

SERVICE AGREEMENT

This Service Agreement (“Agreement”) is dated August 22, 2023 (“Effective Date”) and is between Newton Construction and Management, Inc. a California Corporation (“Contractor”), and the County of Fresno, a political subdivision of the State of California (“County”).

Recitals

A. Public Contract Code section 20128.5 authorizes a Board of Supervisors to award annual contracts for repair, remodeling, or other competitive work to be done accordingly to unit prices, to the lowest responsible bidder, based on plans and specifications for typical work.

B. The County has a need for mechanical repair, remodeling, or other repetitive services to be performed pursuant to an annual contract.

The County desires to engage the Contractor to perform mechanical repair, remodeling, or repetitive work according to unit prices on an annual basis pursuant to the terms of this Agreement. The Contractor is qualified and willing to perform said services. The parties therefore agree as follows:

Article 1

Contractor’s Services

1.1 **Scope of Services.** The Contractor shall perform all of the services provided in Exhibit A to this Agreement, titled “Scope of Services.”

1.2 **Representation.** The Contractor represents that it is qualified, ready, willing, and able to perform all of the services provided in this Agreement.

1.3 **Compliance with Laws.** The Contractor shall, at its own cost, comply with all applicable federal, state, and local laws and regulations in the performance of its obligations under this Agreement, including but not limited to workers compensation, labor, and confidentiality laws and regulations.

1.4 **Patent Indemnity.** The Contractor shall hold County, its officers, agents, and employees, harmless from liability of any nature or kind, including costs and expenses (including attorney’s fees and costs), for infringement or use of any copyrighted or

1 uncopyrighted composition, secret process, patented or unpatented invention, article or
2 appliance furnished or used in connection with this Agreement.

3 1.5 **Immigration Reform and Control Act of 1986.** The Contractor warrants on behalf
4 of itself and all subcontractors engaged for the performance of this Agreement that only persons
5 authorized to work in the United States pursuant to the Immigration Reform and Control Act of
6 1986 and other applicable laws shall be employed in the performance of the Contractor's Work
7 under pursuant to the job order or orders under this Agreement ("Work").

8 1.6 **Confidentiality.** All services performed by the Contractor shall be in strict
9 conformance with all applicable Federal, State of California, and/or local laws and regulations
10 relating to confidentiality, including but not limited to, California Civil Code, California Welfare
11 and Institutions Code, California Health and Safety Code, California Code of Regulations, and
12 the Code of Federal Regulations.

13 (A) The Contractor shall submit to the County's monitoring of said compliance. The
14 Contractor may be a business associate of the County, as that term is defined in the "Privacy
15 Rule" enacted by the Health Insurance Portability and Accountability Act of 1996 (HIPAA). As a
16 HIPAA Business Associate, the Contractor may use or disclose protected health information
17 ("PHI") to perform functions, activities or services for or on behalf of the County as specified by
18 the County, provided that such use or disclosure shall not violate HIPAA and its implementing
19 regulations. The uses and disclosures if PHI may not be more expansive than those applicable
20 to the County, as the "Covered Entity" under HIPAA's Privacy Rule, except as authorized for
21 management, administrative, or legal responsibilities of the Business Associate.

22 (B) The Contractor shall not use or further disclose PHI other than as permitted or
23 required by the County, or as required by law without written notice to the County. The
24 Contractor shall ensure that any agent, including any subcontractor, to which the Contractor
25 provides PHI received from, or created or received by the Contractor on behalf of the County,
26 shall comply with the same restrictions and conditions with respect to such information.

27 1.7 **Confidentiality of Inmates/Wards/Patients/Clients Identity.** Some the Work to be
28 performed under this Agreement may occur in secured facilities or facilities that require

1 confidentiality. The Contractor shall alert and inform its employees and agents that State law
2 requires that the identities of inmates/wards/patients/clients be kept confidential. Revealing the
3 identities of inmates/wards/patients/clients is punishable by law.

4 1.8 **Intent of Agreement Documents.** Some of the Work may require the Contractor to
5 work in in-patient care facilities. The intent of Agreement Documents, as defined in Article 14 of
6 this Agreement, will be to construct or reconstruct the hospital facilities for an individual Job
7 Order in accordance with Title 24, California Code of Regulations. If any conditions develop that
8 are not covered by the Agreement Documents, wherein the completed Work shall not comply
9 with said Title 24, California Code of Regulations, the County shall develop a Job Order
10 detailing any required Work and shall submit it to The Office of Statewide Health Planning and
11 Development for approval prior to the Contractor proceeding with the Work.

12 1.9 **Building Permits.** The Contractor shall be responsible for all fees and costs incurred
13 in connection with obtaining permits; however, the County will reimburse the Contractor for the
14 actual cost of the permit or inspection fees, as part of the Job Order, with no additional
15 allowance for overhead and profit.

16 1.10 **Codes and Regulations.** All work, materials, and equipment shall be in full
17 compliance with the 2013 edition of the California Building Code; California Plumbing Code;
18 California Electrical Code; Cal/Occupational Safety and Health Administration (OSHA) Safety
19 Regulations; and all Federal, State and Local laws, ordinances, regulations, and Fresno County
20 Charter Provisions applicable in the performance of the work.

21 1.11 **Coordination of Work.** The Contractor shall coordinate all work with the County to
22 minimize any interruptions to the normal operation of County operations, particularly
23 interruptions to air conditioning, electrical services, alarm system, communications, and
24 computer systems.

25 1.12 **Workday.** All work shall be set forth as part of the Job Order. Saturday and Sunday
26 work will not be allowed except by written approval of the County, and upon 48 hours advance
27 notice. Payment requirements for shift differential and overtime shall be as set forth in the
28 Collective Bargaining Agreement for the trade, on file with the State Department of Industrial

1 Relations, Division of Labor Statistics and Research. The Contractor is urged to contact the
2 Prevailing Wage Unit at 415/557-0561 or 415/703-4281 for information on these requirements.

3 1.13 **Schedule of Operation.** Time is of the essence in the performing of any Job Order
4 under this Agreement. The Contractor shall schedule the work in a manner that will progress to
5 completion without interruption.

6 1.14 **Coordination Between Contractors.**

7 (A) If separate Agreements are left for Work within or adjacent to the Project site, as
8 may further be hereinafter detailed in the Agreement Documents, the Contractor shall conduct
9 the Work so as not to interfere with or hinder the progress of completion of the Work being
10 performed by other contractors.

11 (B) The Contractor shall assume all liability, financial or otherwise, in connection with
12 this Agreement, and shall protect and hold harmless the County from any and all damages or
13 claims (including attorney's fees and costs) arising because of inconvenience, delay, or loss
14 experienced by the Contractor because of the presence and operations of other contractors
15 working within the limits of the same improvement. The Contractor shall assume all
16 responsibility for all Work not completed or accepted because of the presence and operations of
17 other contractors.

18 (C) The Contractor shall arrange the Work and placement and disposal of the
19 materials being used, so as not to interfere with the operations of other contractors within or
20 adjacent to the limits of the Project site. The Contractor shall join the Work with that of others in
21 an acceptable manner and shall perform it in proper sequence to that of others.

22 1.15 **Temporary Facilities.**

23 (A) Water and Electricity: The Contractor may connect to existing water and
24 electricity available on the site, provided it is suitable to the Contractor's requirements. Water
25 and electricity costs shall be paid by the County. The Contractor shall bear all expenses for
26 carrying the water or electricity to the appropriate locations, and for connecting or tapping into
27 existing lines. The Contractor shall furnish fuel and other power for the operation of the heavy
28 equipment, pneumatic tools, and compressors.

1 (B) Toilet Facilities may be available on the site to the workers engaged in the
2 performance of this Agreement. The use of such facilities may be revoked in the event of
3 excess janitorial requirements, or at the discretion of County.

4 1.16 **Fire Protection and Fire Insurance.** The Contractor shall not perform any fire
5 hazardous operation adjacent to combustible materials. Any fire hazardous operation shall have
6 proper fire extinguishers close by, and the adjacent area shall be policed before stopping work
7 for the day.

8 The Contractor shall provide not less than one OSHA / NFPA Class 10-ABC fire
9 extinguisher for each 9,000 square feet of project area or fraction thereof.

10 1.17 **Dust Separation and Protective Barricades.** When directed as part of an individual
11 Job Order, the Contractor shall erect temporary dust separation partitions and floor mats as
12 necessary to confine dust and debris within the area of Work. The Contractor shall post signs,
13 and erect, and maintain barriers and warning devices for the protection of the general public and
14 Contractor and County personnel.

15 The Contractor shall provide adequate protection for all parts of the present buildings and its
16 contents and occupants wherever Work under this Agreement is to be performed. The
17 Contractor shall observe that the health and welfare of occupants of the existing buildings may
18 be affected by noises and fumes produced by the construction. The Contractor shall avoid
19 creating loud and unnecessary noise, and noise-producing Work shall be performed as far away
20 from occupied areas as is consistent with the efficient conduct of the Work.

21 1.18 **Damage to Existing Work.** Damage to existing construction, equipment, and
22 planting by the Contractor in the performance of the Work shall be replaced or repaired and
23 restored to original condition by the Contractor at the Contractor's expense.

24 1.19 **Protection of Alarms, Security, Communications, and Computer Systems.** The
25 Contractor shall be responsible for all costs incurred by the County on these systems as a
26 result of Work by the Contractor or damage caused by the Contractor's operations, including
27 costs associated with false fire alarms caused by Contractor operations.

1 1.20 **Parking.** The County will provide parking spaces at the project site when parking is
2 available. However, the Contractor shall not rely on the County to provide parking.

3 1.21 **Record Drawings.** The Contractor shall be provided with xerox bond prints at no
4 cost, upon which a record of all changes to the project plans shall be made. As the Work
5 progresses, the Contractor shall be responsible for and shall maintain a record of all deviations
6 in the mechanical, electrical, plumbing, and other Work from that indicated on the plans. As a
7 condition for considering the project complete, the record drawings must be delivered to the
8 Engineer, and deemed acceptable.

9 1.22 **Warranty Response.** In lieu of any time limits imposed or implied by the above-
10 referenced Agreement Documents or stated in standard product warranties or special
11 warranties, the Contractor shall respond within 24 hours' notice from the County that repairs or
12 changes are required in connection with guaranteed Work, or equipment within the guarantee
13 period.

14 1.23 **Asbestos Containing Material (ACM).** When the Job Order requires the Contractor
15 not to remove ACM, the Contractor shall exercise caution when working around ACM to prevent
16 the release of ACM into the atmosphere. If damage to ACM results in release of airborne
17 asbestos fibers to the atmosphere, then control measures required by Federal and State
18 regulations must be instituted at the Contractor's expense. Any ACM damaged by the
19 Contractor's operations shall be repaired at the Contractor's expense in accordance with
20 applicable Federal, State, and local laws and regulations. When the Job Order requires the
21 removal of ACM, the Contractor shall remove, transport, and dispose of either non-friable ACM
22 or less than 100 square feet of friable ACM in accordance with Federal, State, and local statutes
23 and regulations. The Contractor shall furnish project notification documents, employee
24 information, equipment certifications, material specifications and samples, project work plan and
25 air monitoring plan, and other project submittals or documentation as required by statute or
26 regulation.

27 (A) The methods for removal and disposal of either non-friable ACM or friable ACM
28 selected by the Contractor shall be approved by the County before commencing removal

1 operations. If, during the course of removal operations, the County determines that removal
2 methods used by the Contractor result or may result in releasing airborne asbestos fibers to the
3 atmosphere, the Contractor shall immediately cease the Contractor's current ACM removal
4 operations, and propose a new method for removal of ACM for the approval of the County.

5 (B) If removal of ACM results in release of airborne asbestos fibers to the
6 atmosphere, then control measures required by Federal and State regulations must be instituted
7 at the Contractor's expense.

8 (C) Work area air monitoring may be required for individual Job Orders, at the
9 discretion of the County. Work area air monitoring shall be paid for by the Contractor. The
10 Engineer reserves the right to require the Contractor, at the Contractor's expense, to utilize a
11 contractor certified by the Contractors State License Board and registered with the Division of
12 Occupational Safety and Health to remove and dispose of ACM, if, in the opinion of the
13 Engineer based on the Contractor's performance of ACM removal, only a certified and
14 registered contractor would possess the technical skills and resources required to remove the
15 ACM.

16 (D) At the Contractor's option, removal and disposal of non-friable ACM or friable
17 ACM where removal and disposal may result in release of airborne asbestos fibers to the
18 atmosphere may be subcontracted to a contractor certified by the Contractors State License
19 Board and registered with the Division of Occupational Safety and Health.

20 1.24 **Security.** Security is of great concern to the County. Failure to comply with the
21 security requirements listed below will be considered a breach of contract, and may result in
22 termination of this Agreement and any Job Order for default. The Contractor's personnel shall
23 cooperate with all County security personnel at all times, and shall be subject to and conform to
24 County security rules and regulations, including, but not limited to County security rules and
25 procedures, as detailed in Exhibits D through G. Any violations or disregard of these rules may
26 be cause for denial of access to County property. The background checks required, and policies
27 listed below, may change throughout the life of this Agreement. It is the Contractor's
28

1 responsibility to request updates from the County. All of the Contractor's employees, agents,
2 and subcontractors must read the policies listed below. Please see the following Exhibits:

- 3 • Exhibit D – Probation Juvenile Detention Facilities – No Hostage Policy.
- 4 • Exhibit E – Fresno Sheriff – Coroner's Office (FSCO) Jail Detention Facilities – No
5 Hostage Policy.
- 6 • Exhibit F – The Prison Rape Elimination Act.
- 7 • Exhibit G – Background Investigations & Identification (ID) Badges.

8 (A) Security provisions will be strictly enforced. All parties who are required to
9 perform their individual services at the site shall be limited to the area required to complete the
10 Work. Such access shall be obtained by notification to the Facility Services Manager or his
11 designee, of the time and place, prior to commencing the Work.

12 (B) All keys used during construction shall be numbered. Each key issued shall be
13 recorded, and its prompt return shall be strictly enforced. Duplication of any keys issued is
14 strictly prohibited. These keys shall be returned to the County's representative at the end of
15 each working day, when required.

16 (C) Some of the Projects to be done under this Agreement may be in secured facilities
17 such as jails. Prior to commencement of Work, the Contractor, including all subcontractor and
18 contractors, shall obtain security clearances for all employees that will be working or making
19 deliveries to the sites.

20 (D) When Work is performed in secured facilities, it is incumbent upon the Contractor to
21 alert all workmen of the necessity for extreme care in accounting for, and keeping all areas free
22 of any and all types of hand tools, power tools, small parts, scrap material, and all other
23 materials which might be concealed upon the person of an inmate/ward/patient, at all times
24 when such tools and materials are not used for the task at hand.

25 (E) Each Work area shall be kept clean and in order both during working hours and at
26 the completion of the working day.

1 1.25 **Trenching and Excavation.** In accordance with section 7104 of the California Public
2 Contract Code, the following provisions shall apply to any contract involving digging of trenches
3 or other excavations that extend deeper than four feet below the surface:

4 (A) The Contractor shall promptly, and before the following conditions are disturbed,
5 notify the County, in writing, of any:

6 (i) Material that the Contractor believes may be material that is hazardous waste,
7 as defined in section 25117 of the Health and Safety Code that is required to be removed to a
8 Class I, Class II, or Class III disposal site in accordance with provisions of existing law.

9 (ii) Subsurface or latent physical conditions at the site differing from those indicated.

10 (iii) Unknown physical conditions at the site of any unusual nature, different
11 materially from those ordinarily encountered and generally recognized as inherent in work of the
12 character provided for in the Job Order.

13 (B) The County shall promptly investigate the conditions, and if it finds that the
14 conditions do materially so differ, or do involve hazardous waste, and cause a decrease or
15 increase in the Contractor's cost of, or the time required for, performance of any part of the
16 work, shall issue an additional Job Order.

17 (C) In the event that a dispute arises between the County and the Contractor
18 whether the conditions materially differ, or involve hazardous waste, or cause a decrease or
19 increase in the Contractor's cost of, or time required for, performance of any part of the Work,
20 the Contractor shall not be excused from any scheduled completion date provided for by the
21 Agreement but shall proceed with all Work to be performed under the Agreement. The
22 Contractor shall retain any and all rights provided either by contract or by law which pertain to
23 the resolution of disputes and protests between the contracting parties.

24 1.26 **Rights and Remedies of County for Default.** In case of default by the Contractor,
25 the County may procure the articles or service from another source and may recover the cost
26 difference and related expenses from any unpaid balance due to the Contractor or by
27 proceeding against performance bond of the Contractor, if any, or by suit against the Contractor.
28

1 The prices paid by the County shall be considered the prevailing market price at the time such
2 purchase is made.

3 (A) Articles or services, which upon delivery inspection do not meet specifications,
4 shall be rejected, and the Contractor will be considered in default. The Contractor shall
5 reimburse the County for expenses related to delivery of non-specified goods or services.

6 (B) Regardless of F.O.B. point, the Contractor agrees to bear all risks of loss, injury
7 or destruction to goods and materials ordered herein which occur prior to delivery; loss,
8 injury, or destruction shall not release the Contractor from any obligation hereunder.

9 1.27 **Assignment of Moneys.** The Contractor agrees to furnish all labor and materials,
10 including tools, implements, and appliances required, and to perform all the Work in a good and
11 workmanlike manner, free from any and all liens and claims of mechanics, material-men,
12 subcontractors, artisans, machinists, teamsters, day-men, and laborers required for completing
13 specific Job Orders, as directed by the County.

14 1.28 **Inspection.** All material and workmanship (if not otherwise designated by the
15 Agreement Documents) shall be subject to inspection, examination, and test by the Director of
16 the specific project or designated County official (hereinafter "Director") at any and all times
17 during manufacture and/or construction, and at any and all places where such manufacture
18 and/or construction are carried on. The Director shall have the right to reject defective material
19 and workmanship or require its correction.

20 The Contractor shall furnish promptly without additional charge, all reasonable facilities,
21 labor, and materials necessary for the safe and convenient inspection and tests that may be
22 required by the Director.

