub-consultant or any other person or entity involved by, for, with or on behalf of CONSULTANT in the performance of this Agreement. In the event CONSULTANT fails to obtain such indemnity obligations from others as required herein, CONSULTANT agrees to be fully responsible and indemnify, hold harmless and defend CITY and CITY's elected and appointed officials, officers, employees, agents and volunteers from and against any and all claims and losses, costs or expenses for any damage due to death or injury to any person and injury to any property resulting from any alleged intentional, reckless, negligent, or otherwise wrongful acts, errors or omissions of CONSULTANT's subcontractors or any other person or entity involved by, for, with or on behalf of CONSULTANT in the performance of this Agreement. Such costs and expenses shall include reasonable attorneys' fees incurred by counsel of CITY's choice.
- 4.6 CITY does not, and shall not, waive any rights that it may possess against CONSULTANT because of the acceptance by CITY, or the deposit with CITY, of any insurance policy or certificate required pursuant to this Agreement. This hold harmless and indemnification provision shall apply regardless of whether or not any insurance policies are determined to be applicable to the claim, demand, damage, liability, loss, cost or expense.
- 4.7 This Article IV and all provisions contained herein (including but not limited to the duty to indemnify, defend and hold free and harmless) shall survive the termination or normal expiration of this Agreement and is in addition to any other rights or remedies which the CITY may have at law or in equity.

V. TERMINATION

- 5.1 TERMINATION WITHOUT CAUSE: CITY may terminate this Agreement at any time for convenience and without cause by giving CONSULTANT a minimum of five (5) calendar days prior written notice of CITY's intent to terminate this Agreement. Upon such termination for convenience, CONSULTANT shall be compensated only for those services and tasks which have been performed by CONSULTANT up to the effective date of the termination. CONSULTANT may not terminate this Agreement except for cause as provided under Section 5.2, below. If this Agreement is terminated as provided herein, CITY may require CONSULTANT to provide all finished or unfinished Documents and Data, as defined in Section 6.1 below, and other information of any kind prepared by CONSULTANT in connection with the performance of the Work. CONSULTANT shall be required to provide such Documents and Data within fifteen (15) calendar days of CITY's written request. No actual or asserted breach of this Agreement on the part of CITY pursuant to Section 5.2, below, shall operate to prohibit or otherwise restrict CITY's ability to terminate this Agreement for convenience as provided under this Section.

5.2 EVENTS OF DEFAULT; BREACH OF AGREEMENT:

A. In the event either Party fails to perform any duty, obligation, service or task set forth under this Agreement (or fails to timely perform or properly perform any such duty, obligation, service or task set forth under this Agreement), an event of default (hereinafter, "Event of Default") shall occur. For all Events of Default, the Party alleging an Event of Default shall give written notice to the defaulting Party (hereinafter referred to as a "Default Notice") which shall specify: (i) the nature of the Event of Default; (ii) the action required to cure the Event of Default; (iii) a date by which the Event of Default shall be cured, which shall not be less than the applicable cure period set forth under Sections 5.2.8 and 5.2C below or if a cure is not reasonably possible within the applicable cure period, to begin such cure and diligently prosecute such cure to completion. The Event of Default shall constitute a breach of this Agreement if the defaulting Party fails to cure the Event of Default within the applicable cure period or any extended cure period allowed under this Agreement.

