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**CONSULTANT AGREEMENT**

THIS AGREEMENT for Engineering Consultant Services, hereinafter referred to as the "AGREEMENT," is made and entered into this 25th day of April, 2017, between the County of Fresno, a political subdivision of the State of California, hereinafter referred to as "the COUNTY", and James W. Babcock, Geologist, a Sole Proprietor, whose address is 1335 American Way, Nipomo, CA 93444, hereinafter referred to as "the CONSULTANT".

WITNESSETH

WHEREAS, the CONSULTANT has been selected to provide on-call engineering services required for regulatory landfill projects encompassing structural, geological, hydrogeological, geotechnical, surveying and other landfill engineering disciplines as necessary to assist the COUNTY in performing various tasks on an "as-needed" basis, as delineated more thoroughly in Article II of this AGREEMENT (hereinafter referred to as "PROJECT(S)"), as proposed by the COUNTY; and,

WHEREAS, said CONSULTANT has been selected in accordance with the COUNTY'S Ordinance Code Chapter 4.10 on the selection of architects, engineers, and other professionals to provide engineering services necessary for PROJECT(S); and,

WHEREAS, said CONSULTANT represents that it is qualified and willing to perform the professional services required by the COUNTY for PROJECT(S); and,

NOW, THEREFORE, in consideration of the promises and covenants set forth herein, the above named parties agree as follows:

I. **GENERAL PROVISIONS**

A. The COUNTY hereby contracts with the CONSULTANT as an independent contractor to provide the consultant engineering services required for the PROJECT(S).

B. The work to be performed under the AGREEMENT, on such PROJECT(S) as the CONTRACT ADMINISTRATOR may designate, is more thoroughly described in Article II of this AGREEMENT.

C. The CONTRACT ADMINISTRATOR on behalf of the COUNTY shall be:

Curtis Larkin, Senior Engineer

1 2220 Tulare Street, 6<sup>th</sup> Floor, Fresno CA 93721

2 559-600-4259

3 [clarkin@co.fresno.ca.us](mailto:clarkin@co.fresno.ca.us)

4 and shall remain so unless the CONSULTANT is otherwise notified in writing by the COUNTY's  
5 Director of Public Works and Planning or his/her designee (hereinafter referred to as "the  
6 DIRECTOR"); and,

7 D. The PROJECT MANAGER for the CONSULTANT shall be:

8 James W. Babcock

9 1335 American Way, Nipomo, CA 93444

10 Telephone: 510-301-5063

11 [JBabcock356@gmail.com](mailto:JBabcock356@gmail.com)

12 and shall remain so unless the CONSULTANT requests and DIRECTOR approves, in writing, a  
13 change of the CONSULTANT'S PROJECT MANAGER, which approval will not be unreasonably  
14 withheld.

15 E. The CONSULTANT'S staff for their project team shall be as listed in Exhibit A, attached  
16 hereto and incorporated herein. Any substitutions of personnel shall be submitted in writing and  
17 approved in writing by the CONTRACT ADMINISTRATOR prior to the substitution of personnel,  
18 which approval shall not be unreasonably withheld.

19 F. The CONSULTANT may retain geotechnical specialists, geologists, and other  
20 specialized subconsultants, as the CONSULTANT requires, to assist in completing PROJECT(S).  
21 All subconsultants used by the CONSULTANT shall be approved in writing by the CONTRACT  
22 ADMINISTRATOR before they are retained by the CONSULTANT for PROJECT(S); for which  
23 approval shall not be unreasonably withheld. Subconsultants listed in Exhibit B, attached hereto  
24 and incorporated herein, shall be considered as approved by the CONTRACT ADMINISTRATOR.  
25 Should the CONSULTANT retain such subconsultants in connection with PROJECT(S),  
26 compensation to be paid to the CONSULTANT under Article V below shall not be increased, and  
27 any additional compensation to be paid to the CONSULTANT for such subconsultant work shall be  
28 limited to a maximum of ten percent (10%) of the total costs incurred by the CONSULTANT as a

1 result of the subconsultant's involvement in any PROJECT. Additional fees other than the 10%  
2 markup on subconsultant charges shall not be reimbursed.

3 G. The CONSULTANT'S services shall be performed as expeditiously as is consistent with  
4 professional skill and the orderly progress of the work, based on schedules for each specific  
5 PROJECT mutually agreed upon in advance by the CONTRACT ADMINISTRATOR and the  
6 CONSULTANT.

7 H. The CONSULTANT and affiliated subconsultants shall not submit bids, or subbids, for  
8 the contract construction phase of PROJECT(S) for which the CONSULTANT provides services  
9 hereunder. The CONSULTANT and its subconsultants, and all other service providers, shall not  
10 provide any project-related services for, or receive any project-related compensation from any  
11 construction contractor, subcontractor or service provider awarded a construction contract for all or  
12 any portion of PROJECT(S) for which the CONSULTANT provides services hereunder. The  
13 CONSULTANT and its subconsultants, and all other service providers, may provide services for,  
14 and receive compensation from a construction contractor, subcontractor or service provider who  
15 has been awarded a construction contract for all or any portion of PROJECT(S), provided that any  
16 such services which are rendered, and any compensation which is received therefor relates to work  
17 outside the scope of this AGREEMENT.

18 I. It is understood that the CONSULTANT shall not assign, sublet, subcontract, or transfer  
19 the CONSULTANT'S rights or obligations in this AGREEMENT without the prior express, written  
20 consent of the COUNTY. Such consent and approval may only be given by the COUNTY Board of  
21 Supervisors, except as otherwise provided under this AGREEMENT.

22 J. Any changes to this AGREEMENT, requested either by the COUNTY or the  
23 CONSULTANT, may only be effected if mutually agreed upon in writing by duly authorized  
24 representatives of the parties hereto. This AGREEMENT shall not be modified or amended, nor  
25 shall any rights of a party hereto be waived, except by such a writing.

26 K. The consideration to be paid the CONSULTANT as provided herein, shall be in  
27 compensation for all of the CONSULTANT'S expenses incurred in the performance hereof,  
28 including travel and per diem, unless otherwise expressly so provided.

1 II. CONSULTANT SERVICES

2 A. The CONSULTANT shall communicate with the CONTRACT ADMINISTRATOR to  
3 verify, and refine the scope of each assigned PROJECT, which will be mutually agreed to by  
4 CONSULTANT and CONTRACT ADMINISTRATOR, and the CONSULTANT thereafter shall  
5 provide a detailed fee estimate and estimated time schedule for completion of each PROJECT. The  
6 CONSULTANT agrees that each professional or other individual performing work on any such  
7 PROJECT(S) shall be adequately trained to perform the work and shall possess the proper license,  
8 certification or registration as required by law or by accepted standards of the applicable profession.  
9 The CONSULTANT agrees to provide the professional services, when expressly authorized in  
10 writing by CONTRACT ADMINISTRATOR, that are necessary to complete tasks. PROJECT  
11 specific tasks and conditions will be more thoroughly delineated in any request issued pursuant to  
12 this contract. The services which the CONSULTANT may be requested to provide include, but may  
13 not be limited to:

14 1. Structural, geological, hydrogeological, geotechnical, surveying and support services  
15 pertaining to landfills.

16 2. The preparation of Plans, Technical Specifications, and Construction Estimates  
17 pertaining to the design of:

18 a. Landfill modules and covers;

19 b. Landfill gas collection and control systems; and

20 c. Groundwater remediation systems.

21 3. Evaluation of monitoring programs.

22 4. Design and implementation of monitoring programs.

23 5. Engineering feasibility studies.

24 6. Corrective action program design and implementation.

25 7. Remediation system(s) efficacy studies.

26 8. Landfill tipping fee studies and implementation.

27 9. Review, revision and preparation of landfill specific regulatory documents including:

28 a. Joint Technical Documents;

- 1                   b. Closure, Post-closure and Corrective Action Plans and cost estimates;
- 2                   c. Solid Waste Facility Permits;
- 3                   d. Authority to Construct;
- 4                   e. Permits to Operate; and
- 5                   f. Various technical reports.

6                   B. In the preparation of any work product required to complete PROJECT(S) the  
7 CONSULTANT shall:

8                   1. Ascertain the requirements for technical reports through meetings with the  
9 CONTRACT ADMINISTRATOR and a review of existing information on PROJECT(S).

10                  2. Prepare and submit technical reports to the CONTRACT ADMINISTRATOR for  
11 preliminary approval for each assigned PROJECT, in accordance with the appropriate format  
12 required by local, state and federal laws, regulations and guidelines.

13                  3. Submit each technical report to the CONTRACT ADMINISTRATOR for transmittal to  
14 other appropriate agencies for their review and approval.

15                  4. Revise and resubmit each technical report as necessary until approved by all  
16 appropriate agencies.