23 If considered necessary or advisable by the Director at any time either before
24 acceptance of the entire Work, or after acceptance and within the guaranty period, to make an
25 examination of Work already completed, by removing or tearing out same, the Contractor shall,
26 on request, promptly furnish all necessary facilities, labor, and material. If such Work is found to
27 be defective in any material respect, due to the fault of the Contractor or his/her subcontractors,
28 he shall defray all the expenses of such examination and of satisfactory reconstruction. If,

1 however, such Work is found to meet the requirements of this Agreement, the Contractor's
2 costs necessarily incurred in the examination and replacement, as determined by use of the
3 Construction Task Catalog®, shall be reimbursed to the Contractor and the Contractor shall, in
4 addition, if completion of the Work has been delayed thereby, be granted a suitable extension of
5 time on account of the additional Work involved.

6 When the Work is completed, the Contractor shall notify the County in writing that the
7 Work shall be ready for final inspection and test on a definite date, which shall be stated in
8 such notice.

9 1.29 The Contractor shall not assign moneys due or to become due to the Contractor
10 under the Agreement without the written consent of the County's Auditor-Controller/Treasurer-
11 Tax Collector. Any assignment of moneys shall be subject to all proper set-offs in favor of the
12 County, and to all deductions provided for in the Agreement, and particularly all money withheld,
13 whether assigned or not, shall be subject to being used by the County for the completion of the
14 Work in the event that the Contractor defaults under this Agreement.

15 1.30 The Contractor shall use The Gordian Group, Inc.'s Job Order Contracting System
16 for its JOC program. The Gordian Group, Inc.'s Job Order Contracting System includes
17 proprietary JOC applications that shall be used by the Contractor to prepare and submit JOC
18 proposals, subcontractor lists, and other requirements as specified by the County. The
19 Contractor shall be assessed a Contractor license fee by The Gordian Group, Inc. of one
20 percent (1%) of the value of construction of each project awarded by the County ("Contractor
21 License Fee"). Such Contractor License Fee shall be billable by The Gordian Group, Inc., and is
22 payable to The Gordian Group, Inc.

23 1.31 In accordance with Labor Code section 1770, et seq., the Director of the Department
24 of Industrial Relations of the State of California has determined the general prevailing wage
25 rates and employer payments for health and welfare, pension, vacation, travel time and
26 subsistence pay as provided for in section 1773.1, apprenticeship or other training programs
27 authorized by section 3093, and similar purposes applicable to the work to be done.
28

1 Information pertaining to applicable Prevailing Wage Rates may be found on the website
2 for the State of California – Department of Industrial Relations:
3 <http://www.dir.ca.gov/oprl/PWD/index.htm>.

4 Information pertaining to applicable prevailing wage rates for apprentices may be found
5 on the website for the State of California – Department of Industrial Relations:
6 <http://www.dir.ca.gov/oprl/pwappwage/PWAppWageStart.asp>.

7 It shall be mandatory upon the Contractor and upon any subcontractor to pay not less
8 than the prevailing wage rates, including overtime and holiday rates, to all workers, laborers, or
9 mechanics employed on this public work project, including those workers employed as
10 apprentices. Further, the Contractor and each subcontractor shall comply with Labor Code
11 sections 1777.5 and 1777.6 concerning the employment of apprentices. A copy of the above-
12 mentioned prevailing wage rates shall be posted by the Contractor at the job site where it will be
13 available to any interested party.

14 The Contractor shall comply with Labor Code section 1775, and shall forfeit as a penalty
15 to the County \$200.00 for each calendar day or portions thereof, for each worker paid less than
16 the prevailing wage rates for the work or craft in which the worker is employed for any work
17 done under this project by the Contractor or by any subcontractor under the Contractor in
18 violation of Labor Code section 1770, et seq. In addition to the penalty, the difference between
19 the prevailing wage rates and amount paid to each worker for each calendar day or portion
20 thereof for which each worker was paid less than the prevailing wage rate shall be paid to each
21 worker by the Contractor or subcontractor.

22 The Contractor and each of its subcontractors shall keep a log showing the name,
23 address, social security number, work classification, straight time and overtime hours worked
24 each day and week, and the actual per diem wages paid to each journeyman, apprentice,
25 worker, or other employee employed by him or her in connection with this public work project. In
26 accordance with Labor Code section 1776, each payroll record shall be certified and verified by
27 a written declaration under penalty of perjury stating that the information within the payroll
28 record is true and correct, and that the Contractor or subcontractor has complied with the

1 requirements of Labor Code sections 1771, 1811 and 1815 for any work performed by its
2 employees on this public work project. These records shall be open at all reasonable hours to
3 inspection by the County, its officers, and agents, and to the representatives of the State of
4 California – Department of Industrial Relations, including but not limited to the Division of Labor
5 Standards Enforcement.

6 **1.32 Supervision Procedures.**

7 (A) The Contractor shall give efficient supervision to the Work, using skill and
8 diligence for which the Contractor is compensated in the Agreement Adjustment Factors. The
9 Contractor shall carefully inspect the site, and study and compare all Agreement Documents
10 and other instructions, as ignorance of any phase of any of the features or conditions affecting
11 the Agreement shall not excuse the Contractor from carrying out its provisions to its full intent.

12 (B) The Contractor shall employ a competent superintendent and necessary
13 assistants who shall attend the project site during the progress of the Work. The superintendent
14 shall represent the Contractor, and all communications given to the superintendent shall be as
15 binding as if given to the Contractor. The Contractor shall identify in writing the name and
16 experience of the Superintendent for County review. The Contractor's superintendent shall not
17 manage more than 4 projects that are in construction at any one time.

18 (C) The Contractor shall be responsible to the County for the acts and omissions of
19 his/her employees, subcontractors and their agents and employees, and other persons
20 performing any of the Work under a contract with the Contractor.

21 (D) The Contractor shall at all times enforce strict discipline and good order among
22 the Contractor's employees and agents, and shall not employ on the Work any unfit person or
23 anyone not skilled in that person's task.

24 (E) The Contractor shall not be relieved from the Contractor's obligations to perform
25 the Work in accordance with the Agreement Documents, either by the activities or duties of the
26 Director in his/her administration of the Agreement, or by inspections, tests or approvals
27 required or performed by persons other than the Contractor.

28 **1.33 Construction Procedures.**

1 (A) Means and Methods – The Contractor shall be solely responsible for, and control
2 of construction means, methods, techniques, sequences, and procedures for all the Work of this
3 Agreement. Additionally, the Contractor shall be responsible for safety precautions and
4 programs in connection with the Work.

5 (B) Progress Schedule – The Contractor, immediately after being awarded a Job
6 Order, shall update the schedule submitted as part of the Proposal, and submit for the County’s
7 information an estimated progress schedule.

8 (C) Laws of City, County and State – The Contractor must comply with all rules,
9 regulations, and ordinances of the City and the County in which the work is being done, and all
10 Local, State, and Federal laws pertaining to the work.

11 (D) Safeguards -The Contractor shall provide, in conformity with all state and local
12 laws, codes, and ordinances, and as may be required, such temporary walls, fences, guard-
13 rails, barricades, lights, danger signs, and enclosures, and shall maintain such safeguards until
14 all Work is completed.

15 (E) When the County furnishes equipment or materials to the Contractor for use or
16 inclusion in the Work, the Contractor’s responsibility for all such equipment and materials shall
17 be the same as for materials furnished by the Contractor.

18 (F) Housekeeping – The Contractor shall keep the premises free of excess
19 accumulated debris, and clean up as required, and as directed by the Engineer. At completion
20 of Work, all debris shall be removed from the site.

21 (G) The Contractor’s Right to Stop Work or Terminate Agreement – If, through no
22 fault of the Contractor or of anyone employed by the Contractor (1) the Work is stopped by
23 order of any court or governmental authority, or (2) the County fails to issue any certificate for
24 payment within forty-five days after it is due, or (3) the County fails to pay the Contractor within
25 45 days after its presentation, any sum certified by the County, then the Contractor may, upon
26 ten days’ written notice to the County, stop Work or terminate the Agreement.

27 (H) Hazardous Substances – With the invoice, or within 25 days of delivery, the
28 Contractor must provide to the County a Safety Data Sheet for any product used by the

1 Contractor, which contains any substance on “The List of 800 Hazardous Substances”,
2 published by the State Director of Industrial Relations. (See Hazardous Substances Information
3 and Training Act, California State Labor Code sections 6360 through 6399.7).

4 (I) Recycled Products/Materials – The Contractor is encouraged to provide recycled
5 or recyclable products/materials which meet stated specifications per Job Order.

6 1.34 The Contractor shall bind every subcontractor to the terms of this Agreement to carry
7 out its provisions insofar as applicable to their work, and the Contractor further agrees to pay to
8 each subcontractor his/her or their due portion promptly upon issuance of certificate of payment.

9 (A) Neither the acceptance of the name of a subcontractor, the suggestion of such
10 name, any other act of the County, nor anything contained in the Agreement, shall be
11 construed as creating any contractual relationship between the County and any subcontractor.

12 (B) The County reserves the right to reject any proposed subcontractor, installer, or
13 supplier who cannot show satisfactory evidence of meeting the qualifications required by this
14 Agreement. In the event of such rejection, the Contractor shall, within the time frame listed for
15 submittal of revised Proposals, submit the name and qualifications of a replacement
16 subcontractor, installer, or supplier satisfactory to the County. Such replacement submittal shall
17 be in accordance with this Agreement. No adjustment of a Job Order price proposal shall be
18 made in the event of such replacement.

19 (C) This Agreement is subject to nondiscrimination requirements, including, but not
20 limited to, compliance by the Contractor and its subcontractors with the provisions of
21 Government Code section 12940.

22 (D) When an individual Job Order utilizes Federal Funds, and the Contractor elects
23 to require Disadvantaged Business Enterprise (DBE) participation, the Contractor shall follow
24 the Federal Good Faith Effort requirements for inclusion of DBE subcontractors and suppliers.

25 **Article 2**

26 **County’s Responsibilities**

27 2.1 The Work to be performed pursuant to this Agreement includes a comprehensive
28 listing of detailed repair, remodeling, and other repetitive tasks and specifications that have

1 preestablished units of measure and unit prices listed in The Gordian Group, Inc.'s proprietary
2 Construction Task Catalog®. The Work performed under this Agreement shall be carried out
3 pursuant to individual tasks or job orders, and shall involve repair, remodeling, or other
4 repetitive work for public buildings, streets, utilities, and other public works ("Job Order(s)").

5 2.2 The County shall identify projects, as well as the County's intended results for each
6 project, and may, at the County's discretion, work with the Contractor to develop a scope and
7 specifications.

8 2.3 The County shall issue a Notice to Proceed for each Job Order and shall issue any
9 required subsequent Job Order for each project.

10 2.4 The County shall provide inspection and written acceptance of the Work.

11 2.5 The County shall provide a County representative ("County Representative") to
12 represent the County, who will work with the Contractor to carry out the Contractor's obligations
13 under this Agreement. The County Representative will be the County's Facility Services
14 Manager, or his or her designees. The Contractor shall provide a contact person to the County
15 Representative upon execution of this Agreement and is responsible for informing the County as
16 changes in personnel occur.

17 2.6 The County may perform or employ others to undertake any portions of Work
18 persistently neglected by the Contractor, provided that, after three days' written notice to the
19 Contractor, such Work is still not completed to the County's satisfaction. In such case, the Work
20 shall be completed under direction of the Director or designated County Official or designee,
21 and the cost deducted from the amount of next payment falling due to the Contractor. Such
22 action shall, in no way, affect the status of either party under this Agreement, nor be held as a
23 basis of any claim by the Contractor for damages or extension of time.

24 2.7 **Changes to the Job Order.** Changes Requested by the County. The County may,
25 without invalidating the Job Order, order changes, modifications, deletions, and extra work by
26 issuing additional written Job Orders during the progress of the Work. The Contractor shall not
27 be entitled to compensation for any extra Work performed, unless the Director has issued an
28 additional written Job Order designating (i) the extra Work to be performed, (ii) the price of the

1 extra Work, and (iii) the time for completion of the extra Work. If the County orders Work added
2 or deleted from the Job Order, the price for the additional Job Order shall be determined using
3 the Procedure for Ordering Work set forth in Exhibit A. Credits for Pre-priced and Non Pre-
4 priced Tasks shall be calculated at the pre-set Unit Prices, and multiplied by the appropriate
5 Adjustment Factors. Credits for Tasks that have been deleted from the Detailed Scope of Work
6 will be given at 100% of the value at which they were included in the original Job Order Price
7 Proposal.

8 Changes in the Work Claimed by the Contractor – the Contractor may request a change in
9 the Job Order Price, or an extension of time for completion of the Job Order due to changes in
10 the Work that are not within the scope of the Job Order. The request must be in writing, and
11 must be submitted to the County prior to beginning the extra work. Furthermore, the Contractor
12 shall not be entitled to compensation for any extra work performed unless the Director has
13 issued an additional written Job Order designating (i) the extra work to be performed, (ii) the
14 price of the extra work, and (iii) the time for completion of the extra work. If the County agrees
15 that work is added to or deleted from the Job Order, the price for the additional Job Order shall
16 be determined using the Procedure for Ordering Work set forth in Exhibit A.

17 Where the Contractor and the County disagree on the scope, price, and/or time for
18 changes in the Detailed Scope of Work, the County may require the Contractor to perform such
19 Work under a written protest, pursuant to the Resolution of Contract Claims in Article 13, herein.
20 The Contractor’s failure to submit a written protest to the Director within five days of beginning
21 such Work constitutes a waiver of any claim.

22 2.8 Discrepancies. Should the Contractor, at any time, discover a mistake in any of the
23 Agreement Documents or any discrepancy therein, or any variation between dimensions on the
24 Agreement Documents and measurements at site, or any missing dimensions or other
25 information, the Contractor shall report at once to the Director for correction, and shall not
26 proceed with the affected Work until such correction has been made.

27 2.9 Resolving Conflicts
28

1 (A) In resolving conflicts resulting from errors or discrepancies pursuant to this
2 Agreement, the order of precedence shall be as follows:

- 3 (i) Permits from other agencies as may be required by law
- 4 (ii) Permits issued by the County
- 5 (iii) Changes to Job Orders
- 6 (iv) Job Orders
- 7 (v) This Agreement
- 8 (vi) Addenda
- 9 (vii) Scope of Work
- 10 (viii) Technical Specifications
- 11 (ix) Construction Task Catalog®
- 12 (x) Reference Specifications

13 (B) Division of Contract Documents – For convenience of reference and to facilitate
14 the letting of independent contracts, the Agreement Documents may be separated into certain
15 sections; such separation shall not operate to oblige the Director only or designee to establish
16 the limits of any contract between the Contractor and subcontractor, each of whom shall
17 depend upon his/her own contract stipulations. This Agreement shall apply with equal force to
18 all Work, including extra Work.

19 (C) Shop Drawings – Mill drawings, shop drawings, setting diagrams, schedules,
20 maker's specifications, and illustrations requisite for the various parts of the Work shall be
21 provided, and promptly submitted by the Contractor. These shall be submitted in duplicate or
22 as directed, shall be corrected if necessary, and resubmitted until review by the Director is
23 complete, after which corrected copies of each shall be filed with him and the necessary
24 additional copies supplied for use in connection with the Work. Corrections or comments made
25 on the shop drawings during this review do not relieve the Contractor of his/her responsibility to
26 comply with the requirements of the drawings and specifications. This review is only to check
27 for general conformance with the design concept of the project and general compliance with
28 the Agreement Documents. The Contractor remains responsible for: confirming and correlating

1 all dimensions and quantities; selecting fabrication processes and techniques of construction;
2 coordinating the work of the trades; and performing the work in a safe and satisfactory manner.

3 (D) Trade Names and Alternatives – The intent of the specifications is to specify
4 high-grade standard equipment, and it is not the intent of these specifications to exclude or
5 omit the products of any responsible manufacturer, if such products are equal in every respect
6 to those mentioned herein. Wherever an article, or any class of materials, is specified by the
7 trade name or by the name of any particular patentee, manufacturer, or dealer, it shall be taken
8 as intending to mean and specify the article of material described or any other equal thereto in
9 quality, finish, and durability, and equally as serviceable for the purpose for which it is, or they
10 are intended.

11 (E) Materials – All materials, unless otherwise specified, shall be new and of good
12 quality, proof of which shall be furnished by the Contractor; in case of doubt as to kind or
13 quality required, samples shall be submitted to the Director who will specify the kind and use of
14 the material appropriate to the location and the function of the item in question, and the
15 Contractor shall furnish such accordingly.

16 2.10 **Liquidated Damages.** It is understood and agreed by both parties to this Agreement
17 that if all the work specified or indicated in the Job Order is not completed within the specified
18 time frames set forth in the Job Order, or within such time limits as extended, damages will be
19 sustained by the County in the event of and by reason of such delay. It is, and will be,
20 impractical and extremely difficult to determine the actual damage which the County will sustain
21 by reason of the delay. It is therefore agreed that the Contractor will pay, at a minimum, to the
22 County the sum of money stipulated per day in the Job Order for each day's delay in completing
23 the work beyond the time prescribed.

24 The County shall determine the application of liquidated damages, and the value of
25 liquidated damages. Each Job Order shall state whether liquidated damages will be applied.
26 The County may withhold liquidated damages from payments to the Contractor as such
27 damages accrue, or, at the County's discretion, withhold liquidated damages from any
28 payments due or that become due pursuant to a Job Order, including Retention and final

1 payment (pursuant to Government Code §53069.85). The County shall execute a credit Job
2 Order to assess liquidated damages against the Contractor.

3 2.11 **Control of the Work.** The Parties agree that the Director shall be the arbiter
4 between parties thereto, and the entire Work is under the Director's jurisdiction to such end. It is
5 the Director's function to interpret the Agreement Documents; pass upon merits of materials and
6 workmanship, compute amounts of and issue certificates for all payments to which the
7 Contractor may be entitled; decide upon all deductions from and additions to the Job Order
8 Price resulting from alterations after letting of Job Order; determine amount of damages
9 accruing to either Party from any cause; or conferences at any time during the progress of the
10 Work, and such order shall require the Contractor and any or all subcontractors or other
11 contractors to attend; and perform any other required duties.