B. CONSULTANT shall cure the following Events of Defaults within the following time periods:

- i. Within three (3) business days of CITY's issuance of a Default Notice for any failure of CONSULTANT to timely provide CITY or CITY's employees or agents with any information and/or written reports, documentation or work product which CONSULTANT is obligated to provide to CITY or CITY's employees or agents under this Agreement. Prior to the expiration of the 3-day cure period, CONSULTANT may submit a written request for additional time to cure the Event of Default upon a showing that CONSULTANT has commenced efforts to cure the Event of Default and that the Event of Default cannot be reasonably cured within the 3-day cure period. The foregoing notwithstanding, CITY shall be under no obligation to grant additional time for the cure of an Event of Default under this Section 5.2 B.i. that exceeds seven (7) calendar days from the end of the initial 3-day cure period; or
- ii. Within fourteen (14) calendar days of CITY's issuance of a Default Notice for any other Event of Default under this Agreement. Prior to the expiration of the 14-day cure period, CONSULTANT may submit a written request for additional time to cure the Event of Default upon a showing that CONSULTANT has commenced efforts to cure the Event of Default and that the Event of Default cannot be reasonably cured within the 14-day cure period. The foregoing notwithstanding, CITY shall be under no obligation to grant additional time for the cure of an Event of Default under this Section 5.2B.ii that exceeds thirty (30) calendar days from the end of the initial 14-day cure period. In addition to any other failure on the part of CONSULTANT to perform any duty, obligation, service or task set forth under this Agreement (or the failure to timely perform or properly perform any such duty, obligation, service or task), an Event of Default on the part of CONSULTANT shall include, but shall not be limited to the following: (i) CONSULTANT's refusal or failure to perform any of the services or tasks called for under the Scope of Services; (ii) CONSULTANT's failure to fulfill or perform its obligations under this Agreement within the specified time or if no time is specified, within a reasonable time; (iii) CONSULTANT's and/or its employees' disregard or violation of any federal, state, local law, rule, procedure

or regulation; (iv) the initiation of proceedings under any bankruptcy, insolvency, receivership, reorganization, or similar legislation as relates to CONSULTANT, whether voluntary or involuntary; (v) CONSULTANT's refusal or failure to perform or observe any covenant, condition, obligation or provision of this Agreement; and/or (vii) CITY's discovery that a statement representation or warranty by CONSULTANT relating to this Agreement is false, misleading or erroneous in any material respect.

- C. CITY shall cure any Event of Default asserted by CONSULTANT within forty-five (45) calendar days of CONSULTANT's issuance of a Default Notice, unless the Event of Default cannot reasonably be cured within the 45-day cure period. Prior to the expiration of the 45-day cure period, CITY may submit a written request for additional time to cure the Event of Default upon a showing that CITY has commenced its efforts to cure the Event of Default and that the Event of Default cannot be reasonably cured within the 45-day cure period. The foregoing notwithstanding, an Event of Default dealing with CITY's failure to timely pay any undisputed sums to CONSULTANT as provided under Section 1.4, above, shall be cured by CITY within five (5) calendar days from the date of CONSULTANT's Default Notice to CITY.
- D. CITY, in its sole and absolute discretion, may also immediately suspend CONSULTANT's performance under this Agreement pending CONSULTANT's cure of any Event of Default by giving CONSULTANT written notice of CITY's intent to suspend CONSULTANT's performance (hereinafter, a "Suspension Notice"). CITY may issue the Suspension Notice at any time upon the occurrence of an Event of Default. Upon such suspension, CONSULTANT shall be compensated only for those services and tasks which have been rendered by CONSULTANT to the reasonable satisfaction of CITY up to the effective date of the suspension. No actual or asserted breach of this Agreement on the part of CITY shall operate to prohibit or otherwise restrict CITY's ability to suspend this Agreement as provided herein.
- E. No waiver of any Event of Default or breach under this Agreement shall constitute a waiver of any other or subsequent Event of Default or breach. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.
- F. The duties and obligations imposed under this Agreement and the rights and remedies available hereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. In addition to any other remedies available to CITY at law or under this Agreement in the event of any breach of this Agreement, CITY, in its sole and absolute discretion, may also pursue any one or more of the following remedies:
- i. Upon written notice to CONSULTANT, the CITY may immediately terminate this Agreement in whole or in part;
 - ii. Upon written notice to CONSULTANT, the CITY may extend the time of performance;

iii. The CITY may proceed by appropriate court action to enforce the terms of the Agreement to recover damages for CONSULTANT's breach of the Agreement or to terminate the Agreement; or

iv. The CITY may exercise any other available and lawful right or remedy. CONSULTANT shall be liable for all legal fees plus other costs and expenses that CITY incurs upon a breach of this Agreement or in the CITY's exercise of its remedies under this Agreement.

G. In the event CITY is in breach of this Agreement, CONSULTANT's sole remedy shall be the suspension or termination of this Agreement and/or the recovery of any unpaid sums lawfully owed to CONSULTANT under this Agreement for completed services and tasks.

5.3 SCOPE OF WAIVER: No waiver of any default or breach under this Agreement shall constitute a waiver of any other default or breach, whether of the same or other covenant, warranty, agreement, term, condition, duty or requirement contained in this Agreement. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.

