

**AGREEMENT FOR ARCHITECTURAL SERVICES**

This AGREEMENT FOR ARCHITECTURAL SERVICES (the "Agreement") is made and entered into as of the 25th day of Feb., 2020, by and between the COUNTY OF FRESNO, a political subdivision of the State of California ("COUNTY"), and DLR Group, Inc., a California Corporation ("CONSULTANT").

**WITNESSETH:**

**WHEREAS**, COUNTY engaged CONSULTANT to provide certain architectural services, by that certain written agreement dated November 4, 2014 (the "Original Agreement").

**WHEREAS**, the parties desire to execute this Agreement effective retroactive to December 31, 2019, to evidence the intent and actions of the parties for an agreement of architectural services, based on the terms and conditions of the Original Agreement.

**NOW, THEREFORE**, in consideration of the promises herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Notwithstanding anything to the contrary in the Original Agreement, the Original Agreement is attached hereto, as Exhibit A, and incorporated herein as though its terms and conditions are fully set forth below, and together with the terms and conditions set forth below, constitute the entire agreement and understanding between CONSULTANT and COUNTY concerning the subject matter hereof for the term hereof, and supersede all previous negotiations, proposals, commitments, writings, advertisements, publications and understandings of any nature whatsoever unless expressly included in and modified by this Agreement.

2. In no event shall the maximum amount paid to Consultant as compensation for Consultant's Services performed hereunder and as reimbursement of related reasonable and necessary, out-of-pocket expenses exceed seven million, three hundred twenty-six thousand, four hundred dollars (\$7,326,400.00).

3. The term of this Agreement shall commence upon December 31, 2019 and shall

1 continue in full force and effect through December 31, 2020. The Director of the Department of  
2 Public Works and Planning or his/her designee, may extend the agreement, in writing, for one (1)  
3 additional year, upon the same terms and conditions set forth herein, provided however, that it may  
4 be terminated by either or both of the parties according to the terms and conditions of the Original  
5 Agreement.

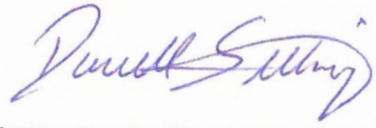
6           4. Because this Agreement is effective retroactive to December 31, 2019, any services  
7 that have been performed, and for which compensation or reimbursement of expenses has been paid,  
8 prior to the execution of this Agreement are hereby approved and ratified by the parties. Except as  
9 modified herein, the terms and conditions of the Original Agreement are ratified and restated herein in  
10 full, and all remaining terms and conditions contained in the Original Agreement, that are not modified  
11 herein, shall remain in full force and effect during the term of this Agreement.  
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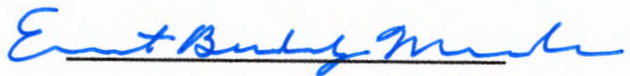
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IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

CONSULTANT

COUNTY OF FRESNO

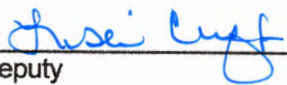
BY:  \_\_\_\_\_

 \_\_\_\_\_

Darrell Stelling, Principal  
DLR Group, Inc.  
1050 20<sup>th</sup> Street, Suite 250  
Sacramento, CA 95811

Ernest Buddy Mendes, Chairman of the Board  
of Supervisors of the County of Fresno

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

By  \_\_\_\_\_  
Deputy

FOR ACCOUNTING USE ONLY:

ORG No 43601150, 8845, 8847  
Account No. 7295, 8150  
Fund No. 0001, 0400  
Subclass No. 10000, 11000

**AGREEMENT FOR ARCHITECTURAL SERVICES**

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3 THIS AGREEMENT made and entered into this 4<sup>th</sup> day of November,  
4 2014, between the County of Fresno, a political subdivision of the State of California, (hereinafter  
5 called "COUNTY"), and DLR Group Inc. of California, a California Corporation, 1050 20<sup>th</sup> Street,  
6 Suite 250, Sacramento, CA 95811, (hereinafter called "CONSULTANT").

7 **W I T N E S S E T H:**

8 WHEREAS, COUNTY plans to construct the West Annex Jail at the southeast corner  
9 of the intersection of L Street and Merced Street in Fresno California; and

10 WHEREAS, COUNTY has been tentatively awarded SB-1022 funding (Funding) by  
11 the Board of State and Community Corrections (BSCC) for the development of the West Annex  
12 Jail; and

13 WHEREAS, COUNTY desires to retain a consultant architect to provide professional  
14 services, including preparation of documents for on-site development and general buildings,  
15 consisting of plans, specifications, opinions of probable construction cost and other documents  
16 required for construction of the West Annex Jail, hereinafter called the Project; and

17 WHEREAS, COUNTY intends to design and construct a 92,528 square foot jail  
18 building with three (3) floors, two (2) of which will have mezzanines, and a basement with tunnel  
19 connection to the North Annex Jail, an adjacent 9,280 square feet Laundry and Warehouse  
20 Building with full basement, and a loading dock capable of accommodating a semi-truck and  
21 trailer; and

22 WHEREAS, said consultant architect has been selected in accordance with COUNTY's  
23 Ordinance Code Chapter 4.10 on the selection of architects, engineers, and other professionals to  
24 provide the architectural and engineering services necessary for the Project; and

25 WHEREAS, said CONSULTANT represents that it is qualified and willing to perform  
26 the architectural and engineering services required by the COUNTY for this Project.

1           NOW, THEREFORE, the parties hereto have and by these presents do agree as  
2 follows:

3 **I. CONTRACTING WITH CONSULTANT: BASIC PARAMETERS**

4           A. The COUNTY hereby contracts with the CONSULTANT as an independent contractor  
5 to provide consultant services as required for the Project. Said services are described in Article II  
6 and enumerated in Article III herein.

7           B. The CONSULTANT shall retain structural engineering, mechanical engineering,  
8 electrical engineering, and other subconsultants as required in order to assist CONSULTANT in  
9 completing the scope of work. All subconsultants used by CONSULTANT shall be approved by  
10 the COUNTY's Director of Public Works and Planning or his/her designee before they are  
11 retained by the CONSULTANT, which approval shall not be unreasonably withheld.  
12 Subconsultants listed in Exhibit A, attached hereto and incorporated herein, shall be considered as  
13 approved by the COUNTY. Should CONSULTANT retain any additional subconsultants or need  
14 to substitute approved subconsultants, compensation to be paid to CONSULTANT under Article V  
15 below shall not be increased.

16           C. The CONSULTANT shall coordinate the inclusion of COUNTY's documents  
17 addressing Regulated Asbestos Containing Material (RACM) and Lead-Based Paint (LBP)  
18 abatement in the bid documents if RACM or LBP abatement is included as a component of the  
19 contracted demolition phase of this Project. However, the CONSULTANT shall not have any  
20 responsibility for the adequacy, accuracy, or completeness of the COUNTY provided documents.

21           D. The CONSULTANT's services shall be performed as expeditiously as is consistent  
22 with professional skill and the orderly progress of the work, based on Project schedules prepared  
23 by the COUNTY.

24           E. The CONSULTANT and affiliated subconsultants shall not submit bids, or sub-bids,  
25 for the contract construction phase of the Project for which CONSULTANT provides services  
26 hereunder. The CONSULTANT and its subconsultants, and all other service providers, shall not

1 provide any project-related services for, or receive any project-related compensation from any  
2 construction contractor, subcontractor or service provider awarded a construction contract for all  
3 or any portion of the Project for which CONSULTANT provides services hereunder. The  
4 CONSULTANT and its subconsultants, and all other service providers, may provide services for,  
5 and receive compensation from a construction contractor, subcontractor or service provider who  
6 has been awarded a construction contract for all or any portion of the Project, provided that any  
7 such services which are rendered, and any compensation which is received therefor relates to work  
8 outside the scope of this Agreement and Project.

9 F. The contact person for the CONSULTANT shall be: Darrell Stelling, AIA, Principal-  
10 in-Charge, (telephone: 916.446.0206, facsimile: 916.446.0894, e-mail: dstelling@dlrgroup.com).

11 **II. DESCRIPTION OF THE WORK COVERED BY THIS AGREEMENT:**

12 A. The work covered by this Agreement is for the consultant services needed for the  
13 preparation of Pre-Design/Programing, Schematic Design (SD), Design Development (DD),  
14 Construction Documents (CD), Bidding and Award, Construction Observation and Project  
15 Completion for the West Annex Jail. The Project shall include on-site development, off-site  
16 development and general buildings, and also may include materials procurement as necessary to  
17 deliver completion of the construction within the Project schedule shown as Exhibit C. The  
18 proposed West Annex Jail site is located in the City of Fresno at the southeast corner of the  
19 intersection of L Street and Merced Street.

20 B. The West Annex Jail will provide Program Offices for Behavioral Health, Sheriff's  
21 Inmate Programs Staff, Out-of-Custody Programs and Treatment Rooms, Public Video Visitation  
22 Room, and separate Laundry and Storage Building and Loading Dock.