17                  5. Prepare technical studies, estimates, and other documents in both hard copy and  
18 electronic formats approved by the CONTRACT ADMINISTRATOR.

19                  6. When not otherwise specified by the CONTRACT ADMINISTRATOR, provide  
20 submittals as delineated herein:

21                   a. Including five (5) compact discs (CD) or digital video discs (DVDs) upon which  
22 copies of all electronic files associated with the submittal are copied. COUNTY acknowledges that  
23 CONSULTANT shall not be responsible for changes made without CONSULTANT's approval. Each  
24 electronic file shall be in a format appropriate to the file or data set, utilizing one or any group of  
25 those listed programs:

26                   i. Files consisting primarily of text shall be submitted in Microsoft Word, version  
27 2010 or later;

28                   ii. Files consisting primarily of data sets and/or formulas shall be submitted in

1 Microsoft Excel, version 2010 or later;

2                   iii. Drawings and plans shall be submitted in Autocad Civil 3D, version 2016.

3                   b. Including ten (10) hard copies of each report, estimate, and/or all other  
4 documents and submittals prepared, printed in color to the extent color is used therein.

5                   c. Including ten (10) hard copies of each plan drawing, not including wet-stamped  
6 final documents, as provided in Section C.

7                   7. Verify approved, compatible format and quantity of submittals prior to delivery.

8                   C. In the preparation of Design Plans, Technical Specifications and Construction  
9 Estimates for PROJECTS, the CONSULTANT shall:

10                   1. Ascertain the requirements for PROJECT(S) through meetings with the CONTRACT  
11 ADMINISTRATOR and a review of an existing schematic layout of PROJECT(S).

12                   2. Ascertain any requirements, unforeseen criteria, or issues for PROJECT(S) that may  
13 be unknown to the CONTRACT ADMINISTRATOR, communicate these requirements, criteria, or  
14 issues to the CONTRACT ADMINISTRATOR, and include in the scope, as agreed by the  
15 CONTRACT ADMINISTRATOR.

16                   3. Provide surveying, as necessary to ascertain all information required to prepare any  
17 document specified herein for PROJECT(S), unless otherwise directed by CONTRACT  
18 ADMINISTRATOR.

19                   4. Design PROJECT(S) to conform to the mutually agreed scope and any requirements  
20 of other reviewing agencies having jurisdiction over PROJECT(S).

21                   5. Design PROJECT(S) to include mitigation measures included in the environmental  
22 document.

23                   6. Monitor and keep the CONTRACT ADMINISTRATOR informed regarding the impact  
24 of design issues on PROJECT budget. Upon the written request of CONTRACT  
25 ADMINISTRATOR, the CONSULTANT shall incorporate into the design, such reasonable design  
26 and operational changes as the CONTRACT ADMINISTRATOR deems appropriate as a result of  
27 the COUNTY'S review processes and impact on each PROJECT budget or estimate.

28                   7. Assist in determining all permits that may be required for PROJECT and prepare all

1 necessary permits for the COUNTY submittal to outside agencies.

2 8. Work with the CONTRACT ADMINISTRATOR to ensure that the plans,  
3 specifications, and estimate meet all COUNTY requirements to be advertised for construction bids.

4 9. Prepare detailed engineers estimates, bid items, and unit prices quantified/qualified,  
5 which shall identify the construction components and requirements of PROJECT(S).

6 10. If required by CONTRACT ADMINISTRATOR, submit to the COUNTY in the  
7 appropriate agency forms, PROJECT background information and recommended testing and  
8 inspection lists for materials to be used for each PROJECT; identifying type, quantity, frequency,  
9 and schedule of said testing and inspection.

10 11. Prepare technical specifications setting forth in detail the work to be done, and the  
11 materials, workmanship, and equipment required for the construction of PROJECT(S), as  
12 necessary to provide the COUNTY complete and functional PROJECT(S) for its intended purpose  
13 within the requirements of this AGREEMENT.

14 12. Submit to the CONTRACT ADMINISTRATOR the projected and final construction  
15 estimate. Verify through written justification the reasonableness of the estimated construction  
16 period for construction contract bidding purposes as provided by the CONTRACT  
17 ADMINISTRATOR and identify long delivery times of materials and equipment which will impact the  
18 duration of the construction contract.

19 13. Respond to CONTRACT ADMINISTRATOR regarding Requests for Clarification  
20 during the bidding process and submit to the CONTRACT ADMINISTRATOR for review and  
21 approval of any addenda deemed necessary. Addenda, if any, shall be submitted no later than  
22 seven (7) working days prior to the scheduled bid opening, except as otherwise directed by the  
23 CONTRACT ADMINISTRATOR.

24 14. Assist the CONTRACT ADMINISTRATOR in evaluating the bids received.

25 15. Delete or otherwise change portions of the project design at the direction of the  
26 CONTRACT ADMINISTRATOR if the lowest bid proposal for the construction contract exceeds the  
27 COUNTY approved engineer's estimate by 10% or more, and if the COUNTY rejects all bids. In  
28 such event, the CONSULTANT shall revise the plans and specifications to comply with such

1 modifications and also shall assist the COUNTY in obtaining new bid proposals from contractors, all  
2 at no additional cost to the COUNTY. Such modifications performed by the CONSULTANT shall  
3 be completed on a time schedule commensurate with the scope of the changes and as set forth by  
4 the CONTRACT ADMINISTRATOR.

5 16. Submit to the COUNTY ten (10) copies of the 30%, 60% and 90% plans (22" X 34"  
6 format), specifications and estimates for review. Submit progress prints and final originals of the  
7 plans, specifications, and estimates. Prior to submission of plans, the CONSULTANT shall request  
8 from the COUNTY examples of acceptable drafting format and reproducible standards. Verification  
9 of compatible format will be required prior to final file delivery. The CONTRACT ADMINISTRATOR,  
10 at its discretion, may reject a submittal that is determined insufficient. Submittals shall, at a  
11 minimum, consist of the following:

12 a. 30% plans, specifications and estimates shall include copies of utility locations,  
13 centerline stationing, proposed and existing right-of-way, typical sections and structural sections.

14 b. 60% plans, specifications and estimates shall include 30% plan information and  
15 in addition, preliminary cross sections and earthwork calculations at 25' or 50' intervals, adequate  
16 information to allow construction survey staking, permits, preliminary profile grade, an updated  
17 engineer's estimate, and shall address comments and include necessary revisions as identified by  
18 the COUNTY in the 30% review.

19 c. 90% plans, specifications and estimates shall include 60% plan information and  
20 in addition, updated cross sections and earthwork, profile grade, technical specifications, typical  
21 sections and PROJECT details, and shall address comments and include necessary revisions as  
22 identified by the COUNTY in the 60% review.

23 d. Final original plans, specifications and estimates to be delivered to the COUNTY  
24 shall include:

25 i. One (1) original reproducible plan set on 22" by 34" sheets of 4 mil thick  
26 double matte film.

27 ii. One (1) reproducible copy of cross sections on 22" by 34" sheets of 4 mil  
28 thick double matte film.



1                   iii. One (1) CD or DVD with final plans, cross sections and slope stake  
2 information, design calculations, quantity calculations, and other design information as applicable to  
3 the PROJECT.

4                   iv. One (1) stamped and wet signed paper copy and one (1) CD or DVD with  
5 final specifications and estimates.

6                   17. Plan sheets, cross sections, earthwork calculations and slope stake information shall  
7 be in Autocad Civil 3D, version 2016. Slope stake information shall include 50-foot intervals for  
8 tangent sections and 25-foot intervals for curved sections. Specifications shall be in Microsoft  
9 Word, version 2010 or later and on 8 ½" by 11" pages. Final engineer's estimates shall be in  
10 Microsoft Excel, version 2010 or later and on 8 ½" by 11" pages. Estimates shall specify specialty  
11 and/or final pay items as described in the 2006 Caltrans State Standard Specifications. Verification  
12 of compatible format will be required prior to final file delivery.

13                   18. The COUNTY will package the CONSULTANT'S documents with those other  
14 documents that together will comprise the COUNTY'S construction contract and bid specifications.

15                   19. Deliver to the CONTRACT ADMINISTRATOR three (3) weeks prior to the advertising  
16 date (which will be determined by CONTRACT ADMINISTRATOR) the final drawings and  
17 specifications for the COUNTY'S printing and distribution of bid sets to interested construction  
18 contractors. The original drawings and specifications index sheet shall be sealed with the  
19 CONSULTANT'S and subconsultant's professional licensure stamp clearly indicating license  
20 numbers and license renewal dates and shall be signed in accordance with the California Business  
21 and Professions Code.

22                   D. During the performance of Construction Observation Services, the CONSULTANT shall:

- 23                   1. Participate in the preconstruction conference.
- 24                   2. When requested by CONTRACT ADMINISTRATOR, attend meetings with the  
25 COUNTY, federal, state and/or local representatives to discuss and review the technical report.  
26 The CONSULTANT shall prepare brief minutes of all meetings attended and shall submit those  
27 minutes to the CONTRACT ADMINISTRATOR within seven (7) calendar days.