12 It shall be the responsibility of the Director or designee to make written decisions in regard
13 to all claims of the County or the Contractor, and to interpret the Agreement Documents in
14 regard to all questions arising in connection with the execution of the Work.

15 Orders from the Director shall be in writing only, and properly signed; no oral orders from
16 the Director, nor from anyone acting for him, shall be considered binding in case of dispute, and
17 no one, other than the County, or the Director acting for him, has authority to order changes
18 involving extra expenditures or deductions. Superintendents or Inspectors may be assigned by
19 the County and/or Engineer to assist them in the conduct of the Work, and these persons shall
20 be entitled to the same free access to all parts of Work, and the degree of authority of such
21 employees to act for the Engineer is as prescribed for the Engineer, such employees acting
22 within the scope of the particular duties entrusted to them.

23 Authority to stop the Work is vested in the Director, and may be involved whenever the
24 Director deems such action necessary to ensure proper execution of the Agreement, and Work
25 may not thereafter be resumed until the Director has given written consent.

1 **Article 3**

2 **Compensation, Invoices, and Payments**

3 3.1 The County agrees to pay, and the Contractor agrees to receive, compensation for
4 each Job Order in accordance with the Contractor's Adjustment Factors stated on the Bid.

5 3.2 Schedule as set forth in the Contractor's Response to the RFQ, which are as follows:

6 Non-Federally Funded Normal Working Hours 7 Adjustment Factor	0.7378
9 Non-Federally Funded Other than Normal 10 Working Hours 11 Adjustment Factor	0.2300
12 Federally Funded Normal Working Hours 14 Adjustment Factor	0.1150
15 Federally Funded Other than Normal Working 16 Hours 17 Adjustment Factor	0.0575

18
19 At no time shall the total sum of the outstanding Job Orders exceed the amount of the
20 Contractor's Payment Bond and Performance Bond. A Job Order is outstanding until the County
21 has accepted the Work described in the Job Order by execution of a written notice of
22 completion. The Contractor shall not be issued Job Orders with compensation amounts that in
23 total exceed the Maximum Agreement Value. The County makes no guarantee that the
24 Contractor will receive Job Orders totaling the Maximum Agreement Value.

25 In no event shall compensation paid for services performed under this Agreement
26 exceed the Maximum Agreement Value during the term of this Agreement. All expenses
27 incidental to the Contractor's performance of services under this Agreement shall be borne by
28 the Contractor.

1 3.3 **Maximum Compensation.** The maximum compensation payable to the Contractor
2 under this Agreement is for all Job Orders (“Maximum Agreement Value”) performed by the
3 Contractor shall not exceed \$2,000,000.00. There is no Minimum Contract Value.

4 3.4 The Contractor acknowledges that the County is a local government entity, and does
5 so with notice that the County’s powers are limited by the California Constitution and by State
6 law, and with notice that the Contractor may receive compensation under this Agreement only
7 for services performed according to the terms of this Agreement and while this Agreement is in
8 effect, and subject to the maximum amount payable under this section. The Contractor further
9 acknowledges that County employees have no authority to pay the Contractor except as
10 expressly provided in this Agreement.

11 3.5 **Invoices.** The Contractor shall submit invoices on the first day of the month in
12 accordance with the charges agreed upon by the Contractor for the services provided to the
13 County during the previous monthly billing period. Each invoice shall reference this agreement
14 number, the FAMIS (the County’s computerized maintenance management system) work order
15 number, the date and name of the facility where the services were performed, and a clear
16 itemization of services performed, to the County of Fresno, Internal Services Department,
17 Attention: Business Office, (A/P Division), 333 W. Pontiac Way, Clovis, CA 93612, [isdap-](mailto:isdap-ar@fresnocountyca.gov)
18 ar@fresnocountyca.gov. The Contractor shall submit each invoice within 60 days after the
19 month in which the Contractor performs services and in any case within 60 days after the end of
20 the term or termination of this Agreement.

21 3.6 **Payment.** The County shall pay each correctly completed and timely submitted
22 invoice within 45 days after receipt and approval of each invoice, which shall be given upon
23 verification of satisfactory performance. The County shall remit any payment to the Contractor’s
24 address specified in the invoice. Payments shall be made for inspected and approved Work
25 only. If an individual Job Order requires 45 days or less for completion, the County will normally
26 make one payment to the Contractor after the Notice of Completion, if required by the County,
27 and retention shall be paid after final acceptance of all Work contained under the Job Order and
28 all Agreement requirements for final payment have been satisfied. For Job Orders requiring

1 greater than 45 days performance period, the County shall consider a request for partial
2 payments to the Contractor, which shall not occur more often than monthly. The County will
3 make progress payments to the Contractor upon completion of portions of the Work, as covered
4 by the Agreement, in accordance with established County procedures:

5 (A) Before payment is made, the Contractor shall prepare for the Director's approval
6 a statement covering the actual Work completed under the terms of the Job Order. A schedule
7 of values listed by "CSI" or "Category" from the Contractor's Job Order Price Proposal may be
8 utilized for this schedule of values.

9 (B) In making such payment, there shall be a retention of 5% of the payment
10 requested. If, after 50% of the Work of the Job Order has been completed, the Director finds
11 that satisfactory progress is being made, the Director may reduce the retention to 2½% of the
12 amount requested. In addition, after 97.5% of the Work has been completed, the Director may
13 reduce the amount withheld to such lesser amount as the Director determines to be adequate
14 security for the fulfillment of the balance of the Work, and other requirements of this
15 Agreement. In no event shall this amount be reduced to less than 125% percent of the
16 estimated value of the Work yet to be completed, as determined by the Director. Such
17 reduction shall only be made upon the written request of the Contractor, and shall be approved
18 in writing by the surety upon the Performance Bond and the surety upon the Payment Bond.
19 The signature of persons executing the approval for the surety shall be properly acknowledged,
20 and the power of attorney authorizing those persons to give such consent must accompany the
21 approval document.

- 22 i. Substitution of securities for any moneys withheld by the County to
23 ensure performance under this Agreement shall be permitted, provided
24 that substitution of securities provisions shall not apply to contracts in
25 which there will be financing provided by the Farmers Home
26 Administration of the United States Department of Agriculture pursuant to
27 the Consolidated Farm and Rural Development Act (7 U.S.C. Sec. 1921
28

1 et seq.), and where federal regulations or policies, or both, do not allow
2 the substitution of securities.

- 3 ii. At the request and expense of the Contractor, and in compliance with
4 Public Contract Code section 22300, securities equivalent to the amount
5 withheld pursuant to these specifications shall be deposited by the
6 Contractor with the County, or with a state or federally chartered bank as
7 the escrow agent, who shall then pay such withheld amounts to the
8 Contractor upon written authorization of the County.
- 9 iii. Securities eligible for investment under this section shall include those
10 listed in section 16430 of the Government Code, bank or savings and
11 loans certificates of deposit, interest bearing demand deposit accounts,
12 standby letters of credit, or any other security mutually agreed to by the
13 Contractor and the County.
- 14 iv. Securities to be placed in escrow shall be of a value at least equivalent to
15 the amounts of retention to be paid to the Contractor.
- 16 v. The Contractor shall be beneficial owner of any securities substituted for
17 moneys withheld and shall receive any interest thereon.
- 18 vi. The Contractor shall enter into an escrow agreement satisfactory to the
19 County, which agreement shall substantially comply with Public Contract
20 Code section 22300.
- 21 vii. The Contractor shall obtain the written consent of the surety to such
22 escrow agreement.

23 C. All material and Work covered by progress payments made shall thereupon
24 become the sole property of the County, but this provision shall not be construed as relieving
25 the Contractor from the sole responsibility for all materials and work upon which payments
26 have been made or the restoration of any damaged Work, or as a waiver of the right of the
27 County to require the fulfillment of all of the terms of the Agreement.

1 D. Upon completion and acceptance of all Work whatsoever required, and the
2 release of all claims against the County as specified, the Director shall file a written Notice of
3 Completion, if required by the County, with the County Recorder as to the entire amount of
4 Work performed.

5 E. Forty-five days after the filing of such Notice of Completion, if required by the
6 County, the County shall pay to the Contractor the amount therein stated, except as provided
7 in, Article 3.6, G, less all prior payment and advances whatsoever to or for the account of the
8 Contractor, and less material and labor claims duly filed with the County on account of this
9 Agreement. All prior estimates and payments, including those relating to extra work, shall be
10 subject to correction by this final payment, which is referred to throughout this Agreement as
11 the Final Payment.

12 F. The acceptance by the Contractor of the Final Payment shall be, and shall
13 operate as a release to the County of all claims and of all liability to the Contractor for all things
14 done or furnished in connection with this Work, and for every act and neglect of the County and
15 others relating to or arising out of this Work, excepting the Contractor's claims for interest upon
16 final payment, if this payment be improperly delayed. No payments, however, final, or
17 otherwise, shall operate to release the Contractor or his/her sureties from any obligations under
18 this Agreement or the Performance and Payment Bonds.

19 G. Payments may be withheld in the whole or in part, if deemed necessary to
20 protect the County from loss on account of the failure of the Contractor to (1) meet the
21 Contractor's obligations, (2) expedite the Work, (3) correct rejected Work, (4) settle damages
22 as herein provided, (5) produce substantial evidence that no claims will be or have been filed,
23 or (6) that unpaid balances may be insufficient to complete the Work.

24 H. The Contractor shall pay:

- 25 i. For all transportation and utility services not later than the 20th day of the
26 calendar month following that in which such services are rendered.
- 27 ii. For all materials, tools, and other expendable equipment to the extent of
28 90% of the cost thereof, not later than the 20th day of the calendar month

1 following that in which such materials, tools, and equipment are delivered
2 at the site of the project, and the balance of the cost thereof not later than
3 the 30th day following the completion of that part of the Work in or on
4 which such materials, tools, and equipment are incorporated or used.

5 iii. To each of the Contractor's subcontractors, not later than the tenth day
6 following each payment to the Contractor, the respective amounts
7 allowed the Contractor on account of the Work performed by the
8 Contractor's subcontractors, including that Work performed and paid for
9 under a Change to the Job Order as provided in Article 2, section 2.7 to
10 the extent of each subcontractor's interest therein.

11 **3.7 Incidental Expenses.** The Contractor is solely responsible for all of its costs and
12 expenses that are not specified as payable by the County under this Agreement.

13 **Article 4**

14 **Term of Agreement**

15 **4.1 Term.** This Agreement is effective upon execution and terminates one year from the
16 Effective Date, or when all issued Job Orders totaling the Maximum Agreement Value, as
17 defined in section, herein, have been completed, whichever occurs first. All Job Orders must be
18 issued, but not necessarily completed, within one calendar year of the Effective Date of this
19 Agreement. All Job Orders for which a Notice to Proceed is issued by the County during the
20 term of this Agreement shall be valid and in effect, notwithstanding that the Detailed Scope of
21 Work may be performed, payments may be made, and the guarantee period may continue, after
22 the Agreement term has expired. All terms and conditions of the Agreement apply to each Job
23 Order, except as provided in Article 6, "Termination and Suspension," below.

24 **4.2 Extension.** The term of this Agreement may be extended for no more than two, one-
25 year periods only upon written approval of both parties at least 30 days before the first day of
26 the next one-year extension period. The Director of Internal Services/Chief Information Officer
27 or his or her designee is authorized to sign the written approval on behalf of the County based
28 on the Contractor's satisfactory performance. The extension of this Agreement by the County is

1 not a waiver or compromise of any default or breach of this Agreement by the Contractor
2 existing at the time of the extension whether or not known to the County.

3 **Article 5**

4 **Notices**

5 5.1 **Contact Information.** The persons and their addresses having authority to give and
6 receive notices provided for or permitted under this Agreement include the following:

7 **For the County:**

8 Director of Internal Services/Chief Information Officer
9 County of Fresno
10 333 W. Pontiac Way
11 Clovis, CA 93612
12 isdcontracts@fresnocountyca.gov

13 **For the Contractor:**

14 President
15 Newton Construction and Management, Inc.
16 2436 Broad Street
17 San Luis Obispo, CA 93401

18 5.2 **Change of Contact Information.** Either party may change the information in section
19 5.1 by giving notice as provided in section 5.3.

20 5.3 **Method of Delivery.** Each notice between the County and the Contractor provided
21 for or permitted under this Agreement must be in writing, state that it is a notice provided under
22 this Agreement, and be delivered either by personal service, by first-class United States mail, by
23 an overnight commercial courier service, or by Portable Document Format (PDF) document
24 attached to an email.

25 (A) A notice delivered by personal service is effective upon service to the recipient.

26 (B) A notice delivered by first-class United States mail is effective three County
27 business days after deposit in the United States mail, postage prepaid, addressed to the
28 recipient.

(C) A notice delivered by an overnight commercial courier service is effective one
County business day after deposit with the overnight commercial courier service, delivery fees
prepaid, with delivery instructions given for next day delivery, addressed to the recipient.

1 (D) A notice delivered by PDF document attached to an email is effective when
2 transmission to the recipient is completed (but, if such transmission is completed outside of
3 County business hours, then such delivery is deemed to be effective at the next beginning of a
4 County business day), provided that the sender maintains a machine record of the completed
5 transmission.

6 5.4 **Claims Presentation.** For all claims arising from or related to this Agreement,
7 nothing in this Agreement establishes, waives, or modifies any claims presentation
8 requirements or procedures provided by law, including the Government Claims Act (Division 3.6
9 of Title 1 of the Government Code, beginning with section 810).

10 **Article 6**

11 **Termination and Suspension**

12 6.1 **Termination for Non-Allocation of Funds.** The terms of this Agreement are
13 contingent on the approval of funds by the appropriating government agency. If sufficient funds
14 are not allocated, then the County, upon at least 30 days' advance written notice to the
15 Contractor, may:

16 (A) Modify the services provided by the Contractor under this Agreement; or

17 (B) Terminate this Agreement.

18 6.2 **Termination for Breach.**

19 (A) Upon determining that a breach (as defined in paragraph (C) below) has
20 occurred, the County may give written notice of the breach to the Contractor. The written notice
21 may suspend performance under this Agreement, and must provide at least 30 days for the
22 Contractor to cure the breach.

23 (B) If the Contractor fails to cure the breach to the County's satisfaction within the
24 time stated in the written notice, the County may terminate this Agreement immediately.

25 (C) For purposes of this section, a breach occurs when, in the determination of the
26 County, the Contractor has:

27 (1) Obtained or used funds illegally or improperly;

28 (2) Failed to comply with any part of this Agreement;

- 1 (3) Submitted a substantially incorrect or incomplete report to the County; or
2 (4) Improperly performed any of its obligations under this Agreement.

3 **6.3 Termination without Cause.** In circumstances other than those set forth above, the
4 County may terminate this Agreement by giving at least 30 days advance written notice to the
5 Contractor.

6 **6.4 No Penalty or Further Obligation.** Any termination of this Agreement by the County
7 under this Article 6 is without penalty to or further obligation of the County.

8 **6.5 County's Rights upon Termination.** Upon termination for breach under this Article
9 6, the County may demand repayment by the Contractor of any monies disbursed to the
10 Contractor under this Agreement that, in the County's sole judgment, were not expended in
11 compliance with this Agreement. The Contractor shall promptly refund all such monies upon
12 demand. This section survives the termination of this Agreement.

13 **Article 7**

14 **Taxes, Permits, Fees, and Indemnification for Patent Infringement Claim**

15 7.1 Taxes, permits, fees and indemnification for patent infringement claim. The
16 Contractor shall pay for and include all Federal, State, and local taxes, direct or indirect, upon all
17 materials, and take out and pay all fees and charges for permits and licenses, unless otherwise
18 specified in the Job Order or Technical Specifications.

19 7.2 Royalty and license fees incidental to the use of any patented material, device or
20 process shall be paid by the Contractor, and in the event of a claim or alleged infringement of
21 patent copyright, or Trade Secrete rights, the Contractor shall indemnify, save the County free
22 and harmless, and defend, at the Contractor's own expense, any and all suits that may be
23 brought in connection with such royalty and license fees.

24 **Article 8**

25 **Independent Contractor**

26 8.1 **Status.** In performing under this Agreement, the Contractor, including its officers,
27 agents, employees, and volunteers, is at all times acting and performing as an independent
28

1 contractor, in an independent capacity, and not as an officer, agent, servant, employee, joint
2 venturer, partner, or associate of the County.

3 8.2 **Verifying Performance.** The County has no right to control, supervise, or direct the
4 manner or method of the Contractor's performance under this Agreement, but the County may
5 verify that the Contractor is performing according to the terms of this Agreement.

6 8.3 **Benefits.** Because of its status as an independent contractor, the Contractor has no
7 right to employment rights or benefits available to County employees. The Contractor is solely
8 responsible for providing to its own employees all employee benefits required by law. The
9 Contractor shall save the County harmless from all matters relating to the payment of the
10 Contractor's employees, including compliance with Social Security withholding and all related
11 regulations.

12 8.4 **Services to Others.** The parties acknowledge that, during the term of this
13 Agreement, the Contractor may provide services to others unrelated to the County.

14 **Article 9**

15 **Indemnity and Defense**

16 9.1 **Indemnity.** The Contractor shall indemnify and hold harmless and defend the
17 County (including its officers, agents, employees, and volunteers) against all claims, demands,
18 injuries, damages, costs, expenses (including attorney fees and costs), fines, penalties, and
19 liabilities of any kind to the County, the Contractor, or any third party that arise from or relate to
20 the performance or failure to perform by the Contractor (or any of its officers, agents,
21 subcontractors, or employees) under this Agreement. The County may conduct or participate in
22 its own defense without affecting the Contractor's obligation to indemnify and hold harmless or
23 defend the County.

24 9.2 **Survival.** This Article 9 survives the termination of this Agreement.

25 **Article 10**

26 **Insurance**

27 10.1 The Contractor shall comply with all the insurance requirements in Exhibit C to this
28 Agreement.