23 C. The CONSULTANT shall provide guidance to the COUNTY with regard to the  
24 Funding requirements and adhere to the schedule and submittals to the State of California and  
25 BSCC as required by the Funding.

26 D. Throughout the term of this Agreement, the CONSULTANT shall collaborate and

1 partner with the COUNTY and other Project participants in the interest of maintaining the Project  
2 budget and schedule and minimizing claims. Partnering may be instituted during design phases  
3 and will be used during construction. There will be a one-day initial session, one-day group  
4 session and quarterly refresher sessions. Sessions shall be attended by all associated project and  
5 executive level staff requested by COUNTY, at no additional cost to COUNTY. It is planned that  
6 all sessions are to be conducted at the Fresno County Plaza Building, 2220 Tulare Street, Fresno,  
7 California 93721, although the location of any session(s) is subject to change upon notice by  
8 COUNTY.

9  
10 E. If it is determined by COUNTY at any time during the term of this Agreement that  
11 performance of the approved personnel is not acceptable, COUNTY may order in writing without  
12 stating cause, that such person or persons be removed from the Project and replaced. Names of  
13 proposed replacement personnel, if requested, shall be made within a period not to exceed five (5)  
14 working days from such order and be activated within ten (10) days of request.

### 15 III. CONSULTANT'S SERVICES:

16 A. The CONSULTANT agrees to be the Architect of Record (AOR) for the work  
17 described herein, cooperate with other consultants of the COUNTY and to provide the professional  
18 services that are necessary to perform the following phases.

#### 19 B. Pre-Design Phase

20 The CONSULTANT shall:

21 1. Develop a building program. To the extent necessary, modify or expand the study  
22 to fully define the functional space needs and required adjacencies, proximities, and furnishings,  
23 fixtures and equipment (FF&E) to fully develop the proposed building for the "user" departments  
24 for the year 2019. Include as part of the building program document the report of the  
25 commissioning agent of the performance characteristics of the buildings' systems to be met as part  
26 of the design and construction of the facility.

1           2. Review and make corrections to the documents as necessary after review with  
2 various County interest groups and as directed by County Staff.

3           3. If requested, prepare and present a report of the updated building program before  
4 the Board of Supervisors.

5           4. Not proceed with the next Phase unless expressly authorized by the COUNTY in  
6 writing.

7           C. Schematic Design Phase

8           The CONSULTANT shall:

9           1. Review and become familiar with the March 2013 Jail Facilities Needs Assessment  
10 Update for historical data on COUNTY's past arrest and incarceration rates, projection rates and  
11 population distribution ratios of male to female and the County's SB 1022 Funding Application  
12 package (SB 1022 Funding).

13           2. Prepare and submit an opinion of probable construction cost for construction, as  
14 identified below, identifying significant area and system components of the Project. The opinion of  
15 probable construction cost shall be submitted in the "Construction Specifications Institute" (CSI)  
16 Masterformat or Unifomat (most current edition) and shall identify design contingency and  
17 escalation amounts to the midpoint of the construction period.

18           3. Prepare a feasibility study for adding and/or replacing cogeneration capacity at the  
19 site, defining uses for the waste heat, recommended construction budget to install the facility and  
20 anticipated operational costs to be realized annually and over the life of the equipment and specify  
21 at least one optimum location on the site to locate the equipment.

22           4. Incorporate any mitigating measures of the Environmental Impact Report (EIR).  
23 The COUNTY will provide the Environmental Impact Report Application review.

24           5. Develop project parameters in concert with the COUNTY's Building Committee  
25 recommendations and concerns. Confer with the Building Committee on construction system  
26 component options, preferences, scheduling, bidding and contracting strategies.



1           6. Participate in meetings with the Building Committee, which will generally consist  
2 of members from various departments of the COUNTY, including the County Administrative  
3 Office, Department of Public Works and Planning, Sheriff's Office, Internal Services Department,  
4 Department of Public Health and Department of Behavioral Health as user departments, as well as  
5 the Project/Construction Manager. Ex-Officio members will include members from various other  
6 user departments and/or consultants.

7           7. Facilitate user meetings with engineering disciplines and commissioning agent to  
8 identify preferred systems and installations for CONSULTANT to incorporate in the Project.

9           8. Identify a logical development for construction that will best fit the most urgent  
10 needs of the COUNTY within funding parameters from both the Board of State and Community  
11 Corrections (BSCC), and COUNTY's available resources.

12           9. Develop schematic design site and floor plans, sections, exterior elevations,  
13 sketches and other drawings, outline specifications and reports consisting of conceptual  
14 illustrations with continuing input and review from the Building Committee.

15           10. Prepare a schematic design consisting of floor plans with square footage and rough  
16 dimensions, and illustrate the function of the rooms. More than one proposed floor plan may be  
17 required.

18           11. Prepare a time line schedule for the Project, a detailed construction estimate for  
19 construction and a budget estimate for the development projected to the year 2019 in concert with  
20 the SB 1022 Funding requirements.

21           12. Participate in one or more reconciliation meetings involving a third party review of  
22 the Project estimate.

23           13. Monitor and keep COUNTY informed regarding the impact of design issues on the  
24 project budget. Upon the request of the COUNTY, CONSULTANT shall incorporate into the  
25 design such reasonable changes as the COUNTY deems appropriate as a result of the COUNTY's  
26 review process and impact on the budget and/or schedule and/or opinion of probable construction

1 cost. If CONSULTANT disagrees with the COUNTY's request, such disagreement must be  
2 registered in writing and the COUNTY will attempt to reconcile such disagreement. If it is  
3 impossible to make reconciliation, the written disagreement will become a part of the project  
4 record. However, CONSULTANT shall then comply with the COUNTY's request.

5 14. Modify or delete portions of the proposed construction work, or reduce program  
6 space at the request of the COUNTY if the schematic opinion of probable construction cost  
7 indicates increases in costs above the project budget established by the COUNTY. Adhere to any  
8 such modifications in the preparation and completion of the schematic plans, opinion of probable  
9 construction cost, and specifications in work performed under this phase.

10 15. Upon completion and submission of the Schematic Design submittal to the BSCC  
11 and/or the State, the CONSULTANT shall perform a coordination review of all disciplines while  
12 the submittal is being reviewed and prior to the COUNTY providing direction to move on to the  
13 next phase. The CONSULTANT shall prepare a report identifying coordination issues and their  
14 resolution.

15 16. The Project/Construction Manager will be reviewing the constructability of the  
16 Project and preparing a report on its findings and recommendations. The Building Committee will  
17 review the recommendations and determine those to be implemented, and those recommendations  
18 determined by the Building Committee to be implemented shall be incorporated by  
19 CONSULTANT prior to moving to the next phase.

20 17. If requested, make a formal presentation before the Board of Supervisors of the  
21 proposed Project's design, space requirements, cost estimates, and timeline. Attend and participate  
22 in a rehearsal prior to presentation of the Project before the Board of Supervisors.

23 18. Not proceed with the next Phase unless expressly authorized by the COUNTY in  
24 writing.

25 D. Design Development Phase

26 The CONSULTANT shall:

1           1. Refine Project parameters in concert with the COUNTY's Building Committee  
2 members' recommendations and concerns.

3           2. No later than the Design Development Phase, the CONSULTANT shall implement  
4 the use of building information software (BIM) for the purpose of project team collaboration for  
5 building analysis and design purposes, as well as construction and facilities information  
6 management. The COUNTY shall be the owner of the BIM model and all members of the building  
7 team shall have the ability and rights to review and comment on the model. Acceptable software  
8 systems include: Graphisoft ArchiCAD; Autodesk Revit; and Bentley Systems. The software shall  
9 be mobile-enabled and include clash detection. The CONSULTANT shall provide access to the  
10 BIM Model to the Building Committee through the term of this Agreement. Upon completion of  
11 the work of the CONSULTANT, the COUNTY shall be provided access to the BIM model with  
12 the ability to modify it for operations, upon completion of construction, as COUNTY deems  
13 necessary or appropriate for the COUNTY's needs.

14           3. Prepare, in this phase of the work, the site or plot plan suitable for the Site Plan  
15 Review process.

16           4. Provide, in this phase of the work (or in a subsequent Phase if so directed by the  
17 COUNTY Representative), all data necessary to comply with all requirements of reviewing  
18 agencies, and with COUNTY permits and land use requirements within the Project schedule.

19           5. Prepare the design development drawings and preliminary specifications. Plans  
20 shall be prepared on a CAD system compatible with the BIM model and acceptable to the  
21 COUNTY, submitted to the COUNTY on no larger than 30" x 42" sheets. All text documents shall  
22 be prepared on electronic files capable of being opened by Microsoft Word 2010 or more recent  
23 version word processing software and submitted to COUNTY on 8½" x 11" page format. The  
24 preliminary design shall consist of floor plans, exterior elevations, interior elevations, cross  
25 sections, landscaping and irrigation plans, horizontal and vertical control, site and plot plans and  
26 other drawings drawn to scale and showing the locations of walls, doors, windows, equipment,

1 fixtures, and other necessary items together with the requirements for the electrical, heating,  
2 plumbing, air conditioning, on-site work, off-site work, outline specifications and other work  
3 necessary to complete the Project. This design development submittal shall also include the  
4 fixture cut sheets for all pieces of equipment included in the design.