28                   3. Make recommendations to the COUNTY on all claims of the COUNTY or the

1 construction contractor and all other matters relating to the execution and progress of the work,  
2 including interpretation of the CONSULTANT'S contract documents.

3 4. Within seven (7) working days of the CONTRACT ADMINISTRATOR'S request,  
4 review and make recommendations for samples, schedules, shop drawings, and other submissions  
5 for general conformance with the design concept of PROJECT(S) and for general compliance with  
6 the plans and specifications and information given by the CONSULTANT'S contract documents.

7 5. Within two (2) working days, respond to requests from the CONTRACT  
8 ADMINISTRATOR for information needed from the CONSULTANT in order to clarify construction  
9 plans and specifications and to review the construction contractor's cost estimates for all change  
10 orders.

11 6. Recommend and assist in the preparation of such change orders as deemed  
12 necessary with supporting documentation, calculations and estimate, for review and issuance of  
13 change orders by the COUNTY Construction Engineer to obtain appropriate agency acceptance  
14 and approval.

15 7. Assist the COUNTY, at the DIRECTOR's express, written authorization, with any  
16 claim resolution process involving the construction contractor and the COUNTY as specified  
17 hereunder, including serving as a witness in connection with any public hearings or legal  
18 proceeding, and also including dispute resolutions required by law or hereunder. The parties  
19 recognize that this clause is provided as a means of expediting resolution of claims among the  
20 construction contractor, the COUNTY, and the CONSULTANT. However, it is understood the  
21 construction contractor is not an intended third party beneficiary of this clause. Compensation for  
22 these services shall be computed and invoiced at hourly rates listed in Exhibit C hereto. The  
23 CONSULTANT shall identify rates for expert witness services, subject to review and approval or  
24 disapproval by the CONTRACT ADMINISTRATOR, in Exhibit C. Any proposed fee schedule (i.e.:  
25 Exhibit C) which fails to identify rates for expert witness services by CONSULTANT will be rejected  
26 by CONTRACT ADMINISTRATOR. Assistance by CONSULTANT as described in this Article shall  
27 be subject to the following provisions:

28 a. The DIRECTOR may believe the CONSULTANT'S work under this

1 AGREEMENT may have included negligent errors or omissions; or that the CONSULTANT may  
2 otherwise have failed to comply with the provisions of this AGREEMENT or with the provisions  
3 associated with a particular PROJECT; or that claims may have resulted from or have been  
4 exacerbated by negligent acts or omissions of CONSULTANT. Upon notice by the DIRECTOR, the  
5 CONSULTANT'S payments for such services shall be held in suspense by the COUNTY until a final  
6 determination has been made of the proportion that the CONSULTANT'S fault bears to the fault of  
7 all other parties concerned.

8           b. Such amounts held in suspense shall not be paid to the CONSULTANT, pending  
9 the final determination as to the CONSULTANT'S proportional fault. However, the appropriate  
10 percentage of such amount held in suspense shall be paid to the CONSULTANT, once a final  
11 determination has been made, and the CONSULTANT thereafter submits a proper invoice to the  
12 COUNTY. Payment shall be issued in accordance with the procedure outlined in Article V, Section  
13 B, Paragraph 2.

14           8. At intervals appropriate to the stage of construction and consistent with the mutually  
15 agreed scope, or as otherwise deemed necessary by the CONTRACT ADMINISTRATOR, visit the  
16 site of PROJECT(S) as necessary to become familiar generally with the progress and quality of the  
17 work and to determine whether the work is proceeding in general accordance with the contract  
18 documents. The CONSULTANT shall not be required to make exhaustive or continuous onsite  
19 inspections but shall keep the COUNTY Construction Engineer or his/her designee fully advised  
20 and informed of all critical path issues of which the CONSULTANT becomes aware during the  
21 course of construction. The CONSULTANT shall not be responsible for the construction  
22 contractor's failure to carry out the construction work in accordance with the contract documents.  
23 However, the CONSULTANT shall immediately advise the CONTRACT ADMINISTRATOR of any  
24 known or observed deviation from the contract documents.

25           9. Not have control over or charge of, and shall not be responsible for construction  
26 means, methods, techniques, sequence, or procedure, or for the safety precautions, programs, or  
27 equipment in use in connection with the work, since these are solely the construction contractor's  
28 responsibility under the contract for construction.

1 10. Keep the COUNTY informed, based on the CONSULTANT'S visits to PROJECT(S),  
2 through written reports as to the progress of the work.

3 11. Advise the COUNTY of defects and deficiencies observed in the work of the  
4 construction contractor, and may recommend that the DIRECTOR reject work as failing to conform  
5 to the contract documents.

6 12. Consistent with the mutually agreed scope, conduct site visits and field observations  
7 to facilitate recommendations by the CONSULTANT regarding:

- 8 a. dates of substantial completion.
- 9 b. dates of final completion.
- 10 c. the DIRECTOR's acceptance of the work.
- 11 d. filing of the Notice of Completion and Issuance of Final Certificate for payment.
- 12 e. other issues which may require site visits, as requested by the CONTRACT

13 ADMINISTRATOR.

14 E. Control of Construction Project Site

15 1. The COUNTY'S construction contractor will be required to assume sole and  
16 complete responsibility for job site conditions during the course of construction projects; including  
17 safety of all persons and property. This requirement shall be made to apply continuously during  
18 projects and shall not be limited to normal working hours. The CONSULTANT shall not have  
19 control over or charge of, and shall not be responsible for, project means, methods, techniques,  
20 sequences or procedures, as these are solely the responsibility of the construction contractor. The  
21 CONSULTANT shall not have the authority to stop or reject the work of the construction contractor.

22 III. OBLIGATIONS OF THE COUNTY

23 The COUNTY will:

- 24 A. Compensate the CONSULTANT as provided in this AGREEMENT.
- 25 B. Furnish available reports, plans, and specifications related to PROJECT(S), and provide  
26 readily available documents requested by CONSULTANT necessary to perform tasks associated  
27 with completion of PROJECT(S).
- 28 C. Examine documents submitted and render timely decisions pertaining thereto.

1 D. Facilitate coordination between the construction contractor and the CONSULTANT,  
2 including scheduling of the preconstruction conference and testing conforming to ASTM  
3 International Standards on soil materials to be performed by the CONSULTANT.

4 E. Participate in meetings with the CONSULTANT as required.

5 F. Provide administration of the construction contract.

6 G. Identify the COUNTY'S Construction Engineer, whom the CONSULTANT shall keep fully  
7 advised and informed of all critical path issues of which the CONSULTANT becomes aware during  
8 the course of PROJECT construction.

9 IV. TERM, PERFORMANCE PERIOD AND TERMINATION

10 A. The term of this AGREEMENT shall be for a period of three (3) years, commencing upon  
11 execution by the COUNTY through and including the third anniversary of execution. This  
12 AGREEMENT may be extended for two (2) additional twelve (12) month periods upon written  
13 approval of the COUNTY and the CONSULTANT, no later than thirty (30) days prior to the first day  
14 of the next twelve (12) month extension period. The DIRECTOR or his or her designee is  
15 authorized to execute such written approval on behalf of the COUNTY, based on CONSULTANT'S  
16 satisfactory performance.

17 B. The terms of this AGREEMENT, and the services to be provided thereunder, are  
18 contingent on the approval of funds by the appropriating government agency. Should sufficient  
19 funds not be allocated, the services provided may be modified, or this AGREEMENT terminated at  
20 any time by giving the CONSULTANT thirty (30) calendar days advance written notice.

21 C. The CONSULTANT shall complete all services required under this AGREEMENT prior  
22 to the expiration thereof, unless extended or earlier terminated, as provided herein.

23 D. The CONSULTANT shall not perform any work under this AGREEMENT without written  
24 authorization to proceed. The CONSULTANT shall commence work promptly after receipt of such  
25 authorization, as issued by the CONTRACT ADMINISTRATOR.

26 E. The CONSULTANT shall provide services as required in accordance with the schedule  
27 established upon authorization of each PROJECT, and in a timely manner to avoid unnecessary  
28 delay to the PROJECT'S construction.

1 F. The CONSULTANT is advised and hereby acknowledges its understanding that any  
2 recommendation for award is not binding on the COUNTY until the AGREEMENT is fully executed  
3 following its approval by the COUNTY'S Board of Supervisors.

4 G. This AGREEMENT may be terminated without cause at any time by the COUNTY upon  
5 thirty (30) calendar days written notice. If the COUNTY terminates this AGREEMENT, the  
6 CONSULTANT shall be compensated for services satisfactorily completed to the date of  
7 termination based upon the compensation rates and subject to the maximum amounts payable  
8 agreed to in Article V, together with such additional services satisfactorily performed after  
9 termination which are expressly authorized by the COUNTY to conclude the work performed to date  
10 of termination.