1 **Article 11**

2 **Inspections, Audits, and Public Records**

3 11.1 **Inspection of Documents.** The Contractor shall make available to the County, and
4 the County may examine at any time during business hours and as often as the County deems
5 necessary, all of the Contractor's records and data with respect to the matters covered by this
6 Agreement, excluding attorney-client privileged communications. The Contractor shall, upon
7 request by the County, permit the County to audit and inspect all of such records and data to
8 ensure the Contractor's compliance with the terms of this Agreement.

9 11.2 **State Audit Requirements.** If the compensation to be paid by the County under this
10 Agreement exceeds \$10,000, the Contractor is subject to the examination and audit of the
11 California State Auditor, as provided in Government Code section 8546.7, for a period of three
12 years after final payment under this Agreement. This section survives the termination of this
13 Agreement.

14 11.3 **Public Records.** The County is not limited in any manner with respect to its public
15 disclosure of this Agreement or any record or data that the Contractor may provide to the
16 County. The County's public disclosure of this Agreement or any record or data that the
17 Contractor may provide to the County may include but is not limited to the following:

18 (A) The County may voluntarily, or upon request by any member of the public or
19 governmental agency, disclose this Agreement to the public or such governmental
20 agency.

21 (B) The County may voluntarily, or upon request by any member of the public or
22 governmental agency, disclose to the public or such governmental agency any record or
23 data that the Contractor may provide to the County, unless such disclosure is prohibited
24 by court order.

25 (C) This Agreement, and any record or data that the Contractor may provide to the
26 County, is subject to public disclosure under the Ralph M. Brown Act (California
27 Government Code, Title 5, Division 2, Part 1, Chapter 9, beginning with section 54950).
28

1 (D) This Agreement, and any record or data that the Contractor may provide to the
2 County, is subject to public disclosure as a public record under the California Public
3 Records Act (California Government Code, Title 1, Division 7, Chapter 3.5, beginning
4 with section 6250) ("CPRA").

5 (E) This Agreement, and any record or data that the Contractor may provide to the
6 County, is subject to public disclosure as information concerning the conduct of the
7 people's business of the State of California under California Constitution, Article 1,
8 section 3, subdivision (b).

9 (F) Any marking of confidentiality or restricted access upon or otherwise made with
10 respect to any record or data that the Contractor may provide to the County shall be
11 disregarded and have no effect on the County's right or duty to disclose to the public or
12 governmental agency any such record or data.

13 **11.4 Public Records Act Requests.** If the County receives a written or oral request
14 under the CPRA to publicly disclose any record that is in the Contractor's possession or control,
15 and which the County has a right, under any provision of this Agreement or applicable law, to
16 possess or control, then the County may demand, in writing, that the Contractor deliver to the
17 County, for purposes of public disclosure, the requested records that may be in the possession
18 or control of the Contractor. Within five business days after the County's demand, the
19 Contractor shall (a) deliver to the County all of the requested records that are in the Contractor's
20 possession or control, together with a written statement that the Contractor, after conducting a
21 diligent search, has produced all requested records that are in the Contractor's possession or
22 control, or (b) provide to the County a written statement that the Contractor, after conducting a
23 diligent search, does not possess or control any of the requested records. The Contractor shall
24 cooperate with the County with respect to any County demand for such records. If the
25 Contractor wishes to assert that any specific record or data is exempt from disclosure under the
26 CPRA or other applicable law, it must deliver the record or data to the County and assert the
27 exemption by citation to specific legal authority within the written statement that it provides to
28 the County under this section. The Contractor's assertion of any exemption from disclosure is

1 not binding on the County, but the County will give at least 10 days' advance written notice to
2 the Contractor before disclosing any record subject to the Contractor's assertion of exemption
3 from disclosure. The Contractor shall indemnify the County for any court-ordered award of costs
4 or attorney's fees under the CPRA that results from the Contractor's delay, claim of exemption,
5 failure to produce any such records, or failure to cooperate with the County with respect to any
6 County demand for any such records.

7 **Article 12**

8 **Disclosure of Self-Dealing Transactions**

9 12.1 **Applicability.** This Article 12 applies if the Contractor is operating as a corporation,
10 or changes its status to operate as a corporation.

11 12.2 **Duty to Disclose.** If any member of the Contractor's board of directors is party to a
12 self-dealing transaction, he or she shall disclose the transaction by completing and signing a
13 "Self-Dealing Transaction Disclosure Form" (Exhibit B to this Agreement) and submitting it to the
14 County before commencing the transaction or immediately after.

15 12.3 **Definition.** "Self-dealing transaction" means a transaction to which the Contractor is
16 a party and in which one or more of its directors, as an individual, has a material financial
17 interest.

18 **Article 13**

19 **Resolution of Contract Claims**

20 Public works contract claims of three hundred seventy-five thousand (\$375,000) or less
21 which arise between a Contractor and a local public agency shall be resolved in accordance
22 with the provisions of Article 1.5 (Sections 20104-20104.6, inclusive) of Chapter 1 of Part 3 of
23 Division 2 of the Public Contract Code. Article 1.5 requires that its provisions or a summary
24 thereof be set forth in the plans and specifications for any work which may give rise to a claim
25 thereunder. Accordingly, this Agreement incorporates all of the terms and conditions of Article
26 1.5, as follows:
27

28 Article 1.5 Resolutions of Contract Claims

1 20104. (a)(1) This article applies to all public works claims of three hundred seventy-five
2 thousand dollars (\$375,000) or less which arise between a contractor and a local agency.

3 (2) This article shall not apply to any claims resulting from a contract between a contractor
4 and a public agency when the public agency has elected to resolve any disputes pursuant to
5 Article 7.1 (commencing with Section 10240) of Chapter 1 of Part 2.

6 (b)(1) "Public work" has the same meaning as in Sections 3100 and 3106 of the Civil Code,
7 except that "public work" does not include any work or improvement contracted for by the state
8 or the Regents of the University of California.

9 (2) "Claim" means a separate demand by the contractor for (A) a time extension, (B)
10 payment of money or damages arising from work done by or on behalf of the contractor
11 pursuant to the contract for a public work and payment of which is not otherwise expressly
12 provided for or the claimant is not otherwise entitled to, or (C) an amount the payment of which
13 is disputed by the local agency.

14 (c) The provisions of this article or a summary thereof shall be set forth in the plans or
15 specifications for any work which may give rise to a claim under this article.

16 (d) This article applies only to contracts entered into on or after January 1, 1991. 20104.2
17 For any claim subject to this article, following requirements apply:

18 (a) The claim shall be in writing and include the documents necessary to substantiate the
19 claim. Claims must be filed on or before the date of final payment. Nothing in this subdivision is
20 intended to extend the time limit or supersede notice requirements otherwise provided by
21 contract for the filing of claims.

22 (b)(1) For claims of less than fifty thousand dollars (\$50,000), the local agency shall
23 respond in writing to any written claim within 45 days of receipt of the claim, or may request, in
24 writing, within 30 days of receipt of the claim, any additional documentation supporting the claim
25 or relating to defenses or claims the local agency may have against the claimant.

26 (2) If additional information is thereafter required, it shall be requested and provided
27 pursuant to this subdivision, upon mutual agreement of the local agency and the claimant.
28

1 (3)The local agency's written response to the claim as further documented shall be
2 submitted to the claimant within 15 days after receipt of the further documentation or within a
3 period of time no greater than that taken by the claimant in producing the additional information,
4 whichever is greater.

5 (c)(1) For claims of over fifty thousand dollars (\$50,000) and less than or equal to three
6 hundred seventy-five thousand dollars (\$375,000), the local agency shall respond in writing to
7 all written claims within 60 days of receipt of the claim, or may request, in writing, within 30 days
8 of receipt of the claim, any additional documentation supporting the claim or relating to defenses
9 or claims the local agency may have against the claimant.

10 (2)If additional information is thereafter required, it shall be requested and provided
11 pursuant to this subdivision, upon mutual agreement of the local agency and the claimant.

12 (3)The local agency's written response to the claim, as further documented, shall be
13 submitted to the claimant within 30 days after receipt of the further documentation, or within a
14 period of time no greater than that taken by the claimant in producing the additional information
15 or requested documentation, whichever is greater.

16 (d)If the claimant disputes the local agency's written response, or the local agency fails to
17 respond within the time prescribed, the claimant may so notify the local agency in writing, either
18 within 15 days of receipt of the local agency's response or within 15 days of the local agency's
19 failure to respond within the time prescribed, respectively, and demand an informal conference
20 to meet and confer for settlement of the issues in dispute, Upon a demand, the local agency
21 shall schedule a meet and confer conference within 30 days for settlement of the dispute.

22 (e)If following the meet and confer conference the claim or any portion remains in dispute,
23 the claimant may file a claim pursuant to Chapter 1 (commencing with Section 900) and Chapter
24 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code.
25 For purposes of those provisions, the running of the period of time within which a claim must be
26 filed shall be tolled from the time the claimant submits his/her or her written claim pursuant to
27 subdivision (a) until the time the claim is denied, including any period of time utilized by the
28 meet and confer conference.

1 20104.4 The following procedures are established for all civil actions filed to resolve claims
2 subject to this article:

3 (a) Within 60 days, but no earlier than 30 days, following the filing or responsive pleadings,
4 the court shall submit the matter to nonbinding mediation unless waived by the mutual
5 stipulation of both parties. The mediation process shall provide for the selection within 15 days
6 by both parties of disinterested third person as mediator, shall be commenced within 30 days of
7 the submittal, and shall be concluded within 15 days from the commencement of the mediation
8 unless a time requirement is extended upon a good cause showing to the court or by stipulation
9 of both parties. If the parties fail to select a mediator within the 15-day period, any party may
10 petition the court to appoint the mediator.

11 (b)(1) If the matter remains in dispute, the case shall be submitted to the judicial arbitration
12 pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of
13 Civil Procedure, notwithstanding Section 1141.11 of that code. The Civil Discovery Act of 1986
14 (Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 of Part 4 of Civil Procedure)
15 shall apply to any proceeding brought under this subdivision consistent with the rule pertaining
16 to judicial arbitration.

17 (2)Notwithstanding any other provision of law, upon stipulation of the parties, arbitrators
18 appointed for purposes of this article shall be experienced in construction law, and, upon
19 stipulation of the parties, mediators and arbitrators shall be paid necessary and reasonable
20 hourly rates of pay not to exceed their customary rate, and such fees and expenses shall be
21 paid equally by the parties, except in the case of arbitration where the arbitrator, for good cause,
22 determines a different division. In no event shall these fees or expenses be paid by state or
23 county funds.

24 (3)In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the
25 Code of Civil Procedure, any party who after receiving an arbitration award requests a trial de
26 novo but does not obtain a more favorable judgment shall, in addition to payment of costs and
27 fees under that chapter, pay the attorney's fees of the other party arising out of the trial de
28 novo.

1 (c) The court may, upon request by any party, order any witnesses to participate in the
2 mediation or arbitration process. Arbitrators shall be experienced in construction law.

3 20104.6 (a) No local agency shall fail to pay money as to any portion of a claim which is
4 undisputed except as otherwise provided in the contract.

5 (b) In any suit filed under Section 20104.4, the local agency shall pay interest at the legal
6 rate on any arbitration award or judgment. The interest shall begin to accrue on the date the suit
7 is filed in a court of law.

8 **Article 14**

9 **General Terms**

10 14.1 **County.** The County of Fresno, State of California, as represented by the Fresno
11 County Board of Supervisors.

12 14.2 **Director.** The County's Director of Internal Services/Chief Information Officer, acting
13 either directly or through properly authorized agents, such agents acting within the scope of the
14 particular duties entrusted to them, which ever department issues the Notice to Proceed to the
15 Contractor.

16 14.3 **Architect or Engineer.** The Director of Department of Internal Services and his/her
17 authorized agents, which may include a duly licensed Architect or Engineer providing consultant
18 services in accordance with an agreement with the County.

19 14.4 **Contractor.** When used in the General Conditions refer to: person, persons, entity,
20 co-partnership: or corporation so named in the Agreement; when used in the body of the
21 Agreement Documents, refers to the Contractor for that specific work, whether it be the General
22 Contractor, subcontractor, or other contractor.

23 14.5 **Subcontractor.** Person, persons, entity, co-partnership or corporation having direct
24 contract with the Contractor.

25 14.6 **Adjustment Factor.** The Contractor's competitively bid price adjustment to the Unit
26 Prices published in the Construction Task Catalog®.

1 14.7 **Construction Task Catalog (CTC).** A comprehensive listing of specific
2 construction related tasks identified by the County, together with a specified unit of
3 measurement and Unit Price.

4 14.8 **Agreement Documents.** All Job Orders issued under the Agreement; all
5 amendments, modifications, or revisions to the Agreement; surety bonds; certificates of
6 insurance; County notification to the Contractor that Work is needed; County Requests for Job
7 Order Proposals; and any design drawings provided by the County with the Job Orders.

8 14.9 **Final Completion of the Job Order.** The last date on which all of the following
9 events have occurred: The County has determined that all Punch List Work and any other
10 remaining Work have been completed in accordance with the Agreement Documents; final
11 inspections have been completed, and all operations systems and equipment testing have been
12 completed; the issuance of final occupancy certifications (if any); all deliverables have been
13 provided to the County, and all contractual requirements for final payment have been
14 completed.

15 14.10 **Job Order Contract (JOC).** This Agreement, which is a competitively bid, firm fixed-
16 price, indefinite-quantity contract for accomplishing construction and construction-related
17 services. Work is accomplished through the issuance of individual Job Orders. Each Job Order
18 issued under the Agreement shall be a firm fixed priced for accomplishing a specific
19 construction task or Project.

20 14.11 **Non Pre-Priced (NPP) Tasks.** The units of Work that are not included in the
21 Construction Task Catalog®, but are required by the Detailed Scope of Work.

22 14.12 **Normal Working Hours.** Between the hours of 7:00 AM to 5:00 PM, Monday
23 through Friday, inclusive. Saturdays, Sundays, and County holidays are excluded.

24 14.13 **Notice of Completion.** A form issued by the County indicating that the Work is
25 complete, and fixing the date of completion. The form is signed by the County, and filed with the
26 County Recorder. The County, at its sole discretion, may elect not to issue a Notice of
27 Completion on any individual Job Order.

1 14.14 **Notice to Proceed.** Written authorization from the County for the Contractor to
2 commence a Job Order.

3 14.15 **Other than Normal Working Hours.** Work done between the hours of 5:00 PM to
4 7:00 AM, on weekdays, and any times during Saturday, Sunday, and County holidays.

5 14.16 **Plans.** The drawings, sketches, illustrations, specifications, or other pertinent
6 information included on or attached to the Job Order.

7 14.17 **Pre-Priced Task.** An item of work included in the Construction Task Catalog® for
8 which a unit price is given.

9 14.18 **Project.** Collectively, the improvements to be constructed by the Contractor pursuant
10 to one or more Job Orders.

11 14.19 **Job Order Price Proposal.** A price proposal prepared by the Contractor that
12 includes the Pre-priced Tasks, Non Pre-priced Tasks, quantities, and appropriate Adjustment
13 Factors required to complete the Detailed Scope of Work.

14 14.20 **Job Order Proposal.** The Contractor's irrevocable offer to perform Work associated
15 with a Job Order, which refers to a Contractor-prepared document quoting a firm fixed
16 Job Order Price and schedule for the completion of a specific Detailed Scope of Work. The
17 Contractor's Job Order Proposal must be on forms provided by the County, and in an electronic
18 version compatible with the County's systems. The Job Order Proposal may also contain
19 approved drawings, work schedule, permits, or other such documentation as the County might
20 require for a specific Job Order.

21 14.21 **Job Order Price.** The value of the approved Job Order Price Proposal and the lump
22 sum amount a Contractor will be paid for completing a Job Order.

23 14.22 **Job Order Completion Time.** The time within which the Contractor must complete
24 the Detailed Scope of Work.

25 14.23 **Joint Scope Meeting.** A site meeting to discuss the work before the Detailed Scope
26 of Work is finalized.

27 14.24 **Punch List Work.** A compilation of minor items that have not been completed in
28 accordance with an individual Job Order and the Agreement Documents. Whether an item is

1 Punch List Work or necessary for completion shall be determined in the sole discretion of the
2 County.

3 14.25 **Request for Job Order Proposal (RFJOP).** The County's written request to the
4 Contractor for a Job Order Proposal for the Detailed Scope of Work referenced in a specific Job
5 Order.

6 14.26 **Detailed Scope of Work.** The complete description of services to be provided by the
7 Contractor under an individual Job Order.

8 14.27 **Job Order.** The documents that indicate the Work to be accomplished under this
9 Agreement. The County will be responsible for the development of the Job Order, as well as the
10 inspection and acceptance of the Work contained within the Job Order. The County will review
11 the Contractor's Proposal, and if acceptable, shall issue a Job Order for the Work described
12 therein. Each Job Order shall include a Detailed Scope of Work, a lump sum, firm fixed Job
13 Order Price Proposal from the Contractor based upon the Construction Task Catalog® or NPP
14 Task formula, whichever is applicable, time for completion of the Work, and any special
15 conditions that might apply to that specific Job Order, such as Liquidated Damages. The County
16 also reserves the right to issue a Job Order to the Contractor for a Job Order Price Proposal
17 that is generated by the County, which in the opinion of the County, best represents the Detailed
18 Scope of Work (DSOW) for such project.

19 14.28 **Unit Price.** The price published in the Construction Task Catalog® for a specific
20 construction or construction-related task. The Unit Prices are fixed for the duration of the
21 Agreement. Each Unit Price is comprised of the labor, equipment, and materials costs to
22 accomplish that specific task.

23 14.29 **Work.** The Contractor's furnishing of all labor, materials, equipment, and other
24 incidentals necessary or convenient to the completion of an individual Job Order.

25 14.30 **Technical Specifications.** The written requirements for materials, equipment,
26 systems, standards, and workmanship for the work, and performance of related services.