5 6. Prepare an independent detailed design development opinion of probable  
6 construction cost which shall identify, in CSI Masterformat or Unifformat, the building components  
7 and requirements of the Project. The estimated cost of each building, on-site improvements, off-  
8 site improvements shall be prepared along with a summary showing the total Project cost.

9 a. The opinion of probable construction cost shall be projected to the midpoint of  
10 the probable construction period and shall include material and labor unit costs, overhead, profit,  
11 insurance, taxes, general requirements, supervision, and difficulty factors.

12 b. The opinion of probable construction cost shall identify construction cost  
13 escalation and design contingency amounts, which shall be approved by the COUNTY prior to  
14 their inclusion in the opinion of probable construction cost. The opinion of probable construction  
15 cost shall assume a competitive bid process as normally anticipated within the Fresno County area.

16 c. Participate in one or more Project estimate reconciliation meetings involving a  
17 third party.

18 7. Review the progress and content of the drawings and specifications and any  
19 possible impacts on the cost estimate every two (2) weeks in meetings with the COUNTY and the  
20 consulting Project/Construction Manager. CONSULTANT shall monitor and keep COUNTY  
21 informed regarding the impact of design issues on the Project budget. The Project construction  
22 cost shall be maintained within the Board approved budget unless an adjustment is approved in  
23 writing. Upon the request of the COUNTY, CONSULTANT shall incorporate into the design such  
24 reasonable design and operational changes as the COUNTY deems appropriate as a result of an  
25 impact on the Project budget or opinion of probable construction cost. In this phase or subsequent  
26 phase, if CONSULTANT disagrees with the COUNTY's request, such disagreement must be

1 registered in writing and the COUNTY will attempt to reconcile such disagreement. If it is  
2 impossible to make a reconciliation, the written disagreement will become part of the Project's  
3 record. However, CONSULTANT shall then comply with the COUNTY's request.

4 8. Prepare applications, and assist the COUNTY in submitting applications for other  
5 agency reviews as required for this Project, and attempt to expedite the processing of any such  
6 review. This will include developing all data necessary as may be required to complete agency  
7 applications. Provide document printing as necessary for such agency review applications and  
8 processing, including but not limited to site plan and land survey, site grading, landscape and  
9 irrigation plans, and building exterior elevations.

10 9. No later than at an early stage of the design development phase, provide six (6)  
11 printed copies of selected documents including plans, cost estimates, outline specifications and  
12 design data to COUNTY's Project/Construction Manager for value engineering review. Review  
13 and analyze findings and alternatives provided by the COUNTY's Project/Construction Manager.  
14 Prepare estimates comparing different construction systems, reports on cost benefit analysis and  
15 life-cycle costs and justify and/or substantiate recommended course of action. CONSULTANT  
16 and appropriate subconsultants shall attend and participate in value engineering and determination  
17 meetings and make corrections and changes as directed by COUNTY at such meetings, at no  
18 additional cost to the COUNTY.

19 10. Submit to the COUNTY ten (10) black and white bond copies of the completed  
20 design development (preliminary) plans, specifications, and opinion of probable construction cost  
21 along with electronic files on compact disc (CD-ROM) or flash/thumb drive. CONSULTANT  
22 shall meet as necessary with the COUNTY to identify and explain in detail all elements included  
23 in the Design Development document requirements as outlined herein or meet as necessary to fully  
24 explain the design scope and obtain COUNTY's approval thereof.

25 11. Review and confirm with COUNTY staff the construction budget.

26 12. Within the scope of the Basic Fee, delete portions of the proposed construction

1 work or change materials and equipment at the request of the COUNTY if the design development  
2 opinion of probable construction cost increases above the approved construction budget. The  
3 CONSULTANT shall adhere to any such modifications in the preparation and completion of  
4 design development plans, opinion of probable construction cost, and specifications as required in  
5 this Phase of the CONSULTANT's work.

6 13. Participate in one or more reconciliation meetings involving a third party review of  
7 the Project Estimate.

8 14. Upon completion and submission of the Design Development submittal to the  
9 BSCC and/or the State, the CONSULTANT shall perform a coordination review of all disciplines  
10 while the submittal is being reviewed and prior to the COUNTY providing direction to move to the  
11 next phase. The CONSULTANT shall prepare a report identifying coordination conflicts and their  
12 resolution.

13 15. The Project/Construction Manager will be reviewing the constructability of the  
14 Project and preparing a report on its findings and recommendations. The Building Committee will  
15 review the recommendations and determine those to be implemented. The recommendations to be  
16 implemented are to be incorporated prior to moving to the net phase.

17 16. Secure necessary reviews and initial permits for California State Fire Marshal  
18 Amendment approvals

19 17. Continue to incorporate into the design in the succeeding phase of the  
20 CONSULTANT's work those changes identified from Project approval of the design development  
21 and proceed to the next Phase only if expressly authorized in writing by COUNTY.

22 E. Construction Documents Phase

23 The CONSULTANT shall:

24 1. Prepare the final BIM model and working drawings from the Design Development  
25 phase as modified by the COUNTY, setting forth in detail the work to be done, materials,  
26 workmanship, finishes, and equipment required for the architectural, structural, mechanical,

1 electrical, security electronics, low voltage systems, communications, and other components of  
2 construction necessary to provide the COUNTY a complete and functional Project for its intended  
3 purpose within the requirements of this Agreement.

4           2. Monitor and keep COUNTY informed regarding the impact of design issues on the  
5 Project budget. Upon the request of the COUNTY, CONSULTANT shall incorporate into the  
6 design such changes as the COUNTY deems appropriate as a result of an impact on the Project  
7 budget or opinion of probable construction cost.

8           3. Review, comment, and/or make recommendations on the form and content of the  
9 COUNTY's General Conditions, Special Conditions, and Bid Form as they apply towards the  
10 Project.

11           4. In addition to the technical specifications, assist the COUNTY with the preparation  
12 of special or supplemental conditions to be included with the construction contract. The  
13 COUNTY will package the CONSULTANT's documents with the COUNTY's approved General  
14 Conditions, Notice to Contractors calling for bids, the Bid Form, and related documents to  
15 complete the construction contract and bid specifications. Documents provided by the COUNTY  
16 for Regulated Asbestos Containing Material (RACM) and Lead Based Paint (LBP) abatement shall  
17 be incorporated into the bid package.

18           5. Submit to the COUNTY the projected and final opinion of probable construction  
19 cost in the CSI Masterformat for the base bid work and alternate bid items. The opinion of  
20 probable construction cost shall be projected to the midpoint of the anticipated construction period  
21 on the Project schedule. Differences between the design development and final opinion of  
22 probable construction cost shall be explained in writing.

23           6. Assist the COUNTY in developing the construction period for bidding purposes  
24 and to identify long delivery times for materials and equipment that will affect the construction  
25 schedule.

26           7. Include additive alternate bid items, not as separate design drawings but

1 incorporated into the original construction drawings, to allow the COUNTY's consideration of  
2 construction element choices or cost options. Additive bid items may be necessary so the  
3 COUNTY is able to award a construction contract not exceeding available construction funds or to  
4 identify costs to be funded by alternate sources. Additive alternate bid items shall each not exceed  
5 1% of the approved Project budget.

6 8. Participate in a constructability review of the plans, specifications and cost  
7 estimates at the 90% Construction Document stage, led by the Project/Construction Manager.  
8 CONSULTANT shall review comments and respond to a single constructability review package at  
9 each of the identified phases. Make changes as directed by the COUNTY at no additional cost to  
10 the COUNTY.

11 9. Participate in the review of the design documents and make revisions limited to  
12 interdisciplinary coordination, constructability, conformity with the general scope of work,  
13 conformity with the COUNTY's construction standards and design guidelines, scheduling, and  
14 time of construction. The recommendations resulting from such review shall be provided to the  
15 CONSULTANT by the COUNTY in writing.

16 10. Include in the design all conduit, pull boxes and device outlet locations for  
17 telephone, radio, television, computer and network support equipment furnished and installed by  
18 the COUNTY.

19 11. Provide the design for intrusion detection system for buildings not occupied  
20 twenty-four (24) hours per day, seven (7) days per week.

21 12. Provide the design of a fire alarm system for entire Project that is compatible and  
22 fully functional with the existing system(s) in the adult detention facilities.

23 13. Provide the design of a Closed Circuit Television (CCTV) monitoring system for  
24 all Project areas so the movement of detainees can be remotely observed. The monitoring system  
25 shall include all points of access into the secured detention perimeter. It shall not include  
26 monitoring of security fence lines, on-site roads or parking areas.