5.4 SURVIVING ARTICLES, SECTIONS AND PROVISIONS: The termination of this Agreement pursuant to any provision of this Article or by normal expiration of its term or any extension thereto shall not operate to terminate any Article, Section or provision contained herein which provides that it shall survive the termination or normal expiration of this Agreement.

VI. MISCELLANEOUS PROVISIONS

6.1 DOCUMENTS & DATA; LICENSING OF INTELLECTUAL PROPERTY: All Documents and Data shall be and remain the property of CITY without restriction or limitation upon their use or dissemination by CITY. For purposes of this Agreement, the term "Documents and Data" means and includes all reports, analyses, correspondence, plans, drawings, designs, renderings, specifications, notes, summaries, strategies, charts, schedules, spreadsheets, calculations, lists, data compilations, documents or other materials developed and/or assembled by or on behalf of CONSULTANT in the performance of this Agreement and fixed in any tangible medium of expression, including but not limited to Documents and Data stored digitally, magnetically and/or electronically including but not limited Engineer-Stamped documents. This Agreement creates, at no cost to CITY, a perpetual license for CITY to copy, use, reuse, disseminate and/or retain any and all copyrights, designs, and other intellectual property embodied in all Documents and Data. CONSULTANT shall require all subcontractors and sub-consultants working on behalf of CONSULTANT in the performance of this Agreement to agree in writing that CITY shall be granted the same right to copy, use, reuse, disseminate and retain Documents and Data prepared or assembled by any sub-consultant or sub-consultant as applies to Documents and Data prepared by CONSULTANT in the performance of this Agreement.

6.2 CONFIDENTIALITY: All data, documents, discussion, or other information developed or received by CONSULTANT or provided for performance of this Agreement are deemed confidential and shall not be disclosed by CONSULTANT without prior written consent by

CITY. CITY shall grant such consent if disclosure is legally required. Upon request, all CITY data shall be returned to CITY upon the termination or expiration of this Agreement. CONSULTANT shall not use CITY's name or insignia, photographs, or any publicity pertaining to the Work in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of CITY.

- 6.3 FALSE CLAIMS ACT: CONSULTANT warrants and represents that neither CONSULTANT nor any person who is an officer of, in a managing position with, or has an ownership interest in CONSULTANT has been determined by a court or tribunal of competent jurisdiction to have violated the False Claims Act, 31 U.S.C., Section 3789 et seq. and the California False Claims Act, Government Code Section 12650 et seq.
- 6.4 NOTICES: All notices permitted or required under this Agreement shall be given to the respective Parties at the following addresses, or at such other address as the respective Parties may provide in writing for this purpose:

CONSULTANT:

PBK Architects
Attn: Max Medina
1110 Iron Point Road, Suite 200
Folsom, CA 93630

CITY:

John Jansons, City Manager
City of Kerman
850 S. Madera Ave.
Kerman, CA 93630

Such notices shall be deemed effective when personally delivered or successfully transmitted by facsimile as evidenced by a fax confirmation slip or when mailed, forty-eight (48) hours after deposit with the United States Postal Service, first class postage prepaid and addressed to the Party at its applicable address.

- 6.5 COOPERATION; FURTHER ACTS: The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as is reasonably necessary, appropriate or convenient to achieve the purposes of this Agreement.
- 6.6 SUBCONTRACTING: CONSULTANT shall not subcontract any portion of the Work required by this Agreement, except as expressly stated herein, without the prior written approval of CITY. Subcontracts (including without limitation subcontracts with sub-consultants), if any, shall contain a provision making them subject to all provisions stipulated in this Agreement, including provisions relating to insurance requirements and indemnification.
- 6.7 CITY'S RIGHT TO EMPLOY OTHER CONSULTANTS: N/A
- 6.8 PROHIBITED INTERESTS: CONSULTANT warrants, represents and maintains that it has not employed nor retained any company or person, other than a bona fide employee working solely for CONSULTANT, to solicit or secure this Agreement. Further, CONSULTANT warrants and represents that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for CONSULTANT, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, CITY shall have the right to rescind this Agreement without liability. For the term of this Agreement, no

member, officer or employee of CITY, during the term of his or her service with CITY, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