11 H. If the CONSULTANT purports to terminate AGREEMENT, or otherwise refuses to  
12 perform pursuant to AGREEMENT, for reasons other than material breach by the COUNTY, the  
13 CONSULTANT shall reimburse the COUNTY, up to a maximum of \$10,000 for the actual expense  
14 of issuing a Request For Proposal (RFP), engaging a new consultant, and the new consultant's cost  
15 in becoming familiar with the previous CONSULTANT'S work. The COUNTY'S entitlement to such  
16 reimbursement shall in no way be construed as a limitation on other damages that may be  
17 recoverable by the COUNTY as a result of the CONSULTANT'S termination, in breach of its  
18 obligations hereunder.

19 I. The COUNTY may immediately suspend or terminate this AGREEMENT in whole or in  
20 part, where in the determination of the COUNTY there is:

- 21 1. An illegal or improper use of funds;
- 22 2. A failure to comply with any material term of this AGREEMENT;
- 23 3. A substantially incorrect or incomplete report submitted to the COUNTY;
- 24 4. Service not performed consistent with the generally accepted standard of care.

25 J. In no event shall any payment by the COUNTY constitute a waiver by the COUNTY of  
26 any breach of this AGREEMENT or any default which may then exist on the part of the  
27 CONSULTANT, nor shall such payment in any way impair or prejudice any remedy available to the  
28 COUNTY with respect to the breach or default. The COUNTY shall have the right to demand of the

1 CONSULTANT the repayment to the COUNTY of any funds disbursed to the CONSULTANT under  
2 this AGREEMENT, which, in the judgment of the COUNTY and as determined in accordance with  
3 the procedures of Article VIII, "ERRORS OR OMISSIONS CLAIMS AND DISPUTES", were not  
4 expended in accordance with the terms of this AGREEMENT. The CONSULTANT shall promptly  
5 refund any such funds upon demand.

6 V. ALLOWABLE COSTS AND PAYMENTS

7 A. Fees:

8 1. Notwithstanding any other provisions in AGREEMENT, the Total Fee for the services  
9 required under AGREEMENT, shall not exceed the total sum of Five Hundred Thousand and  
10 No/100 Dollars (\$500,000.00) over the entire term of AGREEMENT. Total fees paid will be  
11 dependent upon the actual services authorized and performed under this AGREEMENT.

12 Compensation for the services rendered shall be computed at the hourly and cost rates shown in  
13 Exhibit C, attached hereto and incorporated herein, subject to any adjustments that may be  
14 approved in accordance with Article V, Section A, Paragraph 3.

15 2. The hourly and cost rates listed herein for services rendered by the CONSULTANT  
16 and subconsultants shall remain in effect for the entire duration of AGREEMENT unless adjusted in  
17 accordance with the provisions of Article V, Section A, Paragraphs 3, 5, or 6.

18 3. The hourly rates paid for services performed by the CONSULTANT and by  
19 subconsultants of the CONSULTANT and the rates for expenses incidental to the CONSULTANT'S  
20 and subconsultant's performance of services may be adjusted no more than once annually for  
21 inflation, in accordance with the following provisions:

22 a. The CONSULTANT may request new labor rates and new rates for expenses  
23 incidental to the CONSULTANT'S and subconsultants' performance of services subject to written  
24 approval of the CONTRACT ADMINISTRATOR in accordance with the provisions of this Section.

25 b. The CONSULTANT shall initiate the rate adjustment process by submitting to the  
26 CONTRACT ADMINISTRATOR a proposed adjusted fee schedule. The proposed adjusted fee  
27 schedule shall include proposed hourly rates for all categories of the CONSULTANT'S and  
28 subconsultants' wage classifications and proposed rates for incidental expenses listed in Exhibit C.

1 c. The proposed adjusted fee schedule shall not take effect unless approved in  
2 writing by CONTRACT ADMINISTRATOR. The CONSULTANT acknowledges its understanding  
3 that approval by the CONTRACT ADMINISTRATOR of any upward adjustment in the hourly and  
4 cost rates shall not provide a basis for any increase in the total fee of as set forth in Article V,  
5 Section A, Paragraph 1.

6 4. Expenses incidental to the CONSULTANT'S and subconsultant's performance of  
7 services under Article II of AGREEMENT shall be charged at the rates listed in Exhibit C, subject to  
8 any adjustments that may be approved in accordance with Article V, Section A, Paragraphs 3, 5, or  
9 6. Unless incorporated in an adjusted fee schedule approved by the CONTRACT  
10 ADMINISTRATOR, all other expenses incidental to the CONSULTANT'S and subconsultant's  
11 performance of the services under Article II of AGREEMENT that are not listed in Exhibit C shall be  
12 borne by the CONSULTANT.

13 5. In the event that the CONTRACT ADMINISTRATOR approves the CONSULTANT to  
14 retain additional subconsultants not listed in Exhibit B, in accordance with Article I, Section B, hourly  
15 rates paid for services performed by such additional subconsultants of the CONSULTANT and the  
16 rates for expenses incidental to subconsultants performance of services may be adjusted no more  
17 than once annually for inflation, in accordance with Article V, Section A, Paragraph 3. The first  
18 annual adjustment of hourly and incidental expense rates for such additional subconsultants shall  
19 not be approved prior to one year after CONTRACT ADMINISTRATOR'S approval of the retention  
20 of such additional subconsultant(s) by the CONSULTANT.

21 6. Notwithstanding any other provisions in AGREEMENT, the CONTRACT  
22 ADMINISTRATOR may, at any time, authorize in writing the revision of the CONSULTANT'S or  
23 subconsultant's charge rates for incidental expenses to include additional categories of such  
24 expenses if, in the opinion of CONTRACT ADMINISTRATOR, such revision is necessary to  
25 facilitate the CONSULTANT'S performance of PROJECT(S).

26 B. Payments:

27 1. Progress payments will be made by the COUNTY upon receipt of the  
28 CONSULTANT'S monthly invoices and approval by the COUNTY thereof based on CONTRACT



1 ADMINISTRATOR'S evaluation of the completion of the respective components of the assigned  
2 PROJECT. Invoices shall clearly identify the PROJECT, Phase, and Task of the work, and shall be  
3 submitted with the documentation identified in Article V, Section B, Paragraph 5. Invoices shall be  
4 forwarded electronically to: [landfill-oncall@co.fresno.ca.us](mailto:landfill-oncall@co.fresno.ca.us).

5           2. Upon receipt of an invoice containing all requisite information, it will take  
6 approximately ten (10) working days for the COUNTY Department of Public Works & Planning to  
7 review, approve, and submit it to the COUNTY Auditor-Controller / Treasurer-Tax Collector.  
8 Unsatisfactory or inaccurate invoices will be returned to the CONSULTANT for correction and  
9 resubmittal. Payment, less retention, will be issued to CONSULTANT within approximately forty-  
10 five (45) calendar days of the date the Auditor-Controller/Treasurer-Tax Collector receives the  
11 approved invoice.

12           3. The COUNTY may withhold a five percent (5%) retention from earned compensation  
13 of the CONSULTANT, at the discretion of the CONTRACT ADMINISTRATOR. If the CONTRACT  
14 ADMINISTRATOR determines that retention will be withheld for a PROJECT, the CONTRACT  
15 ADMINISTRATOR will so state in writing prior to commencement of PROJECT by CONSULTANT  
16 and will identify PROJECT-specific prerequisites, such as successful completion of a PROJECT  
17 phase, for example, for the release of retentions. Such retention shall be in addition to any amounts  
18 withheld under Article II.

19           4. An unresolved dispute over a possible error or omission may cause payment of the  
20 CONSULTANT fees in the disputed amount to be withheld by the COUNTY.

21           5. Concurrently with the invoices, the CONSULTANT shall certify (through copies of  
22 issued checks, receipts, or other COUNTY pre-approved documentation) that complete payment,  
23 less a five percent (5%) retention, if required for PROJECT as specified in Paragraph 3, has been  
24 made to all subconsultants as provided herein for all previous invoices paid by the COUNTY.  
25 However, the parties do not intend that the foregoing create in any subconsultants or sub-contractor  
26 a third party beneficiary status or any third party beneficiary rights, and expressly disclaim any such  
27 status or rights.

28           6. Final invoices, and separate invoices for retentions if applicable, shall be submitted

1 to the COUNTY no later than thirty (30) days after the phase is completed. Payment for retentions  
2 will be made in accordance with the specific provisions therefor established for the PROJECT by  
3 the CONTRACT ADMINISTRATOR, in accordance with the provisions of Paragraph 3.