1           14. Provide the design of a fire protection system for all buildings that will  
2 communicate and interact with the existing system(s) installed in the adult detention facilities.

3           15. Incorporate into contract documents the materials testing and inspection program  
4 for construction materials. Identify the type, quantity, frequency and schedule of tests to be  
5 performed.

6           16. Submit progress originals and final originals of the plans, specifications, and  
7 opinion of probable construction cost for reproduction by the COUNTY, not less than two (2)  
8 weeks prior to the advertising date of the Project.

9           17. Submit four (4) copies of wet-stamped and signed drawings, specifications,  
10 structural, energy and other building systems calculations.

11           18. Provide an additional fifteen (15) sets of completed construction documents along  
12 with electronic files on a compact disc (CD-ROM) or flash/thumb drive of same (plans,  
13 specifications and opinion of probable construction cost) for agency and final inter-departmental  
14 review. The CONSULTANT shall provide interpretations and clarifications, corrections and  
15 modifications necessary to gain approval of all reviewing agencies at no additional cost to the  
16 COUNTY.

17           19. Participate in plan review meetings with the COUNTY and Project/Construction  
18 Manager as necessary to thoroughly evaluate the Construction Documents for the Project.

19           20. Not proceed with the next Phase unless expressly authorized by the COUNTY in  
20 writing.

21           F. Bidding and Award Phase

22           The CONSULTANT shall:

23           1. Deliver to the COUNTY two (2) weeks prior to the advertising date (which date  
24 shall be determined by COUNTY), the final completed original drawings and specifications for  
25 COUNTY printing and distribution of bid sets to interested contractors and include electronic files  
26 on compact disc (CD-ROM) or flash/thumb drive. The original drawings and specifications index

1 sheet shall be wet-stamped by a seal with CONSULTANT and subconsultants' license numbers  
2 and signed in accordance with the California Business and Professions Code.

3 2. Submit a list of general and specialty contractors who have the expertise and may  
4 be interested in bidding on this Project.

5 3. Attend the pre-bid conference scheduled by the COUNTY.

6 4. Prepare documents as required to clarify scope of work to be bid upon at no  
7 additional cost to the COUNTY. Coordinate subconsultants' addendum drawings and documents.

8 5. Prepare drawing documents and work necessary to delineate either the COUNTY's  
9 changes in scope to the contract or changes in job-site conditions as directed by the COUNTY  
10 representative. Whenever such work is necessitated by the COUNTY having provided inaccurate  
11 information, then CONSULTANT's performance thereof shall be compensated as an Extra Service  
12 under this Agreement.

13 6. Submit to the COUNTY for review and approval any addenda deemed necessary.  
14 Addenda, if any, shall be submitted no later than five (5) working days prior to the scheduled bid  
15 opening. All addenda shall be distributed by the COUNTY. An electronic copy of addenda shall  
16 be furnished to the COUNTY on compact disc (CD-ROM) or flash/thumb drive. Each addendum  
17 shall be reproduced by the COUNTY on a different colored paper and numbered consecutively  
18 starting with one (1). No addendum shall be issued in the 72-hour period prior to bid opening  
19 unless it is to delay the bid opening and the direction is provided by the COUNTY Representative.

20 7. Assist the COUNTY in evaluating the base bids and alternate bid items received.

21 8. Delete or otherwise change portions of the construction work at the request of the  
22 COUNTY if the lowest responsible and responsive bid proposal for the proposed construction bid  
23 package exceeds the COUNTY approved opinion of probable construction cost (including  
24 CONSULTANT's design contingency amount approved by the COUNTY) by 10% or more, and if  
25 the COUNTY rejects all bids. In such event, the CONSULTANT shall revise the plans and  
26 specifications to comply with such modifications and also shall assist the COUNTY in obtaining

1 new bid proposals from contractors, all at no additional cost to the COUNTY. Such modifications  
2 shall be completed on a time schedule commensurate with the scope of the change and as set forth  
3 by the COUNTY.

4 9. Upon completion of bidding and at the request of the COUNTY, the  
5 CONSULTANT shall prepare at no additional cost to the COUNTY, a conformed set of  
6 construction documents that incorporate all addenda issued during bidding. The conformed set of  
7 construction documents shall be the final set of documents the building permit is issued for and the  
8 official set of documents the Construction Contractor uses for construction.

9 10. Not proceed with the next Phase unless expressly authorized by the COUNTY in  
10 writing.

11 G. Construction Observation Phase

12 The CONSULTANT shall:

13 1. Attend the preconstruction conference scheduled by the COUNTY.

14 2. Provide construction observation including, but not limited to:

15 a. Make recommendations to the COUNTY on all claims of the COUNTY or  
16 Construction Contractor (hereinafter called "the CONTRACTOR") and all other matters relating to  
17 the execution and progress of work, including interpretation of the CONSULTANT's contract  
18 documents.

19 b. Except for color boards, within an average of seven (7) working days of  
20 COUNTY's request, review and make recommendations for samples, schedules, shop drawings,  
21 and other submissions for general conformance with the design concept of the Project and for  
22 general compliance with the plans and specifications and information given by the  
23 CONSULTANT's contract documents. Exceptions to the aforesaid review period may include  
24 shop drawing submittals for:

25 (1) Structural steel.

26 (2) Substitutions of materials.

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- (3) Hardware
- (4) Windows, frames and stops
- (5) Doors and frames
- (6) Exterior cladding.
- (7) Window walls.
- (8) Security electronics
- (9) Those submittals involving more than one division of the technical specifications.

(10) Submittals requiring review by multiple specialty disciplines (i.e., by more than one of CONSULTANT's subconsultants).

c. CONSULTANT, the CONTRACTOR, the COUNTY's Project/Construction Manager and COUNTY Representative shall meet within thirty (30) calendar days after award of the construction contract to determine and establish priority schedules for CONSULTANT's reviews and approvals of submittals and shop drawings in order to maintain the CONTRACTOR's construction schedule.

d. Within two (2) working days of receipt or electronic acknowledgment of COUNTY's written Request For Information (RFI), respond to the Project/Construction Manager or designee, through the COUNTY Construction Engineer or designee, with information and/or drawings needed from CONSULTANT in order to clarify the intent of the construction contract plans and specifications of the Project. If unable to provide an appropriate or complete response within the designated time due to the nature or scope of the Request For Information (RFI), or due to the involvement of multiple sub-consultants, CONSULTANT shall so advise the COUNTY Construction Engineer or designee within the required two (2) day period and provide an estimate of the time required for the necessary response. CONSULTANT as well as Project/Construction Manager, shall review CONTRACTOR's cost proposals for all change orders associated with any additional work as may be necessitated by the RFI clarification.

1 e. Recommend and assist in the preparation of such change orders as are deemed  
2 necessary, with supporting documentation, calculations and opinions of probable construction cost,  
3 for review and issuance of change orders by the COUNTY Construction Engineer to obtain  
4 appropriate agency acceptance and approval.

5 3. Notwithstanding the foregoing, where the change order arises as a result of a  
6 negligent error or omission of the CONSULTANT, the CONSULTANT shall not be compensated  
7 as an Extra Service for time spent or cost incurred in efforts connected with the correction thereof.  
8 The costs of rework of installed work caused by the CONSULTANT's negligent errors or  
9 omissions shall be assessed against and deducted from the CONSULTANT's contract payments.

10 4. Any changes to the construction contract shall be made only with written COUNTY  
11 approval in the form of a Construction Change Order.

12 5. Assist COUNTY, but only upon COUNTY's express, written authorization, with  
13 any claim resolution process involving CONTRACTOR and COUNTY as specified hereunder,  
14 including serving as a witness in connection with any public hearings or legal proceeding,  
15 including dispute resolutions required by law or hereunder. The parties recognize that this clause  
16 is provided as a means of expediting resolution of claims among the CONTRACTOR, COUNTY,  
17 and CONSULTANT. However, it is understood the CONTRACTOR is not an intended third party  
18 beneficiary of this clause. Compensation for these services under this Article III, Section G,  
19 Paragraph 5, shall be provided under the Extra Services provisions of Article V, Section C of this  
20 Agreement and shall be computed and invoiced at hourly rates, not to exceed CONSULTANT's  
21 normal and customary hourly rates for such services, to be negotiated with COUNTY at the time  
22 COUNTY authorizes these services, subject to the following:

23 a. COUNTY may believe that CONSULTANT's work under this Agreement is  
24 connected with negligent errors, omissions, or problems related to a claim. As a result and upon  
25 notice of same by COUNTY, CONSULTANT's payment request for such Extra Services shall be  
26 held in suspense by COUNTY until final determination is made, either in accordance with Article

1 IX ("Errors or Omissions Claims and Disputes") of this Agreement or by a court of law, of the  
2 proportion that CONSULTANT's fault bears to the fault of all other parties concerned.