- 6.9 TIME IS OF THE ESSENCE: Time is of the essence for each and every provision of this Agreement.
- 6.10 GOVERNING LAW AND VENUE: This Agreement shall be interpreted and governed according to the laws of the State of California. In the event of litigation between the Parties, venue, without exception, shall be in the Fresno County Superior Court of the State of California. If, and only if, applicable law requires that all or part of any such litigation be tried exclusively in federal court, venue, without exception, shall be in the Eastern District of California located in the City of Fresno, California, legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing Party in such litigation shall be entitled to have and recover from the losing Party reasonable attorneys' fees and all other costs of such action.
- 6.12 SUCCESSORS AND ASSIGNS: This Agreement shall be binding on the successors and assigns of the Parties.
- 6.13 NO THIRD PARTY BENEFIT: There are no intended third party beneficiaries of any right or obligation assumed by the Parties. All rights and benefits under this Agreement inure exclusively to the Parties.
- 6.14 CONSTRUCTION OF AGREEMENT: This Agreement shall not be construed in favor of, or against, either Party but shall be construed as if the Parties prepared this Agreement together through a process of negotiation and with the advice of their respective attorneys.
- 6.15 SEVERABILITY: If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.
- 6.16 AMENDMENT; MODIFICATION: No amendment, modification or supplement of this Agreement shall be valid or binding unless executed in writing and signed by both Parties, subject to CITY approval. The requirement for written amendments, modifications or supplements cannot be waived and any attempted waiver shall be void and invalid.
- 6.17 CAPTIONS: The captions of the various articles, sections and paragraphs are for convenience and ease of reference only, and do not define, limits, augment, or describe the scope, content, or intent of this Agreement.
- 6.18 INCONSISTENCIES OR CONFLICTS: In the event of any conflict or inconsistency between the provisions of this Agreement and any of the exhibits attached hereto, the provisions of this Agreement shall control.
- 6.19 ENTIRE AGREEMENT: This Agreement including all attached exhibits is the entire, complete, final and exclusive expression of the Parties with respect to the matters addressed herein and supersedes all other agreements or understandings, whether oral or written, or entered into between CITY and CONSULTANT prior to the execution of this Agreement. No

statements, representations or other agreements, whether oral or written, made by any Party which are not embodied herein shall be valid or binding. No amendment, modification or supplement to this pursuant to Section 6.15, above.

6.20 COUNTERPARTS: This Agreement shall be executed in three (3) original counterparts each of which shall be of equal force and effect. No handwritten or typewritten amendment, modification or supplement to any one counterparts shall be valid or binding unless made to all three counterparts in conformity with Section 6.16, above. One fully executed original counterpart shall be delivered to CONSULTANT and the remaining two original counterparts shall be retained by CITY.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed the day and year first appearing in this Agreement, above.

CITY OF KERMAN

PBK Architects

By: _____

By: _____

John Jansons, City Manager

Name: _____

Date: _____

Title: _____

Date: _____

By: _____

Name: _____

Title: _____

Date: _____

APPROVED AS TO FORM:

Hilda Cantu Montoy
City Attorney

ATTEST:

Josie Camacho
City Clerk

EXHIBIT "A."

SCOPE OF WORK

Our proposed Scope of Work (SOW) is based on our understanding of the existing two-story structure and separate warehouse facilities at Kerman Community Safety Center located at 15061 West "C" Street (former Sebastian building) in Kerman. The site is existing, but the City has acquired additional parking across the alley. Existing electrical service and emergency power sources are being divided between two properties. The final resolution to these systems is the responsibility of City and adjoining property owner. Once a plan of electrical separation and service is prepared, PBK will be asked to coordinate that work with its electrical engineering sub-consultant and consider those modification in the design package under this agreement. Final design approach of wireless communications may involve a new antenna and associated equipment TBD and is excluded from the proposed SOW. A new elevator will be required in a location different than where the original was planned. Also, the existing electrical, data, and low voltage closet requires relocation. We anticipate working with a Construction Manager selected by the City. The Consultant will work with City to develop the final project schedule. A draft estimated project schedule is attached hereto as "**EXHIBIT C**".

A. Schematic Design Phase

The concept planning and program produced by the C Street Needs Assessment, "**EXHIBIT D**" shall be developed into a Schematic Design. Criteria shall be established for all major engineering systems, and shall be compared to consider architecture, security, environmental, programmatic, and operational/maintenance characteristics. A preliminary estimate of construction costs shall be prepared based upon the costs per square foot methodology. Schematic Design documents shall be submitted for City review at completion for review and acceptance.