4 7. In the event the CONTRACT ADMINISTRATOR reduces the scope of the  
5 CONSULTANT'S work under AGREEMENT for a specific PROJECT (or discontinues a specific  
6 PROJECT), whether due to a deficiency in the appropriation of anticipated funding or otherwise, the  
7 CONSULTANT will be compensated on a pro rata basis for actual work completed in accordance  
8 with the terms of AGREEMENT.

9 VI. COMPENSATION RECORDS:

10 The CONSULTANT shall keep complete records showing the hours and description of  
11 activities performed by each person who works on PROJECT(S) and all associated costs or  
12 charges applicable to work covered by the Total Fee. The CONSULTANT will be responsible for all  
13 subconsultants keeping similar records. At the request of the CONTRACT ADMINISTRATOR, such  
14 records shall be made available to the COUNTY, or shall be summarized on invoices submitted in  
15 accordance with Article V, Section B, Paragraph 1.

16 VII. AUDITS, ACCOUNTING AND INSPECTIONS ACCESS

17 A. The CONSULTANT shall, at any time during regular business hours and as often as the  
18 COUNTY may deem necessary, make available for examination by State authorities or the  
19 COUNTY Auditor-Controller/Treasurer-Tax Collector, or their authorized representatives, all of the  
20 CONSULTANT'S records and data with respect to matters covered by this AGREEMENT. The  
21 CONSULTANT shall permit the COUNTY'S authorities to audit and inspect all invoices, materials,  
22 payrolls, records of personnel, conditions of employment, and other data relating to matters covered  
23 by this AGREEMENT.

24 B. The CONSULTANT shall be subject to the examination and audit of the Auditor General  
25 for a period of three (3) years after final payment under AGREEMENT (Government Code Section  
26 8546.7).

1 VIII. ERRORS OR OMISSIONS CLAIMS AND DISPUTES

2 A. Definitions:

3 1. A "Consultant" is a duly licensed Architect or Engineer, or other provider of  
4 professional services, acting as a business entity (owner, partnership, corporation, joint venture or  
5 other business association) in accordance with the terms of this AGREEMENT.

6 2. A "Claim" is a demand or assertion by one of the parties seeking, as a matter of  
7 right, adjustment or interpretation of contract terms, payment of money, extension of time, change  
8 orders, or other relief with respect to the terms of the contract. The term "Claim" also includes other  
9 disputes and matters in question between the COUNTY and the CONSULTANT arising out of or  
10 relating to the contract. Claims must be made by written notice. The provisions of Government  
11 Code section 901, et seq., shall apply to every claim made to the COUNTY. The responsibility to  
12 substantiate claims shall rest with the party making the claim. The term "Claim" also includes any  
13 allegation of a negligent act, error or omission by the CONSULTANT in the performance of  
14 PROJECT(S) under AGREEMENT.

15 B. In the spirit of cooperation between the COUNTY and the CONSULTANT, the following  
16 procedures are established in the event of any claim or dispute alleging a negligent act, error or  
17 omission, of the CONSULTANT.

18 1. Claims, disputes or other matters in question between the parties, arising out of or  
19 relating to this AGREEMENT, shall not be subject to arbitration, but shall be subject to the following  
20 procedures.

21 2. The COUNTY and the CONSULTANT shall meet and confer and attempt to reach  
22 agreement on any dispute, including what damages have occurred, the measure of damages and  
23 what proportion of damages, if any, shall be paid by either party. The parties agree to consult and  
24 consider the use of mediation or other form of dispute resolution prior to resorting to litigation.

25 3. If the COUNTY and the CONSULTANT cannot reach agreement under Paragraph 2,  
26 the disputed issues may, upon concurrence by all parties, be submitted to a panel of three (3)  
27 members for a recommended resolution. The CONSULTANT and the COUNTY shall each select  
28 one (1) member of the panel, and the third member shall be selected by the other two panel

1 members. The discovery rights provided by California Code of Civil Procedure for civil proceedings  
2 shall be available and enforceable to resolve the disputed issues. Either party requesting this  
3 dispute resolution process shall, when invoking the rights to this panel, give to the other party a  
4 notice describing the claims, disputes and other matters in question. Prior to twenty (20) working  
5 days before the initial meeting of the panel, both parties shall submit all documents such party  
6 intends to rely upon to resolve such dispute. If it is determined by the panel that any party has  
7 relied on such documentation, but has failed to previously submit such documentation on a timely  
8 basis to the other party, the other party shall be entitled to a 20-working-day continuance of such  
9 initial meeting of the panel. The decision by the panel is not a condition precedent to arbitration,  
10 mediation or litigation.

11 4. Upon receipt of the panel's recommended resolution of the disputed issue(s), the  
12 COUNTY and the CONSULTANT shall again meet and confer and attempt to reach agreement. If  
13 the parties still are unable to reach agreement, each party shall have recourse to all appropriate  
14 legal and equitable remedies.

15 C. The procedures to be followed in the resolution of claims and disputes may be modified  
16 any time by mutual agreement of the parties hereto.

17 D. The CONSULTANT shall continue to perform its obligations under this AGREEMENT  
18 pending resolution of any dispute, and the COUNTY shall continue to make payments of all  
19 undisputed amounts due under this AGREEMENT.

20 E. When a claim by either party has been made alleging the CONSULTANT'S negligent  
21 error, act, or omission, the COUNTY and the CONSULTANT shall meet and confer within twenty-  
22 one (21) working days after the written notice of the claim has been provided.

23 F. The CONSULTANT, the CONSULTANT'S subconsultants of any tier, subcontractors of  
24 any tier, suppliers and construction lenders shall all be bound by the dispute resolution provisions of  
25 this AGREEMENT, and immediately upon demand of the COUNTY or the CONSULTANT, shall  
26 participate in and shall become parties to the dispute resolution process, provided they have signed  
27 any document that incorporates or refers to the dispute resolution provisions of this AGREEMENT.  
28 Failure, whether intended or inadvertent, of the CONSULTANT to ensure that such nonparties have

1 signed such a document shall ensure only to the CONSULTANT'S detriment, if any there be. The  
2 COUNTY shall not suffer a detriment by the CONSULTANT'S action or inaction in this regard. If  
3 such a party after due notice fails to appear at and participate in the dispute resolution proceedings,  
4 the panel established in accordance with the provisions of Section B, Paragraph 3 of this Article  
5 VIII, shall make a decision based on evidence introduced by the party or parties who do participate.

6 IX. CONSULTANT'S OBLIGATIONS RELATING TO CONSTRUCTION CLAIMS

7 A. To the extent that review of any construction claim is encompassed by the  
8 CONSULTANT'S scope of work as determined by the COUNTY, the CONSULTANT will review and  
9 analyze construction contract claims and recommend resolution of them as soon as possible  
10 following receipt of demand by the COUNTY. CONSULTANT shall be compensated in accordance  
11 with Article V.

12 B. Within a reasonable time after receipt of a claim, the CONSULTANT shall provide a  
13 written analysis of the claim to the COUNTY, signed by the CONSULTANT and any affected  
14 subconsultants. The written analysis shall include the CONSULTANT'S professional opinion of the  
15 responsibility for payment of the claim, with supporting facts and documentation. A copy of the  
16 written analysis shall be provided to the respective insurance adjusters for the CONSULTANT and  
17 any affected subconsultant.

18 C. Upon receipt of a claim, the CONSULTANT may also take one (1) or more of the  
19 following actions, within ten (10) days of receipt of a claim:

20 1. Request additional supporting data from the claimant, requiring that such data be  
21 supplied within ten (10) days of the request.

22 2. Submit a schedule to the parties indicating when the CONSULTANT expects to  
23 respond to the claim, which schedule shall not exceed thirty (30) days from the CONSULTANT'S  
24 original receipt of the claim.

25 3. Recommend rejection of the claim in whole or in part, stating the reasons for such  
26 rejection.

27 4. Recommend approval of the claim by the other party.

28 5. Suggest a compromise.

1 D. In every case, the CONSULTANT shall provide its recommended resolution of a claim  
2 shall not exceed thirty (30) days from the original receipt of claim, unless the CONSULTANT  
3 obtains the COUNTY'S prior written approval.

4 X. INDEPENDENT CONTRACTOR

5 A. In performance of the work, duties, and obligations assumed by the CONSULTANT  
6 under this AGREEMENT, it is mutually understood and agreed that the CONSULTANT, including  
7 any and all of the CONSULTANT'S officers, agents and employees, will at all times be acting and  
8 performing as an independent contractor, and shall act in an independent capacity and not as an  
9 officer, agent, servant, employee, joint venturer, partner or associate of the COUNTY. Furthermore,  
10 the COUNTY shall have no right to control or supervise or direct the manner or method by which  
11 the CONSULTANT shall perform its work and function. However, the COUNTY shall retain the right  
12 to administer this AGREEMENT so as to verify that the CONSULTANT is performing its obligations  
13 in accordance with the terms and conditions thereof. The CONSULTANT and the COUNTY shall  
14 comply with all applicable provisions of law and the rules and regulations, if any, of governmental  
15 authorities having jurisdiction over matters the subject thereof.