3 b. Such amounts held in suspense shall not be paid to CONSULTANT, pending  
4 the final determination as to the CONSULTANT's proportional fault. However, the appropriate  
5 percentage of such amount held in suspense shall be paid to CONSULTANT, once a final  
6 determination has been made, whether pursuant to Article IX ("Errors or Omissions Claims and  
7 Disputes") of this Agreement or by a court of law, when CONSULTANT thereafter submits a  
8 proper invoice to COUNTY Department of Public Works and Planning, which then shall have a  
9 maximum of five (5) working days to evaluate and approve the invoice before submitting it to the  
10 COUNTY Auditor-Controller/Treasurer-Tax Collector, who then shall have an additional forty  
11 (40) calendar days from receipt of invoice to issue payment.

12 6. At intervals appropriate to the stage of construction, or as otherwise deemed  
13 necessary by CONSULTANT, visit the site of the Project as necessary to become generally  
14 familiar with the progress and quality of the work and to determine that the work is proceeding in  
15 general accordance with the contract documents. CONSULTANT shall not be required to make  
16 exhaustive or continuous on-site inspections but shall give direction to the Project/Construction  
17 Manager as hereinafter more specifically provided. CONSULTANT shall not be responsible for  
18 the CONTRACTOR's failure to carry out the construction work in accordance with the contract  
19 documents, however, CONSULTANT shall immediately advise the COUNTY Representative in  
20 writing of any known or observed deviation from the contract documents. CONSULTANT shall  
21 not have control over or charge of, and shall not be responsible for construction means, methods,  
22 techniques, sequence, or procedure, or for the safety precautions, programs, or equipment in use in  
23 connection with the work, since those matters are the CONTRACTOR's responsibility under its  
24 separate contract for construction of the Project.

25 7. Based on the CONSULTANT's visits to the site, CONSULTANT shall keep the  
26 COUNTY informed through written reports as to the progress of the work, shall endeavor to

1 advise the COUNTY of defects and deficiencies observed in the work.

2 8. Based upon the CONSULTANT's observations of the progress of construction and  
3 the CONTRACTOR's application for payment, and the Project/Construction Manager's  
4 recommendation, CONSULTANT shall assist the Project/Construction Manager in determining,  
5 on a monthly basis, the amount owing to the CONTRACTOR under the contract documents and  
6 shall recommend, through appropriate certificates, payments on such amounts. Such certificates  
7 shall constitute a representation to the COUNTY that the work has progressed to the point  
8 indicated and that to the best of the CONSULTANT's knowledge, information and belief, the  
9 quality of the work is in accordance with the contract documents.

10 9. Conduct site visits which shall include but not be limited to on-site inspections to  
11 determine, in coordination with the Project/Construction Manager, the date(s) of completion and to  
12 recommend to the COUNTY its acceptance of the work, for the filing of the notice of completion  
13 and issuance of final certificate for payment.

14 H. Project Completion Services Phase

15 The CONSULTANT shall:

16 1. Review and forward to the COUNTY four (4) hard copies and one (1) electronic  
17 copy on compact disc (CD-ROM) or flash/thumb drive of Operations and Maintenance Manuals to  
18 be furnished by the CONTRACTOR.

19 2. Inform the COUNTY of all written guarantees required of the CONTRACTOR by  
20 the CONSULTANT's technical specifications or special conditions.

21 3. Return to COUNTY all plans and other documents loaned to the CONSULTANT  
22 by COUNTY.

23 4. Require through the construction contract specifications that "As Built" drawings  
24 be prepared by the CONTRACTOR and submitted to the COUNTY for acceptance by the  
25 Project/Construction Manager and CONSULTANT. However, upon completion of the Project,  
26 CONSULTANT shall transfer the CONTRACTOR's "As Built" drawing changes onto the

1 CONSULTANT's original electronic files and provide the COUNTY with complete record  
2 drawings files of the Project in an electronic format on compact disc (CD-ROM) or flash/thumb  
3 drive. The complete record drawing set shall remain at all times the property of the COUNTY.  
4 Changes shall identify date of change and its source, such as from addenda, change order, or  
5 clarification. CONSULTANT shall have no responsibility for the accuracy of information  
6 provided, either by the CONTRACTOR or by the Project/Construction Manager, for transfer to  
7 record drawings.

8 5. If construction plans have been prepared with a CAD system, record drawings in  
9 the form of .dxf or .dwg files and plot files shall be furnished and delivered to Department of  
10 Public Works and Planning. Such .dxf or .dwg files shall be furnished on a compact disk (CD-  
11 ROM) or flash/thumb drive.

12 6. Participate fully, aligned with and not adverse to the interests of the COUNTY,  
13 upon request, in the early settlement discussions of construction claims resolution issues. In the  
14 event such participation is requested of CONSULTANT, CONSULTANT shall be paid for such  
15 services as provided under the Extra Services provisions under Article V, Section C. of this  
16 Agreement for the time spent in such participation. All provisions of Article III, Section G,  
17 Paragraph 5, of this Agreement shall apply to CONSULTANT's participation in any early  
18 settlement discussions required by this Section. Participation in this process does not preclude the  
19 COUNTY's right to make a negligent error and omissions claim against the CONSULTANT.

20 7. No final payment to the CONSULTANT will be issued until the services of this  
21 Phase have been fully performed and negligent errors, acts and omissions attributed to the  
22 CONSULTANT have been resolved.

23 **IV. COUNTY'S OBLIGATIONS:**

24 The COUNTY will:

25 A. Compensate the CONSULTANT as provided in this Agreement.

26 B. Provide a "COUNTY Representative" who will represent the COUNTY and who will



1 work with the CONSULTANT in carrying out the provisions of this Agreement. The COUNTY  
2 Representative will be the COUNTY Capital Projects Division Manager or his/her designated  
3 representative through award of the construction contract and the COUNTY Construction  
4 Engineer after award of the construction contract and through completion of construction work by  
5 the CONTRACTOR. The CONSULTANT shall communicate and coordinate with the COUNTY  
6 Representative who will provide the following services:

7 1. Prepare the title sheet for each of the Project's plans.  
8 2. Loan or provide copies of any available building plans to the CONSULTANT.  
9 3. Provide prints, if available, of the construction plans, calculations, and reports  
10 prepared to evaluate the buildings. Documents shall be consigned to the CONSULTANT and  
11 shall be returned to the COUNTY upon request or Project completion. The return by  
12 CONSULTANT of all loaned documents is mandatory. Final payment shall not be made to  
13 CONSULTANT until all loaned documents are either accounted for or returned.

14 4. Process the Site Plan Review application with CONSULTANT-supplied site and  
15 floor plans, elevations, landscape and irrigation plans, operational statement, and staffing  
16 requirements.

17 5. Pay all local required plan check and Project review fees.

18 6. Examine documents submitted to the COUNTY by the CONSULTANT and timely  
19 render decisions pertaining thereto.

20 7. Provide communication between the CONSULTANT and COUNTY officials and  
21 commissions (including user Departments).

22 8. Provide the CONSULTANT with the form of contract to be entered into between  
23 the COUNTY and CONTRACTOR, including the COUNTY's General Conditions, Notice To  
24 Contractors calling for bids, Bid Form, and related COUNTY documents.

25 9. Pay for the reproduction costs of printing the final bidding and construction  
26 documents.

1           10. Retain, when required, an independent testing laboratory to provide necessary soils,  
2 structural, chemical, mechanical, air balance, electrical or other tests and reports as may be  
3 required to assure quality control and construction compliance with the plans and specifications.  
4 COUNTY may elect, at its option, to assign this task to CONSULTANT as an Extra Service under  
5 Article V Section C. The COUNTY shall provide all telephone and communications wiring,  
6 including computer network systems, television, fiber-optic cabling.

7           11. Transmit documents for other agency reviews and pay all application and review  
8 processing costs.

9           C. Give reasonably prompt consideration to all matters submitted by the CONSULTANT  
10 for approval to the end that there will be no substantial delays in the CONSULTANT's program of  
11 work. An approval, authorization or request to the CONSULTANT given by the COUNTY will  
12 be binding upon the COUNTY under the terms of this Agreement only if it is made in writing and  
13 signed on behalf of the COUNTY by the COUNTY Representative or a designee.

14           D. Retain the Project/Construction Manager who shall assume primary responsibility for  
15 the performance of duties to achieve the successful completion of the Project; and who shall be the  
16 Inspector of Record (IOR) and the on-site representative of the COUNTY Construction Engineer  
17 responsible for coordinating the efforts of CONTRACTORS, Architects, Engineers, Inspectors,  
18 Testing Laboratories and other construction Project service providers, as well as coordinating and  
19 assuring proper approvals have been obtained for all contract change order work. The  
20 Project/Construction Manager shall be the primary responsible party for the value engineering  
21 reviews scheduled to occur during the Design Development phase, the Constructability and  
22 Coordination reviews scheduled to occur during the Construction Documents phase, and the  
23 Project construction timeline and overall sequencing of the work. The COUNTY and the  
24 Project/Construction Manager may agree to additional responsibilities between them that are  
25 appropriate for the development of the Project.