27 14.31 **Modification.** Except as provided in Article 6, "Termination and Suspension," this
28 Agreement may not be modified, and no waiver is effective, except by written agreement signed

1 by both parties. The Contractor acknowledges that County employees have no authority to
2 modify this Agreement except as expressly provided in this Agreement.

3 14.32 **Non-Assignment.** Neither party may assign its rights or delegate its obligations
4 under this Agreement without the prior written consent of the other party.

5 14.33 **Governing Law.** The laws of the State of California govern all matters arising from
6 or related to this Agreement.

7 14.34 **Jurisdiction and Venue.** This Agreement is signed and performed in Fresno
8 County, California. The Contractor consents to California jurisdiction for actions arising from or
9 related to this Agreement, and, subject to the Government Claims Act, all such actions must be
10 brought and maintained in Fresno County.

11 14.35 **Construction.** The final form of this Agreement is the result of the parties' combined
12 efforts. If anything in this Agreement is found by a court of competent jurisdiction to be
13 ambiguous, that ambiguity shall not be resolved by construing the terms of this Agreement
14 against either party.

15 14.36 **Days.** Unless otherwise specified, "days" means calendar days.

16 14.37 **Headings.** The headings and section titles in this Agreement are for convenience
17 only and are not part of this Agreement.

18 14.38 **Severability.** If anything in this Agreement is found by a court of competent
19 jurisdiction to be unlawful or otherwise unenforceable, the balance of this Agreement remains in
20 effect, and the parties shall make best efforts to replace the unlawful or unenforceable part of
21 this Agreement with lawful and enforceable terms intended to accomplish the parties' original
22 intent.

23 14.39 **Nondiscrimination.** During the performance of this Agreement, the Contractor shall
24 not unlawfully discriminate against any employee or applicant for employment, or recipient of
25 services, because of race, religious creed, color, national origin, ancestry, physical disability,
26 mental disability, medical condition, genetic information, marital status, sex, gender, gender
27 identity, gender expression, age, sexual orientation, military status or veteran status pursuant to
28 all applicable State of California and federal statutes and regulation.

1 14.40 **No Waiver.** Payment, waiver, or discharge by the County of any liability or obligation
2 of the Contractor under this Agreement on any one or more occasions is not a waiver of
3 performance of any continuing or other obligation of the Contractor and does not prohibit
4 enforcement by the County of any obligation on any other occasion.

5 14.41 **Entire Agreement.** This Agreement, including its exhibits, is the entire agreement
6 between the Contractor and the County with respect to the subject matter of this Agreement,
7 and it supersedes all previous negotiations, proposals, commitments, writings, advertisements,
8 publications, and understandings of any nature unless those things are expressly included in
9 this Agreement. If there is any inconsistency between the terms of this Agreement without its
10 exhibits and the terms of the exhibits, then the inconsistency will be resolved by giving
11 precedence first to the terms of this Agreement without its exhibits, and then to the terms of the
12 exhibits.

13 14.42 **No Third-Party Beneficiaries.** This Agreement does not and is not intended to
14 create any rights or obligations for any person or entity except for the parties.

15 14.43 **Authorized Signature.** The Contractor represents and warrants to the County that:

16 (A) The Contractor is duly authorized and empowered to sign and perform its
17 obligations under this Agreement.

18 (B) The individual signing this Agreement on behalf of the Contractor is duly
19 authorized to do so and his or her signature on this Agreement legally binds the
20 Contractor to the terms of this Agreement.

21 14.44 **Electronic Signatures.** The parties agree that this Agreement may be executed by
22 electronic signature as provided in this section.

23 (A) An "electronic signature" means any symbol or process intended by an individual
24 signing this Agreement to represent their signature, including but not limited to (1) a
25 digital signature; (2) a faxed version of an original handwritten signature; or (3) an
26 electronically scanned and transmitted (for example by PDF document) version of an
27 original handwritten signature.

1 (B) Each electronic signature affixed or attached to this Agreement (1) is deemed
2 equivalent to a valid original handwritten signature of the person signing this Agreement
3 for all purposes, including but not limited to evidentiary proof in any administrative or
4 judicial proceeding, and (2) has the same force and effect as the valid original
5 handwritten signature of that person.

6 (C) The provisions of this section satisfy the requirements of Civil Code section
7 1633.5, subdivision (b), in the Uniform Electronic Transaction Act (Civil Code, Division 3,
8 Part 2, Title 2.5, beginning with section 1633.1).

9 (D) Each party using a digital signature represents that it has undertaken and
10 satisfied the requirements of Government Code section 16.5, subdivision (a),
11 paragraphs (1) through (5), and agrees that each other party may rely upon that
12 representation.

13 (E) This Agreement is not conditioned upon the parties conducting the transactions
14 under it by electronic means and either party may sign this Agreement with an original
15 handwritten signature.

16 14.45 **Counterparts.** This Agreement may be signed in counterparts, each of which is an
17 original, and all of which together constitute this Agreement.

18 [SIGNATURE PAGE FOLLOWS]
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The parties are signing this Agreement on the date stated in the introductory clause.

NEWTON CONSTRUCTION AND
MANEGEMENT, INC.

COUNTY OF FRESNO

Eric Newton
Eric Newton (Jul 21, 2023 16:14 PDT)
Eric Newton, President

Sal Quintero
Sal Quintero, Chairman of the Board of
Supervisors of the County of Fresno

2436 Broad Street
San Luis Obispo, CA 93401

Attest:
Bernice E. Seidel
Clerk of the Board of Supervisors
County of Fresno, State of California

By: Alexandra Urejan
Deputy

For accounting use only:

Org No.:8935
Account No.:7295
Fund No.: 1045
Subclass No.: 10000

Exhibit A

Scope of Services and Ordering Procedure for Ordering Work

1. The Construction Task Catalog® contains construction tasks with preset Unit Prices. All Unit Prices are based on local labor, material, and equipment prices and are for the direct cost of construction.
2. The Contractor will be required to work at any of the County's facilities. The County makes no commitment as to the award of individual Job Orders. All costs associated with preparing Job Order Proposals shall be the responsibility of the Contractor.
3. Work or performance shall be made only as authorized by Job Orders issued in accordance with this Scope of Work. The Contractor shall furnish to the County, the supplies or services specified in the Job Orders up to and including the Maximum Contract Value. The County shall give the Contractor the opportunity to perform at least the Minimum Contract Value of construction services designated in the Agreement Documents.
4. The Scope of Work of this Agreement shall be determined by individual Job Orders. The Job Order will reference the Detailed Scope of Work, and set forth the Job Order Completion Time, and the Job Order Price. The Job Order Price is determined by multiplying the preset Unit Prices by the appropriate quantities and by the appropriate Adjustment Factor. The Job Order Price shall be a lump sum, fixed price for the completion of the Detailed Scope of Work. A separate Job Order will be issued for each project. Extra work, credits, and deletions will be contained in additional Job Orders. The Contractor shall provide all pricing, management, design drawings, shop drawings, documents, Work, materials, supplies, parts (to include system components), transportation, plant, supervision, labor, and equipment needed to complete the Job Order. The Contractor shall provide quality assurance as specified in strict accordance with the Agreement. The Contractor shall also be responsible for site safety as well as site preparation and cleanup.
5. The Contractor shall conduct the Work in strict accordance with the Agreement, and all applicable federal, state, and local laws, regulations, or codes.

Exhibit A

- 1 6. The Contractor shall maintain accurate and complete records, files, and libraries of
2 documents, to include federal, state, and local regulations, codes, applicable laws
3 listed herein, and manufacturers' instructions and recommendations, which are
4 necessary and related to the Work to be performed.
- 5 7. The Contractor shall prepare and submit required reports, maintain current record
6 drawings, and submit required information. The Contractor shall provide: materials
7 lists to include trade names and brand names, and model materials lists to include
8 trade names, brand names, model number, and ratings (if appropriate) for all
9 materials necessary for a complete job.
- 10 8. All Work will be ordered and funded when needed in accordance with the procedures
11 contained in the Contract Documents.
- 12 9. All Work will be controlled and monitored by the County or designated
13 representative.
- 14 10. The design of architectural, structural, mechanical, electrical, civil, or other
15 engineering features of the Work required by the Agreement shall be accomplished
16 or reviewed and approved by architects or engineers registered in the State of
17 California to practice in the particular professional field involved.
- 18 11. In addition to the Work unit requirements in the General Requirements, Contract
19 Technical Specifications, Volume 3, and the Construction Task Catalog® (CTC),
20 Volume 4, the County may, from time to time, require Non Pre-priced (NPP) Tasks.
21 The parties shall proceed with these requirements in accordance with the Procedure
22 for Ordering Work contained in Section (b), herein. These NPP Work unit
23 requirements will be incorporated in individual Job Orders, and the Contractor shall
24 accomplish those requirements with the same diligence as those Work units
25 incorporated in this Agreement in the Construction Task Catalog® and Technical
26 Specifications.

Procedure for Ordering Work

Exhibit A

- 1 1. As the need for Work arises, the County will notify the Contractor in writing of the
2 Work.
- 3 2. Upon receipt of this notification, the Contractor shall respond within one working day
4 by:
 - 5 (A) Establishing verbal contact with the County to further define the scope of the
6 requirement, and;
 - 7 (B) Visiting the proposed Work site in the company of the County, and participating
8 in the conduct of a Joint Scope Meeting, which will include discussion and
9 establishment of the following:
 - 10 i. Project number and title
 - 11 ii. Existing site conditions
 - 12 iii. Methods and alternatives for accomplishing Work
 - 13 iv. Definition and refinement of requirements
 - 14 v. Detailed Scope of Work
 - 15 vi. Requirements for design drawings, sketches, shop drawings, submittals,
16 etc.
 - 17 vii. Tentative construction schedule
 - 18 viii. Preliminary quantity estimates
 - 19 ix. Access to the site and protocol for admission
 - 20 x. Hours of operation
 - 21 xi. Staging area
 - 22 xii. Liquidated damages
 - 23 xiii. Presence of hazardous materials
 - 24 xiv. Proposal due date
- 25 3. Upon completion of the Joint Scope Meeting, the County will prepare a draft Detailed
26 Scope of Work referencing any sketches, drawings, photographs, and specifications
27 required to document accurately the Work to be accomplished. The Contractor shall
28 review the Detailed Scope of Work, and request any required changes or

Exhibit A

1 modifications. When an acceptable Detailed Scope of Work has been prepared, the
2 County will issue a Request for Job Order Proposal (RFJOP) and Detailed Scope of
3 Work, which requires that the Contractor prepare a Proposal for the Work under
4 consideration. The Detailed Scope of Work, unless modified by both the Contractor
5 and the County, will be the basis on which the Contractor will develop its Job Order
6 Proposal, and the County will evaluate the same. The Contractor does not have the
7 right to refuse to perform any task or any Work in connection with a particular
8 Project.

9 4. The County may, at its option, include quantities in the Detailed Scope of Work if it
10 helps to define the Detailed Scope of Work, if the actual quantities required are not
11 known or cannot be determined at the time the Detailed Scope of Work is prepared,
12 if the Contractor and the County cannot agree on the quantities required, or for any
13 other reason as determined by the County. In all such cases, the County shall issue
14 a Supplemental Job Order adjusting the quantities appearing in the Detailed Scope
15 of work to the actual quantities.

16 5. The Contractor will prepare the Job Order Price Proposal in accordance with the
17 following:

18 (A) Pre-priced Work requirements. A Pre-priced Task is a task described and for
19 which a Unit Price is set forth in the Construction Task Catalog®. Pre-priced
20 Work requirements will identify the type and number of Work units required from
21 the Construction Task Catalog® (CTC). The price per unit set forth in the CTC
22 shall serve as the base price for the purpose of the operation of this provision.
23 The total of the Job Order Price Proposal shall be the sum of the cost of each
24 applicable CTC task, which is calculated according to the following formula: $A \times B$
25 $\times C$, where:

26 A= Number of Units Required for CTC Task

27 B= Applicable Adjustment Factor

28 C= CTC Price per Unit Cost of CTC Task

Exhibit A

1 (B) The Contractor's Job Order Proposal shall include support documentation to
2 indicate that adequate engineering and planning for the requirement have been
3 done, and that the Work units and quantities proposed are reasonable for the
4 tasks to be performed. Documentation to be submitted with the Job Order
5 Proposal shall include, but not be limited to, the Job Order Price Proposal, design
6 drawings, calculations, catalog cuts, specifications, and architectural renderings,
7 subcontractor list, and construction schedule. Any Job Order Proposal lacking
8 the required items will be considered incomplete, and shall be returned and
9 treated as if never received. Job Order Proposals submitted to the County are
10 valid for the duration of the Agreement.

11 (C) Non Pre-priced Work Requirements: Non Pre-priced Work shall be separately
12 identified and submitted in the Job Order Price Proposal. Information submitted
13 in support of Non Pre-priced Work shall include, but not be limited to, the
14 following:

- 15 i. Complete specifications and technical data, including Work unit content,
16 support drawings, Work unit costs data, quality control and inspection
17 requirements.
- 18 ii. Work schedule in written form.
- 19 iii. Pricing data submitted in support of Non Pre-priced work units shall
20 include a cost or price analysis report, establishing the basis for selecting
21 the approach proposed to accomplish the requirements. Unless otherwise
22 directed by the County, costing data will be submitted, demonstrating that
23 the Contractor sought and received three quotes. The Contractor shall
24 provide an installed unit price (or demolition price if appropriate), which
25 shall include all costs required to accomplish the Non Pre-priced Task.
- 26 iv. If the Contractor will perform the work with its own forces, it shall submit
27 three independent quotes for all material to be installed and shall, to the
28 extent possible, use Pre-Priced Tasks for labor and equipment from the

Exhibit A

1 Construction Task Catalog®. If the work is to be subcontracted, the
2 Contractor shall submit three independent quotes from subcontractors.
3 The Contractor shall not submit a quote from any subcontractor or
4 materialman that the Contractor is not prepared to use. The County may
5 require additional quotes if the subcontractors or materialmen are not
6 acceptable, or if the prices are not reasonable. If three quotes cannot be
7 obtained, the Contractor shall provide the County with a written
8 explanation. If the explanation is accepted by the County, the Contractor
9 may provide less than three quotes.

- 10 v. The final price submitted for Non Pre-priced (NPP) Tasks shall be
11 according to the following formula:

12 Contractor Performed Duties

13 A= The number of hours for each labor classification and hourly rates

14 B=Equipment costs (other than small tools)

15 C= Lowest of three independent quotes for all materials

16 **Total Cost for self-performed work = (A+B+C) x 15% (Only if A & B cannot be**
17 **priced out of the CTC) For Work performed by Subcontractors:**

18 If the Work is to be subcontracted, the Contractor must submit three independent bids
19 from subcontractors. If three quotes or bids cannot be obtained, the Contractor will
20 provide the reason in writing for the County's approval as to why three quotes cannot
21 be submitted.

22 D = Subcontractor Costs (supported by three quotes)

23 **Total Costs of Non-Pre-Priced Task = D x 15%**

- 24 vi. The County will evaluate the entire Proposal and proposed Work units, and compare
25 these with the County's estimate of the Detailed Scope of Work to determine the
26 reasonableness of approach, including the nature and number of Work units
27 proposed. The County will determine whether the Contractor's Job Order Price
28 Proposal is in line with its own estimate.

Exhibit A

1 vii. After using a Non Pre-priced item on three separate Job Orders, the unit price for the
2 work item will be established, following approval by the County, and fixed as a
3 permanent pre-priced item, which will no longer require price justification.

4 viii. The County's determination as to whether an item is a Pre-priced Task or a Non Pre-
5 priced Task shall be final, binding and conclusive as to the Contractor.

6 ix. Whenever, because of trade jurisdiction rules or small quantities, the cost of a minor task
7 in the Job Order Price Proposal is less than the cost of the actual labor and materials
8 to perform such task, the County may permit the Contractor to be paid for such task
9 as a Non Pre-priced Task, or use Pre-priced labor tasks and material component
10 pricing to cover the actual costs incurred. Provided, however, that there is no other
11 Work for that trade on the project or other Work for that trade cannot be scheduled at
12 the same time, and the final charge does not exceed \$1,000.00.

13 d. Processing Time Limits

14 i. Request for Proposal Submittal. The Contractor shall submit the Job Order Proposal to
15 the County on or before the due date stated in the RFJOP (14 days maximum unless
16 otherwise specified).

17 ii. Request for Information Submittal. The Contractor shall make a thorough analysis of
18 each Job Order, and submit all Requests For Information (RFI's) within seven days
19 after issuance of any RFJOP. Submission of RFI's shall in no way extend the
20 proposal due date unless deemed necessary by the County.

21 iii. Job Order Price Proposal Review. The Contractor's Project Manager or agent shall be
22 available for Job Order Price Proposal review meetings within 24 hours of being
23 notified by the County (via fax, e-mail, or telephone). After review of the Job Order
24 Price Proposal, the Contractor shall remove all inappropriate line items and adjust
25 quantities as directed by the County. Job Order Price Proposal Modification. Only on
26 the Contractor's second Job Order Price Proposal shall he/she be granted the
27 opportunity to add new valid line items that may have been omitted from the first Job
28 Order Price Proposal. The Contractor shall submit a revised Job Order Price

Exhibit A

1 Proposal within 24 hours of Job Order Price Proposal review meeting (unless
2 otherwise specified). Upon review of revised Job Order Price Proposal, the
3 Contractor shall remove all line items or adjust quantities deemed inappropriate by
4 the County, and re-submit the Job Order Price Proposal within 24 hours. No new line
5 items may be added to the Job Order Price Proposal. No quantity increases or
6 added modifiers will be accepted unless agreed to in writing by the County during the
7 second Job Order Price Proposal review meeting.