Work products and deliverables shall consist of the following Schematic Design Phase components:

1. Site Plan
2. Floor Plans
3. Exterior Building Elevations
4. Building Sections
5. Furniture Plan Concepts
6. Schematic Cost Estimate
7. Preliminary Color and Material Selection

B. Design Development Phase

Design Development drawings, outline specifications, and preliminary engineering calculations and analysis shall be performed for all major disciplines. Drawings shall reflect architectural, interiors, civil, landscape architectural, structural, electrical/mechanical, and specialty design components. Construction materials, methodologies, major products and materials, and required equipment selection shall also be determined. An outline set of specifications shall be developed. Design development documents shall be submitted for City review at completion. The Schematic

Design Cost Estimate will be further developed and reviewed for budget conformance before proceeding to Construction Documents.

Work products and deliverables shall consist of the following Design Development Phase components:

1. Site Plan
2. Civil Engineering Improvements
3. Utility Plans
4. Landscape Plan
5. Floor Plans
6. Roof Plans
7. Exterior Building Elevations
8. Building Sections
9. Technology, Communications, City LAN, and Police and Fire Department Security System Plans
10. Design Development Engineering to include Structural, Mechanical/Plumbing, and Electrical
11. Design Development Cost Estimate
12. Update Project Schedule
13. Outline Specifications

C. Construction Documents Phase

Based upon the results of previous reviews, the final design of the project shall be coordinated with the Police Department and the City. All final construction documents, drawings, and supporting calculations shall be prepared by the Consultant Team. All engineering systems design shall be finalized and completed. A final interiors color and material presentation board shall be prepared and submitted for review and approval. The Consultant Team shall prepare and coordinate contract documents of the Project Manual including the technical specifications, bidding package, General Conditions, and Division 1 requirements.

The final Construction Documents, Project Manual, supporting calculations, and final cost estimate shall be presented to the City and Police Department for final review and approval. The Consultant Team shall make all necessary revisions and corrections consistent with design intent and functional use.

Work products and deliverables shall consist of the following Construction Document Phase components:

1. Final Engineering Calculations
2. Final Construction Documents and Specifications
3. Title 24 Compliance

4. Bidding Requirements
5. Final Cost Estimate
6. Update Project Schedule
7. Building Department Submittal Package

D. Agency Approval Phase

Consultant shall prepare and package all documents necessary for Building Department approval. Consultant shall respond to review comments and perform re-submittal and back check activities with the City's plan review consultant.

Work products and deliverables shall consist of the following:

1. Completed Construction Documents
2. Project Manual and Calculations
3. Project Registration and Application for Building Department Submittal and Review
4. Building Permit Issuance (after satisfying Building Department Review Requirements)

E. Bidding Assistance Phase

This phase will be coordinated with the City's selected Construction Manager. Contract Documents and bidding requirements shall be assembled and incorporated into the Project Manual. Consultant shall prepare required bid packages for City review and approval. Consultant shall cooperate with City Clerk to advertise and solicit appropriate trades participation, conduct a construction pre-bid conference, and answer and resolve bidder's questions during the Bidding Phase. Any necessary addenda shall be prepared, and the Consultant shall assist in evaluating bids and related bidder's qualifications. The consultant shall make recommendations to the City for award of the construction contract.

Work products and deliverables include the following:

1. Respond to Request for Information and Clarifications
2. Issuing required Addenda

F. Construction Administration Phase

Consultant shall perform construction observation and administration services on a scheduled basis to observe the progress of construction, quality of work, and to determine if general compliance with the drawings and specifications is being achieved. Consultant shall advise the

City and Construction Manager of any deficiencies observed in the work during construction and work closely with the Police Department and City.

Work products and deliverables shall consist of the following:

1. Process RFI, Supplemental Instructions, and clarifications requested by Contractor.
2. When required, process proposal requests for adjustments necessary to complete the work.
3. When required, review change order requests for additions necessary to complete the work.
4. Provide punch list.
5. Prepare Notice of Substantial Completion

G. Project Close-out

Consultant shall make a final review of the Project at the conclusion of all corrective action of Punch-list items. Consultant shall report whether the corrective work is acceptable within the provisions of the Contract Documents or if additional corrective actions are necessary. Consultant shall make recommendations for final payment, recommend Notice of Completion, and prepare closeout documents for the City's records.