26

1 **V. COMPENSATION:**

2 **A. Total Fee:**

3 1. Notwithstanding any other provisions in this Agreement, the Total Fee (Basic Fee  
4 and Extra Services Allocation) for the services required under this Agreement shall not exceed a  
5 total amount of \$7,326,400.

6 **B. Basic Fee:**

7 1. Notwithstanding any other provisions in this Agreement, the Basic Fee for the  
8 services required under Article III shall be a total sum of (\$5,924,000) computed on an estimated  
9 construction budget of \$65,418,181.

10 2. Within the Basic Fee limitation described in Article V, Section B.1 above, the Basic  
11 Fee for each Phase of the Project shall be divided as follows for purposes of payment scheduling.

	Percent	Cost
13 Phase 1 – Pre Design/Programming	2%	\$118,480.00
14 Phase 2 – Schematic Design	5%	\$296,200.00
15 Phase 3 – Design Development	20%	\$1,184,800.00
16 Phase 4 - Construction Documents	45%	\$2,665,800.00
17 Phase 5 – Bidding and Award	3%	\$177,720.00
18 Phase 6 – Construction Observation	20%	\$1,184,800.00
19 Phase 7 – Project Completion	5%	\$296,200.00
20 Total	100%	\$5,924,000.00

21 3. All expenses incidental to CONSULTANT's performance of services under Article  
22 III of this Agreement shall be borne by CONSULTANT and included in the Basic Fee. Incidental  
23 expenses include, but may not be limited to, transportation and travel, postage and courier services,  
24 photo and duplicating services, telephone and facsimile charges, computer usage and storage  
25 media, drawing and plotting media, printing of "check print" plans and plan sets and documents  
26 specifically required by the provisions of Article III of this Agreement.

1           4. If the Project is delayed for reasons beyond the control of either the COUNTY or  
2 the CONSULTANT, and such delay continues for a period of more than twelve (12) months  
3 before work on the Project is resumed, then COUNTY may, at its option, and in the sole discretion  
4 of its Board of Supervisors, consider said delay and the costs associated with CONSULTANT's  
5 work effort in suspension and subsequent resumption of performance of services as a consideration  
6 for adjustment of the Basic Fee.

7           C. Extra Services:

8           1. There will be an additional maximum allocation of \$1,402,400 to pay for authorized  
9 Extra Services. Payment of Extra Services in excess of (\$1,402,400) is unauthorized and can only  
10 be made pursuant to a prior written amendment to this Agreement. The COUNTY Representative  
11 shall have the discretion to adjust in writing the Basic Fee and Extra Services limits as long as the  
12 total Agreement amount is not exceeded.

13           2. The CONSULTANT shall not undertake any Extra Services without the advance  
14 authorization of the COUNTY Representative. The CONSULTANT and the COUNTY shall  
15 expressly confirm in writing the authorization and maximum cost for any such services before the  
16 CONSULTANT is compensated for any work thereon. CONSULTANT shall not add markup  
17 percentages or costs to subconsultant's costs or incidental costs unless expressly authorized in  
18 writing by the COUNTY.

19           3. Payment for Extra Services will be at the hourly and cost rates set forth in Exhibit A  
20 attached hereto and incorporated herein. The rates listed in Exhibit A herein are to remain in effect  
21 for the duration of this Agreement. Rates may be renegotiated annually after the first anniversary  
22 from the date of execution of this Agreement at CONSULTANT's request. CONSULTANT's  
23 request for annual rate adjustment shall correspond with the Engineering News Record's  
24 Construction Cost Index or the California Consumer Price Index.

25           4. All expenses incidental to CONSULTANT's performance of Extra Services under  
26 this Agreement shall be borne by CONSULTANT. Incidental expenses include, but may not be

1 limited to, transportation and travel, postage and courier services, photo and duplicating services,  
2 telephone and facsimile charges, computer storage media, and documents specifically required by  
3 the provisions of this Agreement.

4 5. The following are consultant services, which are considered as not included in  
5 Article III herein, but may be required as Extra Services.

6 a. Prepare presentation quality site and floor plans, exterior elevations and aerial  
7 view perspective rendering of the West Annex Jail and Laundry and Storage Building reflecting  
8 anticipated development of the Project as of the year 2019 plus two interior renderings.

9 b. Submit and review with the COUNTY twenty (20) copies of the final schematic  
10 design. The twenty (20) copies shall be submitted to the COUNTY seven (7) calendar days prior to  
11 the Board of Supervisors meeting.

12 c. Providing construction observation services when construction exceeds thirty  
13 (30) days beyond the original construction and post construction contract periods which has been  
14 established at (Number of months), as adjusted for weather delays and as adjusted for delays by  
15 CONSULTANT-caused change orders, negligent errors, or acts or omissions.

16 d. Conveying or transmitting construction documents for other agencies' approval  
17 when the CONSULTANT is granted prior authorization by the COUNTY.

18 e. Making changes to documents, which are ordered by the COUNTY subsequent  
19 to COUNTY approval thereof.

20 f. Preparing change orders when the Project scope is changed on the basis of  
21 COUNTY-initiated requests, and such changes are not a result of negligent errors, acts, or  
22 omissions by the CONSULTANT.

23 g. If necessary, advising and assisting the COUNTY with respect to any settlement  
24 or litigation arising out of any failure of the CONTRACTOR to fully perform the construction  
25 contract in accordance with the contract documents.

26 h. Performing a visual inspection, within one year following the date of

1 completion (if requested by the COUNTY), and reporting in writing on detectable defects in  
2 workmanship or material.

3 i. Providing site surveys.

4 j. Preparation of geotechnical soils report with foundation design review.

5 k. Providing interior design services.

6 l. Providing computer network design and PBX/telephone system specifications  
7 and design.

8 m. Providing analysis or reviews of COUNTY initiated changes or substitutions  
9 during the Construction Phase.

10 n. Providing multiple reviews in excess of two (2) for specified submittal items  
11 due to incompleteness or non-compliance with contract requirements. CONTRACTOR is  
12 responsible for preparing complete submittals in compliance with contract requirements.

13 o. Providing the design for co-generation, thermal storage and life-cycle cost  
14 analysis of systems as requested by the COUNTY except as identified in Article III.

15 p. Energy studies for co-generation, thermal storage and life-cycle cost analysis of  
16 systems as requested by the COUNTY, except as identified in Article III.

17 q. Traffic Studies --- Phase specific Traffic Impact Study (TIS) for future  
18 development and turn lane design.

19 r. Providing unforeseen, extraordinary, or unique services or items not covered  
20 nor normally included in the Basic Fee, but authorized by the COUNTY Representative.

21 s. If requested by COUNTY, as provided for in Article IV, Section B, Paragraph  
22 10, to retain, when required for the Project, an independent testing laboratory to provide necessary  
23 soils, chemical, structural, mechanical, air balance, electrical or other tests and reports as may be  
24 necessary to assure quality control and construction compliance with the plans and specifications.

25 t. Provide commissioning service for building systems.

26 u. COUNTY may direct that the demolition of the existing site structures be

1 accomplished as a separate construction contract. In such case, CONSULTANT's services in  
2 connection with the demolition and preparation of separate demolition documents, shall be an  
3 Extra Service under this Agreement.

4 v. Provide drawings and work necessary to delineate the COUNTY's additional  
5 changes in scope of the construction contract or to make modifications as directed by the Board of  
6 Supervisors, which shall be made as directed by the Construction Engineer.

7 w. Assist COUNTY, at COUNTY's express, written authorization, with any claim  
8 resolution process involving CONTRACTOR and COUNTY as specified hereunder, including  
9 serving as a witness in connection with any public hearings or legal proceeding, including dispute  
10 resolutions required by law or hereunder. The parties recognize that this clause is provided as a  
11 means of expediting resolution of claims among the CONTRACTOR, COUNTY, and  
12 CONSULTANT. However, it is understood the CONTRACTOR is not an intended third party  
13 beneficiary of this clause. Compensation for services provided under this Article V, Section C,  
14 Paragraph 5u, shall be paid in accordance with the Extra Services provisions of this Agreement  
15 and shall be computed and invoiced at hourly rates, not to exceed CONSULTANT's normal and  
16 customary hourly rates for such services, to be negotiated with COUNTY at the time COUNTY  
17 authorizes these services, subject to the following:

18 (1) COUNTY may believe that CONSULTANT's work under this Agreement is  
19 connected with negligent errors, omissions, or problems related to a claim. As a result and upon  
20 notice of same by COUNTY, CONSULTANT's payment request for such Extra Services shall be  
21 held in suspense by COUNTY until final determination is made, either in accordance with Article  
22 IX ("Errors or Omissions Claims and Disputes") of this Agreement or by a court of law, of the  
23 proportion that CONSULTANT's fault bears to the fault of all other parties concerned.