8 iv. The County reserves the right to reject the Contractor's Job Order Proposal or cancel a
9 project for any reason. The County reserves the right to issue a Notice to Proceed to
10 the Contractor without having a mutual agreement on a final Job Order Price, and
11 that the Contractor will be paid by multiplying the actual quantities used by the
12 appropriate Construction Task Catalog® Unit Price and the applicable Adjustment
13 Factors. Non Pre-priced (NPP) Tasks will be priced according to the formula set forth
14 in Section 1.22 b 4 (c) of these General Conditions. The County also reserves the
15 right to not award a Job Order if it is determined to be in the best interests of the
16 County, or the proposed cost exceeds the County's estimate. The County may
17 perform such work by other means. In these instances, the Contractor has no right of
18 claim to recoup Job Order Proposal expenses, including but not limited to, the costs
19 to attend the Joint Scope Meeting, review the Detailed Scope of Work, prepare a Job
20 Order Proposal (including incidental architectural and engineering services),
21 subcontractor costs, and the costs to review the Job Order Proposal with the
22 County.

23 v. Unilateral Job Order – The County reserves the right to issue Job Orders based on the
24 County's Job Order Price Proposal for a specified Detailed Scope of Work (DSOW).

25 vi. By submitting a signed Job Order Proposal to the County, the Contractor is agreeing to
26 accomplish the Work outlined in the Detailed Scope of Work in accordance with the
27 RFJOP at the lump sum price submitted for that particular Job Order. The Contractor
28 shall include the necessary tasks and quantities in the Job Order Price Proposal and

Exhibit A

1 apply the appropriate Adjustment Factor(s) prior to delivering it to the County. The
2 value of the Job Order Price Proposal shall be calculated by summing the total of the
3 calculations for each Pre-priced Task (Unit Price x quantity x Adjustment Factor) plus
4 the value of all Non Pre-priced Tasks. The Job Order Price shall be the value of the
5 approved Job Order Price Proposal.

6 vii. The County will evaluate the entire Job Order Priced Proposal and compare these with
7 the County's estimate of the Detailed Scope of Work to determine the
8 reasonableness of approach, including the appropriateness of the tasks and
9 quantities proposed.

10 viii. The Contractor may choose the means and methods of construction; subject however,
11 to the County's right to reject any means and methods proposed by the Contractor
12 that:

- 13 • Will constitute or create a hazard to the work, or to persons or property;
- 14 • Will not produce finished Work in accordance with the terms of the Agreement; or
- 15 • Unnecessarily increases the price of the Job Order when alternative means and
16 methods are available.

17 ix. Each Job Order provided to the Contractor shall reference the Detailed Scope of Work,
18 and set forth the Job Order Price and the Job Order Completion Time. All clauses of
19 this Agreement shall be applicable to any Job Orders issued under this clause. Job
20 Orders will be written on an appropriate form. The Job Order, which must be signed
21 by the County, constitutes the County's acceptance of the Contractor's Proposal. A
22 signed copy will be provided to the Contractor.

23 x. Except in an "emergency response" the Contractor is not to proceed with any Job Order
24 without having required permits and a Notice to Proceed (NTP) signed by the
25 County.

26 xi. In the event that "immediate emergency response" is necessary, the County may elect to
27 use an alternative procedure for such type of Job Orders, as long as the alternative
28

Exhibit A

1 procedure is not substantially more burdensome to the Contractor than the
2 procedure described in this section.

3 xii. All Proposals submitted by the Contractor are valid for the duration of the Agreement.

4 e. Measurements to be Verified. Before ordering any material or doing any Work, the
5 Contractor shall verify all measurements at the site of a specific Job Order, and shall
6 be responsible for the correctness of the measurements. No extra charge or
7 compensation will be allowed based on the difference between actual dimensions
8 and the measurements indicated in the Request for Proposal

9 f. Contractor's Responsibility. It is the Contractors' responsibility to verify any and all
10 such items prior to submission of the Job Order Proposal. Any Job Order awarded is
11 for all services or Work, as necessary, to repair, and construct the facilities covered
12 by the Agreement in accordance with all Agreement terms and conditions. It shall
13 also be the duty and responsibility of the Contractor to manage and conduct the
14 required Work in the most effective and efficient manner possible and meet or
15 exceed minimum critical rates or standards.

16 In addition, the County will not entertain claims for additional money, when such claim is
17 based upon a contention the Agreement fails to mention a specific item or
18 component of facility covered by the Job Order and the Work is required in the
19 normal course of operations. For example, surfaced area repair statements may not
20 mention culverts. However, culverts are a normal component of roads, streets, or
21 erosion controls and are shown on plots or maps provided. As culverts are a normal
22 component of the system, the Contractor shall be responsible for providing all
23 necessary repair, or replacement Work or service.

24 g. Pre-Construction Conference. Before the issuance of the first Job Order under this
25 Agreement, a conference will be conducted by the County to acquaint the Contractor
26 with the County's procedures that are to be observed during the execution of the
27 Work, and to develop mutual understanding relative to the administration of the
28 Agreement.

Exhibit A

- 1 h. Computer and Communications Equipment Requirements. The Contractor shall
2 maintain at its office for its use a computer with, at a minimum, a 1 GHz processor
3 and an internet connection. The Contractor shall maintain individual email accounts
4 for each of its project managers.
- 5 i. Job Order Contracting Software and License Fee JOC Software and System License
6 The County selected The Gordian Group's (Gordian) Job Order Contracting (JOC)
7 system for their JOC program. The Gordian JOC Solution™ includes Gordian's
8 proprietary eGordian®, JOC Software, JOC applications, construction cost data, and
9 Construction Task Catalog® which shall be used by the Contractor solely for the
10 purpose of fulfilling its obligations under this Agreement, including the preparation
11 and submission of Job Order Proposals, subcontractor lists, and other requirements
12 specified in the general conditions and as may be requested by the County. The
13 Contractor shall be required to execute Gordian's JOC System License and Fee
14 Agreement, and shall pay a 1% JOC System License Fee on all Work awarded to
15 Contractor by the County for access to the Gordian JOC Solution™.
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Exhibit B

Self-Dealing Transaction Disclosure Form

In order to conduct business with the County of Fresno ("County"), members of a contractor's board of directors ("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 in which one or more of its directors has a material financial interest."

The definition above will be used for purposes of completing this disclosure form.

Instructions

- (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 Code.

The form must be signed by the board member that is involved in the self-dealing transaction described in Sections (3) and (4).

Exhibit B

(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:	

Exhibit C

Insurance Requirements

1. Required Policies

Without limiting the County's right to obtain indemnification from the Contractor or any third parties, the Contractor, at its sole expense, shall maintain in full force and effect the following insurance policies throughout the term of this Agreement.

- (A) **Commercial General Liability.** Commercial general liability insurance with limits of not less than Two Million Dollars (\$2,000,000) per occurrence and an annual aggregate of Four Million Dollars (\$4,000,000). This policy must be issued on a per occurrence basis. Coverage must include products, completed operations, property damage, bodily injury, personal injury, and advertising injury. The Contractor shall obtain an endorsement to this policy naming the County of Fresno, its officers, agents, employees, and volunteers, individually and collectively, as additional insureds, but only insofar as the operations under this Agreement are concerned. Such coverage for additional insureds will apply as primary insurance and any other insurance, or self-insurance, maintained by the County is excess only and not contributing with insurance provided under the Contractor's policy.
- (B) **Automobile Liability.** Automobile liability insurance with limits of not less than One Million Dollars (\$1,000,000) per occurrence for bodily injury and for property damages. Coverage must include any auto used in connection with this Agreement.
- (C) **Workers Compensation.** Workers compensation insurance as required by the laws of the State of California with statutory limits.
- (D) **Employer's Liability.** Employer's liability insurance with limits of not less than One Million Dollars (\$1,000,000) per occurrence for bodily injury and for disease.
- (E) **Professional Liability.** Professional liability insurance with limits of not less than One Million Dollars (\$1,000,000) per occurrence and an annual aggregate of Three Million Dollars (\$3,000,000). If this is a claims-made policy, then (1) the retroactive date must be prior to the date on which services began under this Agreement; (2) the Contractor shall maintain the policy and provide to the County annual evidence of insurance for not less than five years after completion of services under this Agreement; and (3) if the policy is canceled or not renewed, and not replaced with another claims-made policy with a retroactive date prior to the date on which services begin under this Agreement, then the Contractor shall purchase extended reporting coverage on its claims-made policy for a minimum of five years after completion of services under this Agreement.
- (F) **Professional Liability.** If CONTRACTOR employs licensed professional staff, (e.g., Ph.D., R. N., L.C.S.W., M.F.C.C.) in providing services, Professional Liability Insurance with limits of not less than One Million Dollars (\$1,000,000.00) per occurrence, Three Million Dollars (\$3,000,000.00) annual aggregate. This coverage shall be issued on a per claim basis. Contractor agrees that it shall maintain, at its sole expense, in full force and effect for a period of three years following the termination of this Agreement, one or more policies of professional liability insurance with limits of coverage as specified herein.
- (G) **Property Installation Floater.** CONTRACTOR shall procure and maintain at CONTRACTOR's sole cost and expense, Property Installation Floater which provides for the improvement, remodel, modification, alteration, conversion, or adjustment to existing

Exhibit C

buildings, structures, processes, machinery and equipment. The Property Installation Floater shall provide property damage coverage for any building, structures, machinery, or equipment damaged, impaired, broke, or destroyed during the performance of the work, including during transit, installation, and testing at COUNTY's site. The policy must name COUNTY as an additional loss payee and must include applicable endorsements.

- (H) **Molestation Liability.** Sexual abuse / molestation liability insurance with limits of not less than Two Million Dollars (\$2,000,000) per occurrence, with an annual aggregate of Four Million Dollars (\$4,000,000). This policy must be issued on a per occurrence basis.
- (I) **Cyber Liability.** Cyber liability insurance with limits of not less than Two Million Dollars (\$2,000,000) per occurrence. Coverage must include claims involving Cyber Risks. The cyber liability policy must be endorsed to cover the full replacement value of damage to, alteration of, loss of, or destruction of intangible property (including but not limited to information or data) that is in the care, custody, or control of the Contractor.

Definition of Cyber Risks. "Cyber Risks" include but are not limited to (i) Security Breach, which may include Disclosure of Personal Information to an Unauthorized Third Party; (ii) data breach; (iii) breach of any of the Contractor's obligations under Exhibit H of this Agreement; (iv) system failure; (v) data recovery; (vi) failure to timely disclose data breach or Security Breach; (vii) failure to comply with privacy policy; (viii) payment card liabilities and costs; (ix) infringement of intellectual property, including but not limited to infringement of copyright, trademark, and trade dress; (x) invasion of privacy, including release of private information; (xi) information theft; (xii) damage to or destruction or alteration of electronic information; (xiii) cyber extortion; (xiv) extortion related to the Contractor's obligations under this Agreement regarding electronic information, including Personal Information; (xv) fraudulent instruction; (xvi) funds transfer fraud; (xvii) telephone fraud; (xviii) network security; (xix) data breach response costs, including Security Breach response costs; (xx) regulatory fines and penalties related to the Contractor's obligations under this Agreement regarding electronic information, including Personal Information; and (xxi) credit monitoring expenses.

- (J) **All-Risk Insurance.** The Contractor shall procure and maintain at the Contractor's sole cost and expense, Builders Risk Course of Construction insurance, including fire and vandalism coverage, covering the entire work (including any County furnished material and equipment) against loss or damage until completion and acceptance by the County. Such insurance shall be for each Job Order in an amount up to the value of each Job, and endorsed for broad form property damage, breach of warranty, demolition costs, and debris removal. The County will permit a deductible not exceeding 5%. The policy must cover the Contractor, the Contractor's subcontractors, the County, its agents, the awarding entity, and any Trustee, under the indenture or trust agreement securing the bonds, certificates of participation, or other evidence of indebtedness issued to finance the work contemplated herein. The value of the policy shall be in U.S. currency.
- (K) **Bonds.** The Contractor shall furnish to the County a payment bond and performance bond, each in the amount of 100% of the Maximum Contract Amount, which shall meet the requirements of all applicable statutes, including but not limited to those specified in Public

Exhibit C

Contract Code section 20129 and Civil Code section 9554; all bonds shall be submitted in triplicate.

2. Additional Requirements

(A) **Verification of Coverage.** Within 30 days after the Contractor signs this Agreement, and at any time during the term of this Agreement as requested by the County's Risk Manager or the County Administrative Office, the Contractor shall deliver, or cause its broker or producer to deliver, to the County Risk Manager, at 2220 Tulare Street, 16th Floor, Fresno, California 93721, or HRRiskManagement@fresnocountyca.gov, and by mail or email to the person identified to receive notices under this Agreement, certificates of insurance and endorsements for all of the coverages required under this Agreement.

- (i) Each insurance certificate must state that: (1) the insurance coverage has been obtained and is in full force; (2) the County, its officers, agents, employees, and volunteers are not responsible for any premiums on the policy; and (3) the Contractor has waived its right to recover from the County, its officers, agents, employees, and volunteers any amounts paid under any insurance policy required by this Agreement and that waiver does not invalidate the insurance policy.
- (ii) The commercial general liability insurance certificate must also state, and include an endorsement, that the County of Fresno, its officers, agents, employees, and volunteers, individually and collectively, are additional insureds insofar as the operations under this Agreement are concerned. The commercial general liability insurance certificate must also state that the coverage shall apply as primary insurance and any other insurance, or self-insurance, maintained by the County shall be excess only and not contributing with insurance provided under the Contractor's policy.
- (iii) The automobile liability insurance certificate must state that the policy covers any auto used in connection with this Agreement.
- (iv) The professional liability insurance certificate, if it is a claims-made policy, must also state the retroactive date of the policy, which must be prior to the date on which services began under this Agreement.

(B) **Acceptability of Insurers.** All insurance policies required under this Agreement must be issued by admitted insurers licensed to do business in the State of California and possessing at all times during the term of this Agreement an A.M. Best, Inc. rating of no less than A: VII.

(C) **Notice of Cancellation or Change.** For each insurance policy required under this Agreement, the Contractor shall provide to the County, or ensure that the policy requires the insurer to provide to the County, written notice of any cancellation or change in the policy as required in this paragraph. For cancellation of the policy for nonpayment of premium, the Contractor shall, or shall cause the insurer to, provide written notice to the County not less than 10 days in advance of cancellation. For cancellation of the policy for any other reason, and for any other change to the policy, the Contractor shall, or shall

Exhibit C

cause the insurer to, provide written notice to the County not less than 30 days in advance of cancellation or change. The County in its sole discretion may determine that the failure of the Contractor or its insurer to timely provide a written notice required by this paragraph is a breach of this Agreement.

- (D) **County's Entitlement to Greater Coverage.** If the Contractor has or obtains insurance with broader coverage, higher limits, or both, than what is required under this Agreement, then the County requires and is entitled to the broader coverage, higher limits, or both. To that end, the Contractor shall deliver, or cause its broker or producer to deliver, to the County's Risk Manager certificates of insurance and endorsements for all of the coverages that have such broader coverage, higher limits, or both, as required under this Agreement.
- (E) **Waiver of Subrogation.** The Contractor waives any right to recover from the County, its officers, agents, employees, and volunteers any amounts paid under the policy of worker's compensation insurance required by this Agreement. The Contractor is solely responsible to obtain any policy endorsement that may be necessary to accomplish that waiver, but the Contractor's waiver of subrogation under this paragraph is effective whether or not the Contractor obtains such an endorsement.
- (F) **County's Remedy for Contractor's Failure to Maintain.** If the Contractor fails to keep in effect at all times any insurance coverage required under this Agreement, the County may, in addition to any other remedies it may have, suspend or terminate this Agreement upon the occurrence of that failure, or purchase such insurance coverage, and charge the cost of that coverage to the Contractor. The County may offset such charges against any amounts owed by the County to the Contractor under this Agreement.
- (G) **Subcontractors.** The Contractor shall require and verify that all subcontractors used by the Contractor to provide services under this Agreement maintain insurance meeting all insurance requirements provided in this Agreement. This paragraph does not authorize the Contractor to provide services under this Agreement using subcontractors.



Subject: Hostage Situations

Policy Number: 326.0

Page: 1 of 2

Date Originated: April 1, 2004

Date Revised: February 1, 2008

**Authority: Title 15; Section 1327;
California Code of Regulations**

It is imperative for the safety and security of all persons within Juvenile Justice Campus (JJC) facilities, as well as for those in the community, that minors are not allowed to leave the secure confines of the facilities by the taking of a hostage(s). If successful in securing a release through these means minors would be much more likely in the future to use this practice again in an attempt to escape the confines of the facilities. This would put those visiting and working at the JJC at higher level of risk and would jeopardize the safety of the community if the minor was in fact successful in securing his/her release.

The JJC is a "no-hostage" facility. This means that minors will not be released from custody under any circumstances due to the taking of a hostage(s). Any staff person taken hostage, no matter what their rank or status, immediately loses their authority and any orders issued by that person will not be followed.

I. HOSTAGE SITUATION PROCEDURES

- A. If any minor(s) and/or other person(s) in the facility attempt to hold any person hostage, and they do not respond to verbal commands to stop staff will immediately notify the Watch Commander. He/she will respond to the location and assess the situation. If a hostage situation is in progress the Watch Commander will:
1. Summon assistance from other officers as required.
 2. Establish a secure perimeter around the hostage takers and allow no one to pass into it for any reason without authorization. Risks should not be taken that might allow the taking of additional hostages.
 3. Evacuate all non-essential persons at the scene to a safe location or any housing pod that is not directly involved in the incident.
 4. Direct officers to place minors in uninvolved housing pods in their rooms and have them remain there until directed otherwise. Minors outside of housing pods will remain in place under officer supervision until it is safe to return to their respective housing pods or any housing pod that is not directly involved in the incident.
 5. Immediately notify the Director or the Probation Services Manager/Assistant Director in his/her absence and confer with higher authority as to action to be taken. Administration in turn will notify the Chief.
- B. The Fresno Sheriff's Dispatch Center (488-3111) will be notified immediately and a request for a trained hostage negotiator and other emergency personnel will be made as needed. Prior to the arrival of the Sheriff Department's hostage negotiator the Watch Commander will attempt to ascertain:

Subject: Hostage Situation
Policy #: 326.0

1. The number and identity of both the hostages and hostage takers;
 2. Any known weapons possessed by the hostage takers;
 3. The demands of the hostage takers.
- C. The Watch Commander will retain and direct departing custody officers, as well as, available Probation peace officer staff to assist with security and safety needs, as necessary. Additional Juvenile Correctional Officers should be called in as may be needed to insure the safe and secure operation of the facility.
- D. The Watch Commander will coordinate with the Sheriff's Department all activities taken to resolve the hostage situation, including the use of appropriate force, and will maintain control of the facility until relieved of that duty by the presence of a Probation Services Manager/Assistant Director, Director, or the Chief Probation Officer.
- E. Once the hostage situation has been resolved the minors involved should be housed in the most secure setting available and all appropriate charges should be filed.
- F. Each officer and/or non-sworn staff member who was involved or observed the incident will complete an incident report and if required, the appropriate critical incident evaluation report(s) regarding the details of the incident prior to the end of his/her shift. (See Incident Report, located in JAS Probation View, under "Word Templates".)
- G. The Watch Commander will prepare a Critical Incident Investigation Report, using the Critical Incident Evaluation Report - Page 2 report form and the critical incident evaluation report(s) completed by the reporting persons at the time of the incident.

