

September 23, 2020

Name:

Company:

Address:

**RE: Laney Central Utility Plant Upgrade, PCCD RFQ 19-20/12
CAD/BIM Transfer Agreement**

Dear

Noll & Tam Architects (“Architect”) has been requested to provide (“Transferee”) with copies of certain Computer-aided Design (CAD)/Building Information Modeling (BIM) data files (“CAD/BIM information”) prepared by Architect and Architect’s Consultants in connection with Laney Central Utility Plant Upgrade, PCCD RFQ 19-20/12 (“Project”). Architect agrees to provide Transferee with the CAD/BIM information requested and Transferee agrees to receive and use the CAD/BIM information under the following terms.

1. Transferee’s use of CAD/BIM information is for record use only. Transferee agrees that CAD/BIM information shall not be used for any other purpose.
2. Noll & Tam's Architects standard instruments of service for Laney Central Utility Plant Upgrade, PCCD RFQ 19-20/12 are the printed hard copy and digital copies in portable document format (PDF) of drawings and specifications issued for the Project, whereas the electronic media, including CAD/BIM files, are tools for their preparation and are provide for convenience only. In the event of a conflict between the content of the printed drawings and specifications and the CAD/BIM files, the printed hard copies shall take precedence over the electronic media.
3. The transfer of CAD/BIM information shall not be deemed as a sale. The CAD/BIM information represents instruments of professional service and shall remain Architect’s property even if the Project is not completed. Architect shall be deemed author of the CAD/BIM information and shall retain all proprietary rights, including copyrights embodied therein. As instruments of professional service, Architect makes no representations or warranties, expressed or implied, of any kind, including, but not limited to, merchantability, or fitness for a particular purpose or with respect to the CAD/BIM information’s quality, adequacy, completeness or sufficiency, or any results to be or intended to be achieved as to its use.

4. Transferee acknowledges that anomalies and errors can be introduced into CAD/BIM information when it is transferred or used. Further, Transferee acknowledges and solely accepts the risks associated with and/or the responsibility for any damages to hardware, software or computer systems or networks related to any use of the CAD/BIM information. Transferee acknowledges that the CAD/BIM information is being furnished “as is”.

5. Transferee is responsible for modifying its computer system to properly use the CAD/BIM information. Transferee acknowledges that existing Project conditions may vary from the CAD/BIM information transferred to the Transferee. Architect shall have no duty to modify or update CAD/BIM information, and Architect reserves the right to retain a duplicate archival copy of CAD/BIM information delivered to Transferee which shall be referred to and shall be conclusive proof and govern in all disputes over the form or content of the CAD/BIM information furnished to Transferee.

6. To the fullest extent permitted by law, Transferee agrees to indemnify, defend and hold Architect and Architect’s officers, directors, owners, consultants and employees harmless from and against any and all claims, liabilities, suits, demands, losses, costs and expenses, including, but not limited to, reasonable attorneys’ fees and all legal expenses and fees incurred on appeal, and all interest thereon, accruing or resulting to any and all persons, firms or any other legal entities on account of any damages or losses to property or persons, including, but not limited to, indirect, consequential or other economic losses arising directly or indirectly out of the use, reuse or modification of the CAD/BIM information, except Transferee shall have no duty to indemnify Architect and Architect’s Consultants if Architect is found to be negligent and solely liable for such damages or losses by a court of competent jurisdiction.

7. Transferee will not transfer the CAD/BIM information or any copy of the CAD/BIM information in any form to a third party without the prior written consent of Architect. If the Transferee fails to perform or observe any of the terms of this Agreement, Architect may demand that the Transferee shall immediately return the CAD/BIM information and any copies thereof.

8. This Agreement shall be governed by California law, without giving effect to its choice of law provisions. The parties hereby agree that any legal action between the parties hereto shall be exclusively conducted in the federal or state courts in California. EACH PARTY HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES HE RIGHT TO A TRIAL BY JURY WITH RESPECT TO ANY LITIGATION BASED ON THIS AGREEMENT, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES TO ENTER INTO THIS AGREEMENT.

9. Transferee represents and warrants that the individual signing below has authority to execute this Agreement on behalf of Transferee and bind Transferee to its terms.

Signing this letter indicates your agreement to the terms stated above and your intent to be legally bound thereby. Unless otherwise explicitly agreed to in writing by both parties, this Agreement shall govern any and all future transfers or use of new data, if any, to Transferee by Architect.

Accepted and agreed by:

[Architect]

[Transferee]

Signature:  _____

Signature: _____

Name: Chris Noll _____

Name: _____

Title: Principal _____

Title: _____

Company: Noll & Tam Architects _____

Company: _____

Date: 09/23/2020 _____

Date: _____