24 (2) Such amounts held in suspense shall not be paid to CONSULTANT,  
25 pending the final determination as to the CONSULTANT's proportional fault. However, the  
26 appropriate percentage of such amount held in suspense shall be paid to CONSULTANT, once a

1 final determination has been made, whether pursuant to Article IX ("Errors or Omissions Claims  
2 and Disputes") of this Agreement or by a court of law, when CONSULTANT thereafter submits a  
3 proper invoice to COUNTY Department of Public Works, which then shall have a maximum of  
4 five (5) working days to evaluate and approve the invoice before submitting it to the COUNTY  
5 Auditor-Controller/Treasurer-Tax Collector, who then shall have an additional forty (40) calendar  
6 days from receipt of invoice to issue payment.

7 x. Conduct a "Project shakedown" commissioning of all the building's  
8 mechanical, plumbing, electrical, security electronics, public address system, fire alarm, and other  
9 systems, and conduct a building maintenance staff orientation for the completed Project.

10 y. Providing those items under Article III which are identified as Extra Services.

11 6. If the CONSULTANT becomes aware of potential unforeseen expenses that would  
12 not be covered by the Basic Fee of this Agreement or for Extra Services as delineated in this  
13 Article V, Article C, CONSULTANT shall inform the COUNTY in writing of the extent and  
14 nature of such expenses or services. Upon mutual agreement of the CONSULTANT and the  
15 COUNTY, this Agreement may be amended in writing to cover such unforeseen expense or cost of  
16 Extra Service.

17 7. In the event the COUNTY Representative expressly authorizes Extra Services,  
18 CONSULTANT shall keep complete records showing the hours and description of activities  
19 worked by each person who works on the Project and all costs and charges applicable to the Extra  
20 Services work authorized. Should there be a claim for Extra Services, the CONSULTANT  
21 understands and agrees that he shall identify the activity, performer of the activity, reason for the  
22 activity, and COUNTY official requesting the activity, or the claim will be denied.  
23 CONSULTANT shall be responsible for all subconsultants keeping similar records. The  
24 CONSULTANT shall not stop the work, including the design in other areas unrelated to the Extra  
25 Services request or claim, unless it can be shown the Project design cannot proceed while a claim  
26 or request for Extra Services is being evaluated.



1           D. Payments:

2           1. Progress payments will be made by the COUNTY upon receipt of the  
3           CONSULTANT's monthly invoices and approval by COUNTY thereof based on the COUNTY's  
4           evaluation of the completion of the respective components of the consultant services provided for  
5           herein. Invoices shall clearly identify the phase of the work and shall be submitted with the  
6           documentation identified in Article V, Section D, Paragraph 5 below. CONSULTANT shall  
7           submit separate invoices for Extra Services, accompanied with copies of subconsultants' invoices  
8           and costs for approved incidentals.

9           a. Invoices shall be forwarded to:

10                   Stuart G. Seiden, Capital Projects Division Manager  
11                   Fresno County Department of Public Works and Planning  
12                   2220 Tulare Street, Suite 720  
13                   Fresno, CA 93721-2104

14           2. Upon receipt of a proper invoice, the COUNTY Department of Public Works and  
15           Planning will take a maximum of five (5) working days to review, approve, and submit it to the  
16           COUNTY Auditor-Controller/Treasurer-Tax Collector. Unsatisfactory or inaccurate invoices will  
17           be returned to the CONSULTANT for correction and resubmittal. Payment, less retention, will be  
18           issued to CONSULTANT within forty (40) calendar days of the date the  
19           Auditor-Controller/Treasurer-Tax Collector receives the approved invoice.

20           3. COUNTY is entitled to and shall withhold a five percent (5%) retention from the  
21           earned compensation in accordance with the provisions of Article VII of this Agreement.

22           4. An unresolved dispute over a possible negligent error or omission may cause  
23           payment of CONSULTANT fees in the disputed amount to be withheld by the COUNTY if just  
24           cause exists.

25           5. Concurrently with the invoices, the CONSULTANT shall provide its certification  
26           acceptable to the COUNTY, and shall provide, on COUNTY request, copies of issued checks,

1 receipts, or other COUNTY pre-approved documentation, that complete payment, less a five  
2 percent (5%) retention, has been made by CONSULTANT to all subconsultants as provided herein  
3 for all previous invoices paid by the COUNTY, and that CONSULTANT has complied with state  
4 wage and work hour laws and regulations. However, the parties do not intend that the foregoing  
5 creates in any subconsultant or subcontractor a third party beneficiary status or third party  
6 beneficiary rights, and expressly disclaim any such status or rights.

7 6. Final invoice, and separate invoice for retentions, shall be submitted to COUNTY  
8 no later than thirty (30) days after the Project is completed. The CONSULTANT shall provide its  
9 certification and unconditional lien release acceptable to the COUNTY that all subconsultants have  
10 received full payment for services rendered on the Project. Final payment of retentions shall not  
11 be made until all post-construction services are completed, including but not limited to record  
12 drawings approval, operation and maintenance manual review, and furnishing of required reports.

13 7. In the event the COUNTY reduces the scope of the Project, the CONSULTANT  
14 will be compensated on a pro rata basis for actual work completed and accepted by the COUNTY  
15 in accordance with the terms of this Agreement.

## 16 VI. COMPENSATION RECORDS

17 The CONSULTANT shall keep complete records showing the hours and description of  
18 activities performed by each person who works on the Project and all associated costs or charges  
19 applicable to work covered by the Basic Fee and approved Extra Services. The CONSULTANT  
20 additionally shall be responsible for all sub-consultants keeping similar records. The  
21 CONSULTANT shall maintain all such records for a period of three (3) years following final  
22 payment under this Agreement, consistent with the provisions of Article VIII, Section C.

## 23 VII. RETENTION FROM EARNED COMPENSATION:

24 A. In addition to any amounts withheld under Article III, COUNTY is entitled to and shall  
25 withhold five percent (5%) retention from the earned compensation of the CONSULTANT. Such  
26 retention from earned compensation shall be applied to all phases of the consultant services to be

1 provided under this Agreement, including those phases completed and Extra Services.

2 B. At the request and expense of the CONSULTANT, securities equivalent to the amount  
3 withheld shall be deposited with the COUNTY or with a state or federally chartered bank in  
4 California as the escrow agent, in accordance with Section 22300 of the California Public Contract  
5 Code, attached hereto as Exhibit B and incorporated herein, which provides for the substitution of  
6 securities for any moneys withheld by a public agency to ensure performance under a contract. If  
7 such request is made by the CONSULTANT, the escrow agreement shall be prepared by  
8 CONSULTANT in compliance with the above-referenced statute and it may be executed by the  
9 Director of the Department of Public Works and Planning.

10 **VIII. AUDITS, ACCOUNTING AND INSPECTIONS ACCESS:**

11 A. The CONSULTANT shall use established accounting and bookkeeping practices,  
12 including but not limited to, employee time cards, payroll, and other records of transactions, in  
13 order to ensure appropriate documentation for all payments made hereunder, including those made  
14 from State and Federal funds.

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

22 C. The CONSULTANT shall be subject to the examination and audit of the Auditor  
23 General for a period of three (3) years after final payment under this Agreement (Government  
24 Code Section 8546.7)

25 **IX. ERRORS or OMISSION CLAIMS and DISPUTES**

26 A. Definitions

1           1. "Consultant" is a duly licensed Architect or Engineer, or other provider of  
2 professional services, acting as a business entity (owner, partnership, corporation, joint venture or  
3 other business association) in accordance with the terms of an Agreement with the COUNTY.

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

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

15           1. Claims, disputes or other matters in question between the parties, arising out of or  
16 relating to this Agreement, shall not be subject to arbitration, but shall be subject to the following  
17 procedures.

18           2. COUNTY shall notify CONSULTANT in writing within thirty (30) days of  
19 discovery of any claims for negligent errors, acts or omissions relating to CONSULTANT's  
20 professional services.

21           3. The Capital Projects Division Manager, Construction Engineer or their  
22 representative and CONSULTANT shall meet and confer and attempt to reach agreement on any  
23 dispute, including what damages have occurred, the measure of damages and what proportion of  
24 damages, if any, shall be paid by either party. The parties agree to consult and consider the use of  
25 third party mediation or other form of dispute resolution prior to resorting to litigation.

26           4. If the COUNTY and CONSULTANT cannot reach agreement under Article IX,

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

14 5. Upon receipt of the panel's recommended resolution of the disputed issues, the  
15 COUNTY and the CONSULTANT shall again meet and confer and attempt to reach agreement. If  
16 the parties still are unable to reach agreement, each party shall have recourse to all appropriate  
17 legal and equitable remedies.

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

20 D. The CONSULTANT shall continue to perform its obligations under this Agreement  
21 pending resolution of any dispute, and the COUNTY shall continue to make payments of all  
22 undisputed amounts due under this Agreement.