Work products and deliverables shall consist of the following:

1. Review As-Built Documents provided by the Contractor.
2. Collect O&M Manuals, Warranties, and Guarantees.
3. Verify completion of Police Department and City training of facility use.

END OF EXHIBIT "A"

EXHIBIT "B"

FEE SCHEDULE

A. Fee Description

Our proposed fee for A/E services involve Architecture and in-house engineering for Structural, Mechanical, Electrical, Plumbing (including AFS alternations), Communication Systems (requires involvement of City/County communication staff), and low voltage systems, (Access Control and Security sub-consultants). Civil Engineering shall be provided by sub-consultant services. Our fee is an estimate based on a program of roughly 14,000 sf (See Exhibit of conceptual floor plan) adapted into the existing C Street Building. Should the overall program increase outside the walls of the existing structures, we reserve the right to request a fee adjustment.

Our fee is broken down into the following work phases described in the Scope of Work:

FEE SCHEDULE		
Phase Description	%	Amount
Schematic Design	15%	\$ 97,500.00
Design Development	15%	97,500.00
Construction Documents	45%	292,500.00
Agency Approval	5%	32,500.00
Bidding Assistance	4%	26,000.00
Construction Administration	15%	97,500.00
Project Close-out	1%	6,500.00
TOTAL (Lump Sum Fixed Fee)	100%	\$650,000.00

B. Estimated Reimbursable Expenses

General hard copies for progress reviews, travel costs, and mail are covered under our proposed fixed fee. Courier services, Record Document retrieval/scanning, and Bid Document distribution shall be billed at direct cost without markup. For these typical items or miscellaneous services ordered by the City, we estimate a budget of **not-to-exceed 1% of our Total Fee or \$6,500.00**

C. Work Excluded

1. Traffic and noise studies.
2. Environmental Studies/CEQA Documentation.
3. Funding analysis.
4. Program operating cost analysis.
5. Third party cost estimates.
6. Street Improvement beyond project frontage.
7. Utility Surveys
8. Agency fees.
9. Landscape Architecture.

D. Information to be provided by Owner

Topographic surveys, utility survey, and geo-hazard/foundation investigation may be required to start the engineering of this project. Hazardous materials (including underground) if known, should be made available as well as any plans for mitigation.

E. Additional Services- Hourly Rate Schedule

If additional services are requested, the following standard rates will be used to generate and negotiate potential fees. Sub-consultant work will be provided by direct quote if necessary. Additional services shall be approved by the City prior to beginning work.



HOURLY BILLING RATES
CALIFORNIA
Effective June 1, 2024 - May 31, 2025

Senior Principal	\$	400.00
Principal/Client Executive/Director	\$	350.00
Senior Project Manager/Director	\$	310.00
Project Manager	\$	290.00
Senior Project Architect	\$	275.00
Project Architect	\$	255.00
Construction Services Manager	\$	250.00
Construction Services Coordinator/Construction Administrator	\$	200.00
Production Staff (Job Captain, Asst. PM, Project Coord., Design Coord., Associates, Tech, Designer)	\$	180.00
Draftsman	\$	180.00
Interior Designer	\$	170.00
Intern	\$	155.00
Designer	\$	130.00
Administrative	\$	120.00

END OF EXHIBIT "B"

EXHIBIT "C"

PROJECT SCHEDULE

A. Project Schedule

The following proposed draft schedule is based on our experience with projects with similar scope and budget. The initial schedule shall be established as mutually agreed between the City and Consultant. As stated in the Scope of Work, the schedule will be updated at each phase. Events that can affect schedule in any way are, but not limited to committee design approvals, agency approvals, and unforeseen events during construction.

Estimated Project Schedule		
Phase	Est. Duration	Completion Date
Schematic Design	6 Weeks	TBD
Design Development	6 Weeks	
Construction Documents	16 Weeks	
Agency Approval	4 Weeks	
Bidding Assistance	4 Weeks	
Construction Administration	52 Weeks	
Project Close-out /Move In	3 Weeks	
TOTAL PROJECT DURATION	91 Weeks (1.75 Yrs.)	TBD

END OF EXHIBIT “C”

EXHIBIT “D”

DRAFT Conceptual Floor Plan