16 B. Because of its status as an independent contractor, the CONSULTANT shall have  
17 absolutely no right to employment rights and benefits available to the COUNTY employees. The  
18 CONSULTANT shall be solely liable and responsible for providing to, or on behalf of its employees  
19 all legally required employee benefits. In addition, the CONSULTANT shall be solely responsible  
20 and save the COUNTY harmless from all matters relating to payment of the CONSULTANT'S  
21 employees, including compliance with Social Security, withholding, and all other regulations  
22 governing such matters. It is acknowledged that during the term of this AGREEMENT the  
23 CONSULTANT may be providing services to others unrelated to the COUNTY or to this  
24 AGREEMENT.

25 XI. LEGAL AUTHORITY

26 A. This AGREEMENT shall be binding upon the COUNTY, the CONSULTANT, and their  
27 respective successors in interest, legal representatives, executors, administrators, and assigns with  
28 respect to all covenants as set forth herein.

1 B. The CONSULTANT shall comply with all applicable federal, state, and local laws,  
2 ordinances, regulations, and Fresno County Charter Provisions in effect at the time of the  
3 CONSULTANT'S performance of the professional services to be provided hereunder.

4 C. Any controversy or claim arising out of or relating to this AGREEMENT which cannot be  
5 amicably settled without court action shall be litigated either in a state court for Fresno County,  
6 California, or in the U.S. District Court for the Eastern District of California, located in Fresno  
7 County.

8 D. The rights and obligations of the parties and all interpretations and performance of this  
9 AGREEMENT shall be governed in all respects by the laws of the State of California.

10 E. In the event that the CONSULTANT is operating as a Corporation, each individual  
11 executing this AGREEMENT on behalf of the CONSULTANT hereby covenants, warrants, and  
12 represents:

13 1. That he or she is duly authorized to execute and deliver this AGREEMENT on behalf  
14 of such corporation in accordance with a duly adopted resolution of the corporation's board of  
15 directors and in accordance with such corporation's articles of incorporation or charter and bylaws.

16 2. That this AGREEMENT is binding upon such corporation.

17 3. That the CONSULTANT is a duly organized and legally existing corporation in good  
18 standing in the State of California.

19 F. The CONSULTANT shall comply with the provisions of the County of Fresno  
20 Department of Public Works and Planning Conflict of Interest Code, attached hereto as Exhibit D  
21 and incorporated herein. Such compliance shall include the filing of annual statements pursuant to  
22 the regulations of the State Fair Political Practices Commission.

23 XII. HOLD HARMLESS

24 CONSULTANT shall indemnify, save, hold harmless, and at the COUNTY'S request, defend  
25 the COUNTY, its officers, agents, and employees from any and all costs and expenses, damages,  
26 liabilities, claims, and losses occurring or resulting to the COUNTY in connection with the performance,  
27 or failure to perform, by the CONSULTANT, its officers, agents, or employees under this Agreement,  
28 and from any and all costs and expenses, damages, liabilities, claims, and losses occurring or

1 resulting to any person, firm, or corporation who may be injured or damaged by the negligent  
2 performance, or failure to perform, of CONTRACTOR, its officers, agents, or employees under this  
3 Agreement.

4 XIII. INSURANCE

5 A. Without limiting the COUNTY'S right to obtain indemnification from the CONSULTANT  
6 or any third parties, the CONSULTANT, at its sole expense, shall maintain in full force and effect,  
7 the following insurance policies prior to commencement of any work for the COUNTY and  
8 throughout the entire term of this AGREEMENT (with the exception of Professional Liability  
9 Insurance, which CONTRACTOR shall maintain in full force and effect for the additional period of  
10 time required by Paragraph 4).

11 1. Commercial General Liability Insurance with limits of One Million Dollars  
12 **(\$1,000,000.00)** per occurrence and an annual aggregate of Two Million Dollars **(\$2,000,000.00)**.  
13 This policy shall be issued on a per occurrence basis. The COUNTY may require specific  
14 coverages including completed operations, products liability, contractual liability, Explosion-  
15 Collapse-Underground, fire legal liability or any other liability insurance deemed necessary because  
16 of the nature of this AGREEMENT.

17 2. Automobile Liability Insurance with limits for bodily injury of Two Hundred Fifty  
18 Thousand Dollars **(\$250,000.00)** per person, Five Hundred Thousand Dollars **(\$500,000.00)** per  
19 accident and for property damages of Fifty Thousand Dollars **(\$50,000.00)**, or such coverage with a  
20 combined single limit of Five Hundred Thousand Dollars **(\$500,000.00)**. Coverage should include  
21 owned and non-owned vehicles used in connection with this AGREEMENT.

22 3. Worker's Compensation insurance policy as required by the California Labor Code.

23 4. Professional Liability Insurance:

24 a. If the CONSULTANT employs licensed professional staff in providing services,  
25 Professional Liability Insurance with limits of One Million Dollars **(\$1,000,000.00)** per claim, Three  
26 Million Dollars **(\$3,000,000.00)** annual aggregate.

27 b. The Professional Liability Insurance shall be kept in full force and effect for a  
28 period of three (3) years from the date of substantial completion of the CONSULTANT's work as



1 determined by the COUNTY.

2 B. The CONSULTANT shall obtain endorsements to the Commercial General Liability  
3 insurance naming the COUNTY, its officers, agents, and employees, individually and collectively, as  
4 additional insured, but only insofar as the operations under the AGREEMENT are concerned. Such  
5 coverage for additional insured shall apply as primary insurance and any other insurance, or  
6 self-insurance, maintained by the COUNTY, its officers, agents and employees shall be excess only  
7 and not contributing with insurance provided under the CONSULTANT'S policies herein. The  
8 COUNTY shall be given at least thirty (30) days advance written notice of any cancellation,  
9 expiration, reduction or other material change in coverage with respect to any of the aforesaid  
10 policies.

11 C. Prior to commencing any such work under the AGREEMENT, the CONSULTANT shall  
12 provide to the COUNTY certificates of insurance and endorsements for all of the required policies  
13 as specified above, stating that all such insurance coverage has been obtained and is in full force;  
14 that the COUNTY, its officers, agents and employees will not be responsible for any premiums on  
15 the policies; that such Commercial General Liability insurance names the COUNTY, its officers,  
16 agents and employees, individually and collectively, as additional insured, but only insofar as the  
17 operations under the AGREEMENT are concerned; that such coverage for additional insured shall  
18 apply as primary insurance and any other insurance, or self-insurance, maintained by the COUNTY,  
19 its officers, agents and employees, shall be excess only and not contributing with insurance  
20 provided under the CONSULTANT'S policies herein; and that this insurance shall not be cancelled  
21 or changed without a minimum of thirty (30) days advance, written notice given to the COUNTY.  
22 The certificates shall be sent to the CONTRACT ADMINISTRATOR at Department of Public Works  
23 and Planning, Design Division, 2220 Tulare Street, Sixth Floor, Fresno, CA 93721.

24 D. In the event CONSULTANT fails to keep in effect at all times insurance coverage as  
25 herein provided, the COUNTY may, in addition to other remedies it may have, terminate the  
26 AGREEMENT.

27 E. All policies shall be issued by licensed insurers that are admitted or authorized by the  
28 California Department of Insurance, and all such insurance shall be purchased from companies

1 possessing a current A.M. Best, Inc. rating of A FSC VIII or better.

2 XIV. OWNERSHIP OF DOCUMENTS

3 A. The CONSULTANT understands and agrees that the COUNTY shall retain full  
4 ownership rights of the drawings and work-product of the CONSULTANT to the fullest extent  
5 permitted by law. In this regard, the CONSULTANT acknowledges and agrees that the  
6 CONSULTANT’S services are on behalf of the COUNTY and are “works made for hire,” as that  
7 term is defined by copyright law, by the COUNTY; that the drawings and work-product to be  
8 prepared by the CONSULTANT are for the sole and exclusive use of the COUNTY and shall be the  
9 sole property of the COUNTY and its assigns, and the COUNTY and its assigns shall be the sole  
10 owner of all patents, copyrights, trademarks, trade secrets and other contractual and intangible  
11 rights of any kind or nature in connection therewith; that all the rights, title, and interest in and to the  
12 drawings and work-product will be transferred to the COUNTY by the CONSULTANT, and the  
13 CONSULTANT will assist the COUNTY to obtain and enforce patents, copyrights, trademarks,  
14 trade secrets, and other contractual and intangible rights of any kind or nature relating to said  
15 drawings and work-product that the COUNTY shall become the owner of such drawings and work-  
16 product, free and clear from any claim by the CONSULTANT or anyone claiming any right through  
17 the CONSULTANT. The CONSULTANT further acknowledges and agrees that the COUNTY’S  
18 ownership rights in such drawings and work-product shall apply regardless of whether such  
19 drawings and work-product, or any copies thereof, are in the possession of the CONSULTANT, or  
20 any other person, firm, corporation, or entity. For the purpose of this AGREEMENT the phrase  
21 “drawings and work-product” shall mean the geologic report and map, as-builts, daily summary  
22 reports, inspection data sheets, records of field and laboratory test, Final Construction Report, and  
23 any other documents required in performing services under this AGREEMENT for PROJECT(S)  
24 that result from the tasks assigned to the CONSULTANT by the COUNTY under this AGREEMENT.