II. PARENTAL AND MEDIA INFORMATION

- A. Attempts will be made at the direction of Administration to reach the families of the hostages to advise them of the situation. Notification will also be made to the parents of the hostage takers as deemed appropriate.
- B. All media inquiries will be referred to the Chief's office per departmental policy.

III. SECURITY AND OPERATIONAL REVIEW

- A. Once the incident has been resolved a team will be established to conduct a security and operational review of the incident. The review will be conducted within 2 days of the resolution of the incident. The review team will be comprised of the facility administrator and/or facility Director, Probation Services Manager/Assistant Director and Supervising Juvenile Correctional Officers who are relevant to the incident. The team will review the circumstances leading up to the incident and any necessary corrective action necessary to insure that such an incident does not repeat itself.

THE PRISON RAPE ELIMINATION (PREA) ACT

All bidders must comply with the Prison Rape Elimination (PREA) Act as stated below:

“CONTRACTOR shall comply with all Prison Rape Elimination (PREA) Act standards for juvenile correctional facilities. Training will be provided by Probation at no charge to CONTRACTOR.” “CONTRACTOR will ensure that all staff assigned to work at the Juvenile Justice Campus (JJC) undergo a pre-employment Live Scan and criminal background security clearance by the Probation Department at no charge to CONTRACTOR. No alcoholic beverages/drugs will be brought into any facility. Nor will anyone under the influence of alcoholic beverages or drugs be allowed inside. In the event of any disturbance inside the facilities, the CONTRACTOR’S employees will immediately follow the orders of the Facility Administrator or his/her designees.

CONTRACTOR shall comply with all Probation Department Policies and Procedures. In the event of a dispute involving COUNTY staff and the contract employee, the on-duty Facility Administrator will have the final decision.” **INFORMATION ON THE PRISON RAPE ELIMINATION ACT CAN BE FOUND HERE:**

<http://www.prearesourcecenter.org/>

BACKGROUND INVESTIGATIONS AND IDENTIFICATION (ID) BADGES

Background Investigations

Prior to the beginning of any services, one (1) background check may be required for every member of the Contractor's personnel providing services to a building location for the life of the agreement. The background check may be required before access is given to any County facility/property. Clearance will only be granted after a successful background check, completed by the County of Fresno Sheriff's Department. Background checks provided by any agency other than the County of Fresno Sheriff's Department will not be accepted.

The current cost of a background check is \$52 per person. This cost will be incurred by the successful Bidder. One check covering the cost of background checks for all employees shall be made payable to: Sheriff, County of Fresno. The successful bidder will be notified regarding the result of background checks. Those that are accepted will report to County of Fresno Security to have their photo taken and ID badge issued.

Background checks are done on a first-come, first serve basis between the hours of 7:00 a.m and 12:00 noon. Monday through Friday. The process takes approximately 20 minutes time. The amount of time it takes to receive the result of background checks varies from one day to a month (or longer), dependent upon the individual's history.

Individuals who are cleared through this process are entered into the Department of Justice database. Their records are flagged and the County of Fresno Sheriff's Department is notified if the person is ever arrested in the future.

When required by County, applicants' background checks must be approved prior to entering any County facility. Approval will not be granted to any individual possessing any of the following circumstances:

1. They have been convicted of a felony, or any crime involving moral turpitude, or carrying or possessing a dangerous weapon.
2. They have ever been charged with a felony or are currently under investigation for a felony.
3. They are charged with or convicted of any crime committed in or at a correctional institution.
4. They are currently on parole or probation or are a sentenced inmate at any correctional facility.
5. They have been refused a license as a private investigator or had such license revoked.
6. They have fraudulently represented themselves, their credentials, their employment or their criminal or arrest record on their application.
7. Make omissions or false statements on their application.
8. They have no valid reason for entering a facility.
9. Their admission into a facility could represent a threat to security, staff or inmate safety.
10. Further information regarding the criteria for background check clearance, including an appeal for process for someone who may be denied clearance is available upon request.

Exhibit F

Identification (ID) Badges

The successful bidder's employees will be issued a badge that must be worn and be visible at all times during performance of work in any County building to identify the wearer as an individual who is authorized to enter County facilities.

1. ID badges will be given only after successfully completing the background investigation. ID badges will be issued when the photo is taken. If electronic access to any County facility is required, activation of the badge may take an additional 48 hours to complete.
2. Costs for ID badges are established by County Auditor and fluctuate annually, therefore the cost of obtaining a new ID badge for a Bidder's new employee may not remain the same throughout the contract term.
3. The wearer will not escort or bring any other individuals into any County facilities. County issued ID badges are for the exclusive use of the individual named and pictured on the badge.
4. All ID badges will remain the property of the County and are returnable upon demand or upon the expiration of the contract. The successful Bidder will be responsible for collecting all ID badges issued and turning them in to the County Security Office when a contract ends or when an employee leaves employment. The Bidder will assume all responsibility for their employee's use of and the return of the County ID badges.
5. The ID badges will only be issued to individuals passing the Background check. Each individual will need to present themselves in person with a valid, clean, and legible copy of a Driver's license or State issued Identification Card to receive an ID badge.

Vendors, Volunteers and Student Interns

308.1 PURPOSE AND SCOPE

This policy establishes guidelines for using Juvenile Justice Campus vendors, volunteers, and student interns, to supplement and assist Department personnel in their duties. Vendors and volunteers are members who can augment Department personnel and help complete various tasks.

308.1.1 DEFINITIONS

Definitions related to this policy include:

Student intern - A college, university, or graduate student gaining practical experience in a chosen field while performing services for the Department under supervision.

Vendor - An individual representing a company, outside agency, or non-profit organization, who is assigned to one of our facilities, performs a service for the Department, and may receive compensation for services rendered.

Volunteer - An individual who performs a service for the Department without promise, expectation, or receipt of compensation for services rendered. This may include unpaid chaplains and student interns.

308.2 POLICY

The Fresno County Probation Department shall ensure that vendors, volunteers and student interns are properly appointed, trained, and supervised to carry out specified tasks and duties in order to create an efficient Department and improve services to the community.

308.3 ELIGIBILITY

Requirements for participation as a vendor, volunteer or student intern for the Department may include but are not limited to:

- (a) Being at least 18 years of age.
- (b) Possession of liability insurance for any personally owned equipment, vehicles, or animals utilized during volunteer or student intern work.
- (c) No conviction of a felony, any crime of a sexual nature or against children, any crime related to assault or violence, any crime related to dishonesty, or any crime related to impersonating a law enforcement officer.
- (d) Ability to meet physical requirements reasonably appropriate to the assignment.
- (e) A background history and character suitable for a person representing the Department, as validated by a background investigation.

The Chief Probation Officer or the authorized designee may allow exceptions to these eligibility requirements based on organizational needs and the qualifications of the individual.

Vendors, Volunteers and Student Interns

308.4 RECRUITMENT, SELECTION, AND APPOINTMENT

The Fresno County Probation Department shall endeavor to recruit and appoint only those applicants who meet the high ethical, moral, and professional standards set forth by this Department.

308.4.1 RECRUITMENT

Volunteers and student interns are recruited on a continuous basis consistent with Department policy on equal opportunity, nondiscriminatory employment terms. A primary qualification for participation in the application process should be an interest in and an ability to assist the Department in serving the public.

Requests for volunteers and student interns should be submitted in writing by interested Department members to the Personnel Unit through the requester's immediate supervisor. A complete description of the volunteer's or intern's duties and a requested time frame should be included in the request. All Department members should understand that the recruitment of volunteers and student interns is enhanced by creative and interesting assignments.

Vendors are recruited/selected in accordance with the Fresno County Purchasing Office contract/agreement process.

308.4.2 SELECTION

Vendor, volunteer and student intern candidates shall successfully complete this process before appointment:

- (a) Submit the appropriate written application.
- (b) Current TB skin test (completed within the last 6 months).
- (c) Successfully complete an appropriate-level background investigation, which may include fingerprinting, and/or obtaining information from local, state, federal and Department of Motor Vehicle databases.

308.4.3 APPOINTMENT

Volunteers and student interns shall be placed only in assignments or programs consistent with their knowledge, skills, and abilities and the needs of the Department. Volunteers' and student interns' interests will be considered when placed in assignments.

Volunteers and student interns serve at the discretion of the Chief Probation Officer.

Vendors are appointed and placed in accordance with the Fresno County Purchasing Office contract/agreement.

308.5 IDENTIFICATION

As representatives of the Department, vendors, volunteers and student interns are responsible for presenting a professional image to the community. Vendors, volunteers and student interns shall dress appropriately for the conditions and performance of their duties, in compliance with Personal Appearance Standards and Uniform and Non-Uniform attire policies unless excluded by the Department.

Vendors, Volunteers and Student Interns

Vendors, volunteers and student interns will be issued Fresno County Probation Department identification cards, which must be carried at all times while on-duty. The identification cards will be the standard Fresno County Probation Department identification cards, except that "Volunteer" or "Student Intern" will be indicated on the cards.

308.6 PERSONNEL WORKING AS STUDENT INTERNS

Qualified regular Department personnel, when authorized, may also serve as student interns. However, this Department shall not utilize the services of student interns in such a way that it would violate employment laws or collective bargaining agreements or memorandums of understanding (e.g., a Juvenile Correctional Officer participating as a student intern for reduced or no pay). Therefore, members shall consult with the Personnel Unit prior to allowing regular department personnel to serve in a student intern capacity (29 CFR 553.30).

308.7 PERSONNEL UNIT

The function of the Personnel Unit is to provide a central coordinating point for effective volunteer management within the Department, and to direct and assist efforts to jointly provide more productive volunteer services.

The responsibilities of the Personnel Unit include but are not limited to:

- (a) Recruiting and selecting qualified volunteers and student interns.
- (b) Maintaining records for each vendor, volunteer and student intern.
- (c) Completing and disseminating, as appropriate, all necessary paperwork and information.
- (d) Maintaining a liaison with colleges and universities that provide student interns to promote the intern program with both students and the educational system.
- (e) Maintaining volunteer and student intern orientation and training materials and outlining expectations, policies, and responsibilities for all volunteers and student interns.

308.8 DUTIES AND RESPONSIBILITIES

Volunteers assist department personnel as needed. Assignments of volunteers may be to any division within the Department, as needed. Volunteers should be placed only in assignments or programs consistent with their knowledge, skills, interests, abilities and the needs of the Department. Student interns should be assigned to areas that meet the needs of both their educational program and the Department. Vendors will be assigned per the contract/agreement.

308.8.1 COMPLIANCE

Vendors, volunteers and student interns shall be required to adhere to all Department policies and procedures. Policies and procedures are available on the Department website and will be made available to each vendor, volunteer, and student intern upon appointment. The vendor, volunteer

Vendors, Volunteers and Student Interns

and student intern shall become thoroughly familiar with these policies as directed by the Chief Probation Officer or the authorized designee.

Whenever a rule, regulation, or guideline in this Custody Manual refers to regular Department personnel, it shall also apply to vendors, volunteers and student interns, unless by its nature it is inapplicable.

Vendors, volunteers and student interns are required by this Department to meet Department-approved training requirements as applicable to their assignments.

308.9 TASK SPECIFIC TRAINING

Task-specific training is intended to provide the required instruction and practice for vendors, volunteers and student interns to properly and safely perform their assigned duties. Training should correspond to the assignment.

Vendors, volunteers and student interns shall be provided with the policies of the Department and procedures applicable to their assignments.

Vendors, volunteers and student interns shall receive position-specific training to ensure they have adequate knowledge and skills to complete the required tasks and should receive ongoing training as deemed appropriate by their supervisors or the authorized designee.

Training should reinforce to vendors, volunteers and student interns that they shall not intentionally represent themselves as, or by omission give the impression that they are, Juvenile Correctional Officers or other full-time members of the Department. They shall always represent themselves as vendors, volunteers or student interns.

All vendors, volunteers and student interns shall comply with the standards of conduct and with all applicable orders and directives, either oral or written, issued by the Department.

308.9.1 STATE REQUIREMENTS

The vendor, volunteer and student intern initial orientation shall include the following: safety and security issues and anti-discrimination policies.

308.10 SUPERVISION

Each vendor, volunteer and student intern must have a clearly identified supervisor who is responsible for direct management of that individual. This supervisor will be responsible for day-to-day management and guidance of the work of the vendor, volunteer or student intern and should be available for consultation and assistance.

Functional supervision of vendors, volunteers and student interns is the responsibility of the supervisor or the authorized designee in charge of their assigned duties. The following are some considerations that supervisors or the authorized designee should keep in mind while supervising vendors, volunteers and student interns:

- (a) Take the time to introduce vendors, volunteers and student interns to members on all levels.

Vendors, Volunteers and Student Interns

- (b) Ensure vendors, volunteers and student interns have work space and necessary office supplies.
- (c) Make sure the work is challenging. Do not hesitate to give vendors, volunteers and student interns assignments or tasks that will utilize these valuable resources.
- (d) Ensure the work for student interns meets the needs of their educational program, while also meeting the needs of the Department.

308.10.1 EVALUATIONS

Student interns may need evaluations as a requirement of their educational program.

308.10.2 FITNESS FOR DUTY

No vendor, volunteer or student intern shall report for work or be at work when the individual's judgment or physical condition has been impaired due to illness or injury, or by the use of alcohol or drugs, whether legal or illegal.

Vendors, volunteers and student interns shall report to their supervisors any change in status that may affect their ability to fulfill their duties. This includes but is not limited to:

- (a) Driver's license.
- (b) Arrests.
- (c) Criminal investigations.
- (d) All law enforcement contacts.

308.11 INFORMATION ACCESS

Volunteers and student interns should not have access to or be in the vicinity of criminal histories, investigative files, or information portals. Unless otherwise directed by a supervisor, the duties of the position, or Department policy, all such information shall be considered confidential. Only that information specifically identified and approved by authorized members shall be released. Confidential information shall be given only to persons who have a need and a right to know as determined by Department policy and supervisory personnel.

A vendor, volunteer or student intern whose assignment requires the use of, or access to, confidential information will be required to be fingerprinted and have the fingerprints submitted to the California Department of Justice to obtain clearance. Vendors, volunteers and student interns working this type of assignment shall receive training in data practices and shall be required to sign a CLETS Employee/Volunteer Statement before being given an assignment with the Department. Subsequent unauthorized disclosure of any confidential information verbally, in writing, or by any other means by the vendor, volunteer, or student intern is grounds for immediate dismissal and possible criminal prosecution.

Vendors, volunteers and student interns shall not address public gatherings, appear on radio or television, prepare any article for publication, act as correspondents to newspapers or other periodicals, release or divulge any information concerning the activities of the Department, or

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maintain that they represent the Department in such matters without permission from the proper Department personnel.

308.11.1 RADIO AND DATABASE ACCESS USAGE

The supervisor or the authorized designee shall ensure that radio and database access training is provided for vendors, volunteers, and student interns whenever necessary.

308.12 EQUIPMENT

Any property or equipment issued by the Department shall be for official and authorized use only. Any property or equipment issued to a vendor, volunteer or student intern shall remain the property of the Department and shall be returned at the termination of service.

308.13 TERMINATION OF SERVICES

If a vendor or volunteer is the subject of a personnel complaint or becomes involved in an internal investigation, the matter shall be investigated in compliance with the Personnel Complaints Policy. If a student intern is the subject of or is involved in an internal investigation, the coordinator of the educational program that sponsors the intern should be notified.

Vendors and volunteers are considered at-will and may be removed from service at the discretion of the Chief Probation Officer or the authorized designee, with or without cause. Vendors and volunteers shall have no property interest in their continued appointments. Vendors and volunteers may resign from service with the Department at any time. It is requested that vendors and volunteers who intend to resign provide advance notice and a reason for their decision.

308.14 ISSUED DATE

- 02/18/2022

Exhibit H

Data Security

A. Definitions.

Capitalized terms used in this Exhibit H have the meanings set forth in this section A.

“Authorized Employees” means the Contractor’s employees who have access to Personal Information.

“Authorized Persons” means: (i) any and all Authorized Employees; and (ii) any and all of the Contractor’s subcontractors, representatives, agents, outsourcers, and consultants, and providers of professional services to the Contractor, who have access to Personal Information and are bound by law or in writing by confidentiality obligations sufficient to protect Personal Information in accordance with the terms of this Exhibit H.

“Director” means the County’s Director of Internal Services-Chief Information Officer or his or her designee.

“Disclose” or any derivative of that word means to disclose, release, transfer, disseminate, or otherwise provide access to or communicate all or any part of any Personal Information orally, in writing, or by electronic or any other means to any person.

“Person” means any natural person, corporation, partnership, limited liability company, firm, or association.

“Personal Information” means any and all information, including any data provided, or to which access is provided, to the Contractor by or upon the authorization of the County, including but not limited to vital records, that: (i) identifies, describes, or relates to, or is associated with, or is capable of being used to identify, describe, or relate to, or associate with, a person (including, without limitation, names, physical descriptions, signatures, addresses, telephone numbers, e-mail addresses, education, financial matters, employment history, and other unique identifiers, as well as statements made by or attributable to the person); (ii) is used or is capable of being used to authenticate a person (including, without limitation, employee identification numbers, government-issued identification numbers, passwords or personal identification numbers (PINs), financial account numbers, credit report information, answers to security questions, and other personal identifiers); or is personal information within the meaning of California Civil Code section 1798.3, subdivision (a), or 1798.80, subdivision (e). Personal Information does not include

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1 publicly available information that is lawfully made available to the general public from federal, state, or local
2 government records.