25 B. If AGREEMENT is terminated, or work on a PROJECT is suspended, during or at the  
26 completion of any task performed by CONSULTANT hereunder pursuant to Article II, a copy of the  
27 report or other documents shall be submitted by the CONSULTANT to the COUNTY, which may  
28 use them to complete PROJECT(S) at a future time.

1 C. Documents, including drawings, prepared by the CONSULTANT pursuant to this  
2 AGREEMENT are intended to be suitable for use by the COUNTY or others on extensions of the  
3 services provided for PROJECT(S). Documents for PROJECT(S) may not be suitable for other  
4 projects.

5 XV. DISCLOSURE OF SELF-DEALING TRANSACTIONS

6 This provision is only applicable if the CONSULTANT is operating as a corporation (a for-  
7 profit or non-profit corporation) or if during the term of this AGREEMENT, the CONSULTANT  
8 changes its status to operate as a corporation. Members of the CONSULTANT'S Board of  
9 Directors shall disclose any self-dealing transactions that they are a party to while the  
10 CONSULTANT is providing goods or performing services under this AGREEMENT. A self-dealing  
11 transaction shall mean a transaction to which the CONSULTANT is a party and in which one or  
12 more of its directors has a material financial interest. Members of the CONSULTANT'S Board of  
13 Directors shall disclose any self-dealing transactions that they are a party to by completing and  
14 signing a Self-Dealing Transaction Disclosure Form (attached as Exhibit E and incorporated herein  
15 by this reference); and submitting it to the COUNTY prior to commencing with the self-dealing  
16 transaction or immediately thereafter.

17 XVI. ENTIRE AGREEMENT

18 This AGREEMENT constitutes the entire AGREEMENT between the COUNTY and the  
19 CONSULTANT with respect to the subject matter hereof and supersedes all previous negotiations,  
20 proposals, commitments, writings, advertisements, publications, and understandings of any nature  
21 whatsoever unless expressly included in this AGREEMENT.

22 XVII. SEVERABILITY

23 Should any provision herein be found or deemed to be invalid, this AGREEMENT shall be  
24 construed as not containing such provision, and all other provisions which are otherwise lawful shall  
25 remain in full force and effect, and to this end the provisions of this AGREEMENT are hereby  
26 declared to be severable.

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IN WITNESS WHEREOF, the parties have executed this Agreement on the date set forth above

JAMES BABCOCK, GEOLOGIST

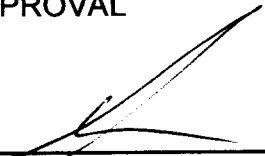
COUNTY OF FRESNO

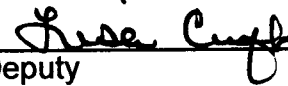
By:   
James W. Babcock

  
Brian Pacheco, Chairman  
Board of Supervisors

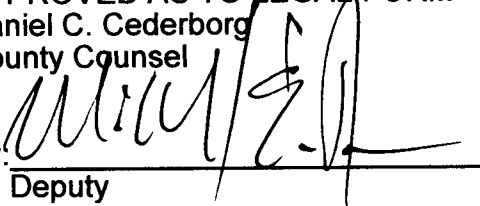
REVIEWED AND RECOMMENDED FOR APPROVAL

ATTEST:  
Bernice E. Seidel, Clerk  
Board of Supervisors


By:   
Steven E. White, Director  
Department of Public Works and  
Planning

By:   
Deputy

APPROVED AS TO LEGAL FORM  
Daniel C. Cederborg  
County Counsel

By:   
Deputy

APPROVED AS TO ACCOUNTING FORM  
Oscar J. Garcia, C.P.A  
Auditor-Controller/ Treasurer-Tax  
Collector

By:   
Deputy

FUND: 0700, 0701, 0710, 0720  
SUBCLASS: 15000, 15001  
ORG: 9015, 9020, 9026, 9028  
ACCT: 7295

# **Exhibit A**

## **Project Team**



County of Fresno  
Qualifications: On-Call Consulting Services for  
Landfill Projects

## FIRM INFORMATION

### Prime Consultant

**Firm Name:** James W. Babcock, Consulting Geologist

**Current Address:** 2430-B Calais Drive,  
Longmont, Colorado 80504

**New Address (February 2017):**

1335 American Way  
Nipomo, CA 93444

**Phone Number:** (510) 301-5063

**Fax Number:** (none)

**Web Address:** (none)

## 2. TYPE OF ORGANIZATION

James W. Babcock, Consulting Geologist is a sole proprietorship.

## 3. FIRM PRINCIPAL

### James W. Babcock, PhD, PG

Dr. Babcock is the owner and principal of James W. Babcock, Consulting Geologist (Babcock). See additional educational background, credentials and experience under Key Personnel.

## 4. KEY PERSONNEL

### James W. Babcock, PhD, PG - Principal and Project Manager

Dr. Babcock is noted for his contributions in the areas of landfill investigations, environmental

remediation, hydrogeology, and regulatory compliance. He is Malcolm Pirnie's solid waste practice leader in California. He has extensive experience on projects encompassing groundwater remediation, pesticide soils remediation, water resources, environmental compliance and permitting, and solid waste project management. His expertise in negotiating with regulatory has been essential to the successful completion of remedial action projects and reduction of client costs for many clients. He has managed, designed, and implemented hazardous waste remedial investigation and feasibility studies, remedial designs, and remedial actions, water resource management and provided expert witness and litigation support services. A summary resume is attached for more detailed experience.

### Education:

BA (Geology) 1966; University of Colorado, Boulder

MA (Geology) 1971; University of California, Santa Barbara

PhD (Geology) 1977; University of California, Santa Barbara

### Credentials:

California Professional Geologist, Certificate Number 4515.

Oregon Registered Geologist, Registration Number OR-166.

**Exhibit B**  
**No Subconsultants Listed**

# **Exhibit C**

## **Rates**



*James W. Babcock, PhD, PG*  
SUMMARY OF STANDARD CHARGES

**This Summary of Standard Charges describes the basis for compensation and terms of payment. All rates presented apply to services rendered from April 1, 2017 to the end of the first three year contract period. It may be subject to adjustment annually after the initial three year contract period. Hourly and cost rates may be adjusted in accordance with the provisions of Article V, Section A of the Consultant Agreement.**

Invoices for services provided by James W. Babcock, Consulting Geologist, consist of: (1) hourly rate professional services fees; (2) material and equipment expenditures and usage; (3) subcontractor costs; (4) travel, shipping, and communications charges; and (5) sales or gross receipt taxes, as applicable. Hourly rate fees for professional services are indicated below:

Principal (J. W. Babcock)	\$190.00
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**ADDITIONAL TERMS**

*Invoicing and Payment:* Progress invoices will be issued monthly and payment is due within thirty (30) days of invoice date. Invoices for subcontractor charges are payable upon presentation. Non-standard, client-requested invoice formats and supporting documentation will be invoiced at \$50.00 per hour plus expenses. A finance charge of 1.5% per month will be payable on past due account balances after 60 days.

*Other Direct Costs:* All expenses incurred for a project, except in-house services, from outside vendors will be invoiced at cost plus 5%. These items may include, but are not limited to: shipping charges, printing, supplies, equipment, travel expenses, meals, lodging, rental vehicles, field supplies, field equipment charges; premiums for insurance, bonds, and letters of credit required by the client in addition to normal coverage; project-required permits and licenses; etc. will be invoiced at cost plus 5%.

*Vehicles:* Charges for company vehicle usage will be charged on a per mile basis. Company and personal vehicles will be charged at the IRS allowable mileage reimbursement rate.

*Communications Charge:* A communications and expenses charge equal to 3.0% of professional fees will be charged for in-house services and communications to cover the cost of computers, telephone, and reproduction charges.

*Subcontracts:* Subcontractor (drillers, analytical labs, etc.) charges will be invoiced at cost plus 5%.

*Litigation / Arbitration / Claim Resolution Services:* For work preparing expert reports, arbitration documents, and claim resolution materials the fee is 150% of the standard rate. **For DEPOSITION, TRIAL AND PUBLIC HEARING TESTIMONY** the fee is 200% of the standard rate – rates for deposition, trial testimony and public hearing will only apply to person giving testimony. All other rates will apply for all other services. Any deposition, trial and public hearing testimony will be billed on a daily basis (minimum 8 hours), not hourly.

**Exhibit D**  
**Conflict of Interest Code**

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File #15123  
February 23, 1999  
Resolution #99-086

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**BEFORE THE BOARD OF SUPERVISORS  
OF THE COUNTY OF FRESNO  
STATE OF CALIFORNIA**

In the matter of  
Adoption of Standard Conflict of Interest  
Code for All County Departments.

Resolution #99-086

**Whereas**, the Political Reform Act, Government Code section 81000 et seq., requires state and local government agencies to adopt and promulgate conflict of interest codes; and

**Whereas**, the Fair Political Practices Commission has adopted a regulation, 2 California Code of Regulations section 18730, which contains the terms of a standard conflict of interest code, and which may be amended by the Fair Political Practices Commission after public notices and hearings to conform to amendments to the Political Reform Act; and

**Whereas**, any local agency may incorporate this standard conflict of interest code, and thereafter need not amend the text of its code to conform to future amendments to the Political Reform Act or its regulations; and

**Whereas**, the Board of Supervisors is the code reviewing body for all County departments except courts; and

**Whereas**, the Board of Supervisors may adopt the standard conflict of interest code on behalf of all County departments.

**Now therefore be it resolved**, that the terms of 2 California Code of Regulations section 18730, and any amendments to it duly adopted by the Fair Political Practices Commission, are hereby incorporated by reference and, along with the Exhibits A and B approved previously, today, or in the future, by this Board for each County department, in which officers and employees are designated and disclosure categories are set forth,

1 constitute the conflict of interest codes of each County department except courts.

2 Conflict of Interest forms shall be filed as follows:

3 1. As required by Government Code Section 87500, subdivision (e), the  
4 County Administrative Officer, District Attorney, County Counsel, and Auditor-  
5 Controller/Treasurer-Tax Collector shall file one original of their statements with the County  
6 Clerk, who shall make and retain copies and forward the originals to the Fair Political  
7 Practices Commission, which shall be the filing officer. The County Administrative Officer,  
8 District Attorney, County Counsel, and Auditor-Controller/Treasurer-Tax Collector shall also  
9 file one copy of their statements with the Clerk to the Board of Supervisors.

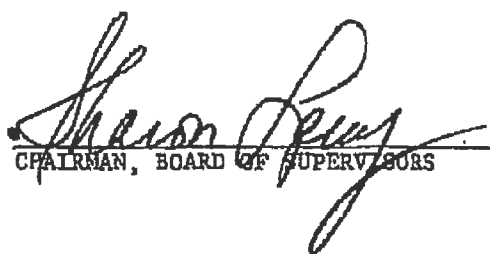
10 2. As required by Government Code section 87500, subdivision (j), all other  
11 department heads shall file one original of their statements with their departments. The filing  
12 officer of each department shall make and retain a copy of the department head's statement  
13 and shall forward the original to the Clerk to the Board of Supervisors.

14 3. All other designated employees shall file one original of their statements with  
15 their departments.

16 All statements shall be public records and shall be made available for public  
17 inspection and reproduction. (Gov. Code, § 81008.)

18 Adopted at a regular meeting of the Board of Supervisors, held on the 23rd day  
19 of February, 19 99, by the following vote, to wit:

- 20 Ayes: Supervisors Koligian, Case, Arambula, Oken, Levy
- 21 Noes: None
- 22 Absent: None

  
 CHAIRMAN, BOARD OF SUPERVISORS

24 ATTEST:  
25 SHARI GREENWOOD, CLERK  
26 BOARD OF SUPERVISORS

27 By   
28 Deputy

EXHIBIT "A"

PUBLIC WORKS AND PLANNING

<u>Classification</u>	<u>Category</u>
Accountant I / II	2
Architect	1
Assistant Real Property Agent	1
Associate Real Property Agent	1
Building Inspector I / II	1
Building Plans Engineer	1
Capital Projects Division Manager	1
Chief Building Inspector	1
Chief of Field Surveys	1
Community Development Manager	1
Consultant	*
Deputy Director of Planning	1
Deputy Director of Public Works	1
Deputy Director of Resources & Administration	1
Development Services Manager	1
Director of Public Works and Planning	1
Disposal Site Supervisor	2
Engineer I / II / III	1
Field Survey Supervisor	3
Housing Rehabilitation Specialist I / II	1
Information Technology Analyst I / II / III / IV	2
Landfill Operations Manager	1
Planner I / II / III	1
Principal Accountant	1
Principal Planner	1
Principal Staff Analyst	1
Public Works and Planning Business Manager	1
Public Works Division Engineer	1
Road Maintenance Supervisor	1
Road Superintendent	1
Senior Accountant	2
Senior Engineer	1
Senior Engineering Technician	2
Senior Information Technology Analyst	2
Senior Planner	1

<u>Classification</u>	<u>Category</u>
Senior Staff Analyst	1
Senior Systems and Procedures Analyst	2
Staff Analyst I / II / III	1
Supervising Accountant	1
Supervising Building Inspector	1
Supervising Engineer	1
Supervising Water/Wastewater Specialist	1
Systems and Procedures Analyst I / II / III	2
Systems and Procedures Manager	2
Traffic Maintenance Supervisor	2

- \* Consultants shall be included in the list of designated employees and shall disclose pursuant to the broadest disclosure category in the code subject to the following limitation: The Director of Public Works and Planning may determine in writing that a particular consultant, although a "designated position", is hired to perform a range of duties that is limited in scope and thus is not required to fully comply with the disclosure requirements in this section. Such written determination shall include a description of the consultant's duties and, based upon that description, a statement of the extent of disclosure requirements. The Director of Public Works and Planning's determination is a public record and shall be retained for public inspection in the same manner and location as this conflict of interest code.

## EXHIBIT "B"

### PUBLIC WORKS AND PLANNING

1. Persons in this category shall disclose all reportable investments, interests in real property, sources of income (including gifts), and business positions. Financial interests (other than gifts) are reportable only if located within or subject to the jurisdiction of Fresno County, or if the business entity is doing business or planning to do business in the jurisdiction, or has done business within the jurisdiction at any time during the two years prior to the filing of the statement. Real property shall be deemed to be within the jurisdiction of the County if the property or any part of it is located within or not more than two miles outside the boundaries of the County (including its incorporated cities) or within two miles of any land owned or used by the County.
2. Persons in this category shall disclose all reportable investments in, income from (including gifts), and business positions with any business entity which, within the last two years, has contracted or in the future foreseeably may contract with Fresno County through its Public Works and Planning Department, Solid Waste Commissions within the jurisdiction, or to any other joint powers agency which Fresno County is a member to provide services, supplies, materials, machinery, or equipment to the County.
3. Persons in this category shall disclose all interests in real property within the jurisdiction of Fresno County. Real Property shall be deemed to be within the jurisdiction if the property or any part of it is located within or not more than two miles outside the boundaries of Fresno County (including its incorporated cities) or within two miles of any land owned or used by the County.

**Exhibit E**  
**Self Dealing Transactions Form**



Exhibit E

**SELF-DEALING TRANSACTION DISCLOSURE FORM**

(1) Company Board Member Information:

Name: \_\_\_\_\_ Date: \_\_\_\_\_

Job Title: \_\_\_\_\_

(2) Company/Agency Name and Address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(3) Disclosure (Please describe the nature of the self-dealing transaction you are a party to)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(4) Explain why this self-dealing transaction is consistent with the requirements of Corporations Code 5233 (a)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(5) Authorized Signature

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

## **SELF-DEALING TRANSACTION DISCLOSURE FORM INSTRUCTIONS**

In order to conduct business with the County of Fresno (hereinafter referred to as "County"), members of a contractor's board of directors (hereinafter referred to as "County Contractor"), must disclose any self-dealing transactions that they are a party to while providing goods, performing services, or both for the County. A self-dealing transaction is defined below:

*"A self-dealing transaction means a transaction to which the corporation is a party and which one or more of its directors has a material financial interest"*

The definition above will be utilized for purposes of completing the disclosure form.

- (1) Enter board member's name, job title (if applicable), and date this disclosure is being made.
- (2) Enter the board member's company/agency name and address.
- (3) Describe in detail the nature of the self-dealing transaction that is being disclosed to the County. At a minimum, include a description of the following:
  - a. The name of the agency/company with which the corporation has the transaction; and
  - b. The nature of the material financial interest in the Corporation's transaction that the board member has.
- (4) Describe in detail why the self-dealing transaction is appropriate based on applicable provisions of the Corporations Codes.
- (5) Form must be signed by the board member that is involved in the self-dealing transaction described in Sections (3) and (4).