3 **“Privacy Practices Complaint”** means a complaint received by the County relating to the
4 Contractor’s (or any Authorized Person’s) privacy practices, or alleging a Security Breach. Such complaint
5 shall have sufficient detail to enable the Contractor to promptly investigate and take remedial action under
6 this Exhibit H.

7 **“Security Safeguards”** means physical, technical, administrative or organizational security
8 procedures and practices put in place by the Contractor (or any Authorized Persons) that relate to the
9 protection of the security, confidentiality, value, or integrity of Personal Information. Security Safeguards
10 shall satisfy the minimal requirements set forth in subsection C.(5) of this Exhibit H.

11 **“Security Breach”** means (i) any act or omission that compromises either the security,
12 confidentiality, value, or integrity of any Personal Information or the Security Safeguards, or (ii) any
13 unauthorized Use, Disclosure, or modification of, or any loss or destruction of, or any corruption of or
14 damage to, any Personal Information.

15 **“Use”** or any derivative thereof means to receive, acquire, collect, apply, manipulate, employ,
16 process, transmit, disseminate, access, store, disclose, or dispose of Personal Information.

17 **B. Standard of Care.**

18 (1) The Contractor acknowledges that, in the course of its engagement by the County under this
19 Agreement, the Contractor, or any Authorized Persons, may Use Personal Information only as permitted in
20 this Agreement.

21 (2) The Contractor acknowledges that Personal Information is deemed to be confidential information
22 of, or owned by, the County (or persons from whom the County receives or has received Personal
23 Information) and is not confidential information of, or owned or by, the Contractor, or any Authorized
24 Persons. The Contractor further acknowledges that all right, title, and interest in or to the Personal
25 Information remains in the County (or persons from whom the County receives or has received Personal
26 Information) regardless of the Contractor’s, or any Authorized Person’s, Use of that Personal Information.

27 (3) The Contractor agrees and covenants in favor of the County that the Contractor shall: (i) keep
28 and maintain all Personal Information in strict confidence, using such degree of care under this Subsection

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1 B as is reasonable and appropriate to avoid a Security Breach; (ii) Use Personal Information exclusively for
2 the purposes for which the Personal Information is made accessible to the Contractor pursuant to the terms
3 of this Exhibit H; (iii) not Use, Disclose, sell, rent, license, or otherwise make available Personal Information
4 for the Contractor's own purposes or for the benefit of anyone other than the County, without the County's
5 express prior written consent, which the County may give or withhold in its sole and absolute discretion;
6 and (iv) not, directly or indirectly, Disclose Personal Information to any person (an "Unauthorized Third
7 Party") other than Authorized Persons pursuant to this Agreement, without the Director's express prior
8 written consent.

9 Notwithstanding the foregoing paragraph, in any case in which the Contractor believes it, or any
10 Authorized Person, is required to disclose Personal Information to government regulatory authorities, or
11 pursuant to a legal proceeding, or otherwise as may be required by applicable law, the Contractor shall (a)
12 immediately notify the County of the specific demand for, and legal authority for the disclosure, including
13 providing the County with a copy of any notice, discovery demand, subpoena, or order, as applicable,
14 received by the Contractor, or any Authorized Person, from any government regulatory authorities, or in
15 relation to any legal proceeding, and (b) promptly notify the County before such Personal Information is
16 offered by the Contractor for such disclosure so that the County may have sufficient time to obtain a court
17 order or take any other action the County may deem necessary to protect the Personal Information from
18 such disclosure, and the Contractor shall cooperate with the County to minimize the scope of such
19 disclosure of such Personal Information.

20 The Contractor shall remain liable to the County for the actions and omissions of any Unauthorized
21 Third Party concerning its Use of such Personal Information as if they were the Contractor's own actions
22 and omissions.

C. Information Security.

24 (1) The Contractor covenants, represents and warrants to the County that the Contractor's Use of
25 Personal Information under this Agreement does and shall at all times comply with all federal, state, and
26 local, privacy and data protection laws, as well as all other applicable regulations and directives, including
27 but not limited to California Civil Code, Division 3, Part 4, Title 1.81 (beginning with section 1798.80), and
28 the Song-Beverly Credit Card Act of 1971 (California Civil Code, Division 3, Part 4, Title 1.3, beginning with

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1 section 1747). If the Contractor Uses credit, debit, or other payment cardholder information, the Contractor
2 shall at all times remain in compliance with the Payment Card Industry Data Security Standard (“PCI DSS”)
3 requirements, including remaining aware at all times of changes to the PCI DSS and promptly
4 implementing and maintaining all procedures and practices as may be necessary to remain in compliance
5 with the PCI DSS, in each case, at the Contractor’s sole cost and expense.

6 (2) The Contractor covenants, represents and warrants to the County that, as of the Effective Date,
7 the Contractor has not received notice of any violation of any privacy or data protection laws, as well as any
8 other applicable regulations or directives, and is not the subject of any pending legal action or investigation
9 by, any government regulatory authority regarding same.

10 (3) Without limiting the Contractor’s obligations under subsection C.(1) of this Exhibit H, the
11 Contractor’s (or Authorized Person’s) Security Safeguards shall be no less rigorous than accepted industry
12 practices and, at a minimum, include the following: (i) limiting Use of Personal Information strictly to the
13 Contractor’s and Authorized Persons’ technical and administrative personnel who are necessary for the
14 Contractor’s, or Authorized Persons’, Use of the Personal Information pursuant to this Agreement; (ii)
15 ensuring that all of the Contractor’s connectivity to the County computing systems will only be through the
16 County’s security gateways and firewalls, and only through security procedures approved upon the express
17 prior written consent of the Director; (iii) to the extent that they contain or provide access to Personal
18 Information, (a) securing the Contractor’s business facilities, data centers, paper files, servers, back-up
19 systems and computing equipment, operating systems, and software applications, including, but not limited
20 to, all mobile devices and other equipment, operating systems, and software applications with information
21 storage capability; (b) employing adequate controls and data security measures with respect to the
22 Contractor Facilities and Equipment), both internally and externally, to protect (1) the Personal Information
23 from potential loss or misappropriation, or unauthorized Use, and (2) the County’s operations from
24 disruption and abuse; (c) having and maintaining network, device application, database and platform
25 security; (d) maintaining authentication and access controls within media, computing equipment, operating
26 systems, and software applications; and (e) installing and maintaining in all mobile, wireless, or handheld
27 devices a secure internet connection, having continuously updated anti-virus software protection and a
28 remote wipe feature always enabled, all of which is subject to express prior written consent of the Director;

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1 (iv) encrypting all Personal Information at advance encryption standards of Advanced Encryption Standards
2 (AES) of 128 bit or higher (a) stored on any mobile devices, including but not limited to hard disks, portable
3 storage devices, or remote installation, or (b) transmitted over public or wireless networks (the encrypted
4 Personal Information must be subject to password or pass phrase, and be stored on a secure server and
5 transferred by means of a Virtual Private Network (VPN) connection, or another type of secure connection,
6 all of which is subject to express prior written consent of the Director); (v) strictly segregating Personal
7 Information from all other information of the Contractor, including any Authorized Person, or anyone with
8 whom the Contractor or any Authorized Person deals so that Personal Information is not commingled with
9 any other types of information; (vi) having a patch management process including installation of all
10 operating system/software vendor security patches; (vii) maintaining appropriate personnel security and
11 integrity procedures and practices, including, but not limited to, conducting background checks of
12 Authorized Employees consistent with applicable law; and (viii) providing appropriate privacy and
13 information security training to Authorized Employees.

14 (4) During the term of each Authorized Employee's employment by the Contractor, the Contractor
15 shall cause such Authorized Employees to abide strictly by the Contractor's obligations under this Exhibit H.
16 The Contractor further agrees that it shall maintain a disciplinary process to address any unauthorized Use
17 of Personal Information by any Authorized Employees.

18 (5) The Contractor shall, in a secure manner, backup daily, or more frequently if it is the
19 Contractor's practice to do so more frequently, Personal Information received from the County, and the
20 County shall have immediate, real time access, at all times, to such backups via a secure, remote access
21 connection provided by the Contractor, through the Internet.

22 (6) The Contractor shall provide the County with the name and contact information for each
23 Authorized Employee (including such Authorized Employee's work shift, and at least one alternate
24 Authorized Employee for each Authorized Employee during such work shift) who shall serve as the
25 County's primary security contact with the Contractor and shall be available to assist the County twenty-four
26 (24) hours per day, seven (7) days per week as a contact in resolving the Contractor's and any Authorized
27 Persons' obligations associated with a Security Breach or a Privacy Practices Complaint.

D. Security Breach Procedures.

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1 (1) Promptly, and without undue delay, upon the Contractor's confirmation of a Security Breach, the
2 Contractor shall (a) notify the Director of the Security Breach, such notice to be given first by telephone at
3 the following telephone number, followed promptly by email at the following email address: (559) 600-6200
4 / servicedesk@fresnocountyca.gov (which telephone number and email address the County may update by
5 providing notice to the Contractor), and (b) preserve all relevant evidence (and cause any affected
6 Authorized Person to preserve all relevant evidence) relating to the Security Breach. The notification shall
7 include, to the extent reasonably possible, the identification of each type and the extent of Personal
8 Information that has been, or is reasonably believed to have been, breached, including but not limited to,
9 compromised, or subjected to unauthorized Use, Disclosure, or modification, or any loss or destruction,
10 corruption, or damage.

11 (2) Immediately following the Contractor's notification to the County of a Security Breach, as
12 provided pursuant to subsection D.(1) of this Exhibit H, the Parties shall coordinate with each other to
13 investigate the Security Breach. The Contractor agrees to fully cooperate with the County, including,
14 without limitation: (i) assisting the County in conducting any investigation; (ii) providing the County with
15 physical access to the facilities and operations affected; (iii) facilitating interviews with Authorized Persons
16 and any of the Contractor's other employees knowledgeable of the matter; and (iv) making available all
17 relevant records, logs, files, data reporting and other materials required to comply with applicable law,
18 regulation, industry standards, or as otherwise reasonably required by the County. To that end, the
19 Contractor shall, with respect to a Security Breach, be solely responsible, at its cost, for all notifications
20 required by law and regulation, and the Contractor shall provide a written report of the investigation and
21 reporting required to the Director within thirty (30) days after the Contractor's discovery of the Security
22 Breach.

23 (3) The County shall promptly notify the Contractor of the Director's knowledge, or reasonable
24 belief, of any Privacy Practices Complaint, and upon the Contractor's receipt of notification thereof, the
25 Contractor shall promptly address such Privacy Practices Complaint, including taking any corrective action
26 under this Exhibit H, all at the Contractor's sole expense, in accordance with applicable privacy rights, laws,
27 regulations and standards. In the event the Contractor discovers a Security Breach, the Contractor shall
28 treat the Privacy Practices Complaint as a Security Breach. Within 24 hours of the Contractor's receipt of

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1 notification of such Privacy Practices Complaint, the Contractor shall notify the County whether the matter is
2 a Security Breach, or otherwise has been corrected and the manner of correction, or determined not to
3 require corrective action and the reason therefor.

4 (4) The Contractor shall take prompt corrective action to respond to and remedy any Security
5 Breach and take reasonable mitigating actions, including but not limiting to, preventing any reoccurrence of
6 the Security Breach and correcting any deficiency in Security Safeguards as a result of such incident, all at
7 the Contractor's sole expense, in accordance with applicable privacy rights, laws, regulations and
8 standards. The Contractor shall reimburse the County for all reasonable costs incurred by the County in
9 responding to, and mitigating damages caused by, any Security Breach, including all costs of the County
10 incurred in relation to any litigation or other action described in subsection D. (5) of this Exhibit H. to the
11 extent applicable: (1) the cost of providing affected individuals with credit monitoring services for a specific
12 period not to exceed twelve (12) months, to the extent the incident could lead to a compromise of the data
13 subject's credit or credit standing; (2) call center support for such affected individuals for a specific period
14 not to exceed thirty (30) days; and (3) the cost of any measures required under applicable laws.

15 **E. Oversight of Security Compliance.**

16 (1) The Contractor shall have and maintain a written information security policy that specifies
17 Security Safeguards appropriate to the size and complexity of the Contractor's operations and the nature
18 and scope of its activities.

19 (2) Upon the County's written request, to confirm the Contractor's compliance with this Exhibit H, as
20 well as any applicable laws, regulations and industry standards, the Contractor grants the County or, upon
21 the County's election, a third party on the County's behalf, permission to perform an assessment, audit,
22 examination or review of all controls in the Contractor's physical and technical environment in relation to all
23 Personal Information that is Used by the Contractor pursuant to this Agreement. The Contractor shall fully
24 cooperate with such assessment, audit or examination, as applicable, by providing the County or the third
25 party on the County's behalf, access to all Authorized Employees and other knowledgeable personnel,
26 physical premises, documentation, infrastructure and application software that is Used by the Contractor for
27 Personal Information pursuant to this Agreement. In addition, the Contractor shall provide the County with
28 the results of any audit by or on behalf of the Contractor that assesses the effectiveness of the Contractor's

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1 information security program as relevant to the security and confidentiality of Personal Information Used by
2 the Contractor or Authorized Persons during the course of this Agreement under this Exhibit H.

3 (3) The Contractor shall ensure that all Authorized Persons who Use Personal Information agree to
4 the same restrictions and conditions in this Exhibit H. that apply to the Contractor with respect to such
5 Personal Information by incorporating the relevant provisions of these provisions into a valid and binding
6 written agreement between the Contractor and such Authorized Persons, or amending any written
7 agreements to provide same.

F. Return or Destruction of Personal Information.

8 Upon the termination of this Agreement, the Contractor shall, and shall instruct all Authorized
9 Persons to, promptly return to the County all Personal Information, whether in written, electronic or other
10 form or media, in its possession or the possession of such Authorized Persons, in a machine readable form
11 used by the County at the time of such return, or upon the express prior written consent of the Director,
12 securely destroy all such Personal Information, and certify in writing to the County that such Personal
13 Information have been returned to the County or disposed of securely, as applicable. If the Contractor is
14 authorized to dispose of any such Personal Information, as provided in this Exhibit H, such certification shall
15 state the date, time, and manner (including standard) of disposal and by whom, specifying the title of the
16 individual. The Contractor shall comply with all reasonable directions provided by the Director with respect
17 to the return or disposal of Personal Information and copies thereof. If return or disposal of such Personal
18 Information or copies of Personal Information is not feasible, the Contractor shall notify the County
19 accordingly, specifying the reason, and continue to extend the protections of this Exhibit H to all such
20 Personal Information and copies of Personal Information. The Contractor shall not retain any copy of any
21 Personal Information after returning or disposing of Personal Information as required by this section F. The
22 Contractor's obligations under this section F survive the termination of this Agreement and apply to all
23 Personal Information that the Contractor retains if return or disposal is not feasible and to all Personal
24 Information that the Contractor may later discover.

G. Equitable Relief.

25 The Contractor acknowledges that any breach of its covenants or obligations set forth in this Exhibit
26 H may cause the County irreparable harm for which monetary damages would not be adequate
27
28

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1 compensation and agrees that, in the event of such breach or threatened breach, the County is entitled to
2 seek equitable relief, including a restraining order, injunctive relief, specific performance and any other relief
3 that may be available from any court, in addition to any other remedy to which the County may be entitled
4 at law or in equity. Such remedies shall not be deemed to be exclusive but shall be in addition to all other
5 remedies available to the County at law or in equity or under this Agreement.

6 **H. Indemnification.**

7 The Contractor shall defend, indemnify and hold harmless the County, its officers, employees, and
8 agents, (each, a “**County Indemnitee**”) from and against any and all infringement of intellectual property
9 including, but not limited to infringement of copyright, trademark, and trade dress, invasion of privacy,
10 information theft, and extortion, unauthorized Use, Disclosure, or modification of, or any loss or destruction
11 of, or any corruption of or damage to, Personal Information, Security Breach response and remedy costs,
12 credit monitoring expenses, forfeitures, losses, damages, liabilities, deficiencies, actions, judgments,
13 interest, awards, fines, and penalties (including regulatory fines and penalties), costs or expenses of
14 whatever kind, including attorney’s fees and costs, the cost of enforcing any right to indemnification or
15 defense under this Attachment “A” and the cost of pursuing any insurance providers, arising out of or
16 resulting from any third party claim or action against any COUNTY Indemnitee in relation to
17 CONTRACTOR’s, its officers, employees, or agents, or any Authorized Employee’s or Authorized Person’s,
18 performance or failure to perform under this Attachment “A” or arising out of or resulting from
19 CONTRACTOR’s failure to comply with any of its obligations under this section H. The provisions of this
20 section H do not apply to the acts or omissions of the County. The provisions of this section H are
21 cumulative to any other obligation of the Contractor to, defend, indemnify, or hold harmless any County
22 Indemnity under this Agreement. The provisions of this section H shall survive the termination of this
23 Agreement.

24 **I. Survival.**

25 The respective rights and obligations of the Contractor and the County as stated in this Exhibit H
26 shall survive the termination of this Agreement.

27 **J. No Third Party Beneficiary.**

28 Nothing express or implied in the provisions of in this Exhibit H is intended to confer, nor shall

Exhibit H

1 anything herein confer, upon any person other than the County or the Contractor and their respective
2 successors or assignees, any rights, remedies, obligations or liabilities whatsoever.

3 **L. No County Warranty.**

4 The County does not make any warranty or representation whether any Personal Information in the
5 Contractor's (or any Authorized Person's) possession or control, or Use by the Contractor (or any
6 Authorized Person), pursuant to the terms of this Agreement is or will be secure from unauthorized Use, or
7 a Security Breach or Privacy Practices Complaint.

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