23 E. When a claim by either party has been made alleging the CONSULTANT's negligent  
24 error, act, or omission, the COUNTY Project Manager and the CONSULTANT shall meet and  
25 confer within twenty-one (21) days after the written notice of the claim has been provided.  
26

1     **X.     JOINDER OF PARTIES**

2             The CONSULTANT, the CONSULTANT's consultants of any tier, subcontractors of any  
3 tier, suppliers and construction lenders shall all be bound by the dispute resolution provisions of  
4 this Agreement, and immediately upon demand of COUNTY or CONSULTANT, shall participate  
5 in and shall become parties to the dispute resolution process, provided they have signed any  
6 document that incorporates or refers to the dispute resolution provisions of this Agreement.  
7 Failure, whether intended or inadvertent of CONSULTANT, to ensure that such nonparties have  
8 signed such a document shall inure only to CONSULTANT's detriment, if any there be.  
9 COUNTY shall not suffer a detriment by CONSULTANT's action or inaction in this regard. If  
10 such a party after due notice fails to appear at and participate in the dispute resolution proceedings,  
11 the panel established in accordance with the provisions of Article IX, Section B, Paragraph 4, shall  
12 make a decision based on evidence introduced by the party or parties who do participate.

13     **XI.    CONSULTANT'S OBLIGATIONS RELATING TO CONSTRUCTION CLAIMS**

14             A. The CONSULTANT will review and analyze construction contract claims and  
15 recommend resolution of them as soon as possible following receipt of demand by COUNTY.

16             B. Within a reasonable time after receipt of a claim, the CONSULTANT shall provide a  
17 written analysis of the claim to the COUNTY, signed by the CONSULTANT and any affected  
18 sub-consultants. The written analysis shall include the CONSULTANT's professional opinion of  
19 the responsibility for payment of the claim, with supporting facts and documentation. A copy of  
20 the written analysis shall be provided to the respective insurance adjusters for CONSULTANT and  
21 any affected sub-consultant.

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

- 24                 1. Request additional supporting data from the claimant, requiring that such data be  
25 supplied within ten (10) days of the request;
- 26                 2. Submit a schedule to the parties indicating when the CONSULTANT expects to

1                   respond to the claim, which schedule shall not exceed thirty (30) days from  
2                   CONSULTANT's original receipt of the claim;

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

5                   4. Recommend approval of the claim by the other party, or

6                   5. Suggest a compromise.

7                   D. In every case, resolution of a claim shall not exceed thirty (30) days from the original  
8                   receipt of claim, unless the CONSULTANT obtains COUNTY's prior written approval.

9                   **XII. INDEPENDENT CONTRACTOR:**

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

21                  B. Because of its status as an independent contractor, CONSULTANT shall have  
22                  absolutely no right to employment rights and benefits available to COUNTY employees.  
23                  CONSULTANT shall be solely liable and responsible for providing to, or on behalf of its  
24                  employees all legally-required employee benefits. In addition, CONSULTANT shall be solely  
25                  responsible and save COUNTY harmless from all matters relating to payment of  
26                  CONSULTANT's employees, including compliance with Social Security, withholding, and all

1 other regulations governing such matters. It is acknowledged that during the term of this  
2 Agreement CONSULTANT may be providing services to others unrelated to the COUNTY or to  
3 this Agreement.

4 **XIII. PARTIES BOUND BY AGREEMENT:**

5 This Agreement shall be binding upon the COUNTY, the CONSULTANT, and their  
6 successors in interest, legal representatives, executors, administrators, and assigns with respect to  
7 all covenants as set forth herein.

8 **XIV. REQUIRED APPROVALS:**

9 It is understood that the CONSULTANT shall not assign, sublet, subcontract, or transfer  
10 any of CONSULTANT's rights, duties, or obligations under this Agreement, without the prior  
11 express, written consent of the COUNTY. Except as provided in Article I, Section B, such consent  
12 and approval may be given only by the COUNTY Board of Supervisors.

13 **XV. COMPLIANCE WITH LAWS:**

14 CONSULTANT shall comply with all applicable federal, state, and local laws, ordinances,  
15 regulations, and Fresno County Charter Provisions in effect at the time of CONSULTANT's  
16 performance of the professional services to be provided hereunder.

17 **XVI. GOVERNING LAW:**

18 A. Any controversy or claim arising out of or relating to this Agreement which cannot be  
19 amicably settled without court action shall be litigated either in a state court for Fresno County,  
20 California, or in the U.S. District Court for the Eastern District of California, located in Fresno  
21 County.

22 B. The rights and obligations of the parties and all interpretations and performance of this  
23 Agreement shall be governed in all respects by the laws of the State of California.

24 **XVII. AMENDMENTS:**

25 Any changes to this Agreement requested either by the COUNTY or CONSULTANT may  
26 only be effected if mutually agreed upon in writing by duly authorized representatives of the



1 parties hereto. This Agreement shall not be modified or amended, nor shall any rights of a party  
2 hereto be waived, except by such a writing.

3 **XVIII. CONSULTANT'S LEGAL AUTHORITY:**

4 Each individual executing this Agreement on behalf of CONSULTANT hereby covenants,  
5 warrants, and represents: (i) that he or she is duly authorized to execute or attest and deliver this  
6 Agreement on behalf of such corporation in accordance with a duly adopted resolution of the  
7 corporation's board of directors and in accordance with such corporation's articles of incorporation  
8 or charter and bylaws; (ii) that this Agreement is binding upon such corporation; and (iii) that  
9 CONSULTANT is a duly organized and legally existing corporation in good standing in the State  
10 of California.

11 **XIX. HOLD HARMLESS**

12 A. CONSULTANT shall hold harmless and indemnify the COUNTY and the  
13 Project/Construction Manager, and their respective officers, agents, and employees, against the  
14 payment of any and all costs and expenses (including reasonable attorney fees and court costs),  
15 damages, claims, suits, losses, and liability for bodily and personal injury to or death of any person  
16 or for loss of any property to the extent caused by the negligent or wrongful acts, errors or  
17 omissions of CONSULTANT, its officers, agents, and employees, in performing or failing to  
18 perform any work, services, or functions under this Agreement.

19 B. COUNTY and CONSULTANT hereby declare their mutual intent to cooperate in the  
20 defense of any claim, suit, or other action alleging liability, arising from the negligent performance  
21 or failure to perform of any COUNTY contractor or subcontractor in the Project. Such  
22 cooperation may include an agreement to prepare and present a cooperative defense after  
23 consultation with CONSULTANT's professional liability insurance carrier.

24 **XX. LIABILITY INSURANCE:**

25 A. Prior to commencing the duties under the Agreement with the COUNTY, the  
26 CONSULTANT shall furnish the COUNTY, at no additional cost to the COUNTY, certificates for

1 the following insurance policies which shall be kept in force during the term of the Agreement  
2 (i.e., until the Agreement is terminated or it expires), and for such additional time as may be  
3 specified herein with respect to a particular type of policy.

4 1. Commercial General Liability Insurance naming the COUNTY and the  
5 Project/Construction Manager as an additional insured, with limits of not less than \$1,000,000 per  
6 occurrence, with an annual aggregate of not less than 2,000,000.

7 2. Comprehensive Automobile Liability Insurance with limits for bodily injury of not  
8 less than \$250,000 per person, \$500,000 per accident and for property damages of  
9 not less than \$50,000, or such coverage with a combined single limit of \$500,000.

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

11 4. Project Specific Professional Liability Insurance Policy:

12 a. In the minimum amount of at least \$5,000,000.00 coverage per claim, with an  
13 annual aggregate of at least \$10,000,000.00 and with a deductible not to exceed \$50,000.  
14 Provided, however, that it is the COUNTY's established policy that a deductible greater than  
15 \$50,000.00 will be accepted, but only upon the COUNTY receiving satisfactory, certified  
16 information of the CONSULTANT's ability to support such a deductible, and that the financial  
17 ability to support the difference between the \$50,000.00 and greater deductible amount requested  
18 by CONSULTANT shall be guaranteed by any of the following:

19 (1) Cash deposit with a trustee bank.

20 (2) Irrevocable letter of credit issued by a bank for a period sufficient for the  
21 COUNTY to determine if there is a claim to be made against the CONSULTANT, e.g. six months  
22 after termination of Agreement.

23 (3) Withholding payment under terms of the Agreement for the same period as  
24 under Article V Section D Paragraph 6 herein.

25 For purposes of this Agreement, the CONSULTANT has requested a deductible of  
26

1 \$250,000, with \$200,000 thereof to be secured by an irrevocable letter of credit in favor of  
2 COUNTY to be issued by Great Western Bank of Omaha, Nebraska, which shall be accepted if  
3 presented in form acceptable to COUNTY and in accordance with the requirements specified  
4 above.

5 b. CONSULTANT and subconsultants shall make full disclosure, in writing to the  
6 COUNTY, of all pending and open claims and disputes during the course of this Agreement that  
7 affect the specified aggregate limits of the Project Specific Professional Liability Insurance policy.

8 c. The Project Specific Professional Liability Insurance policy shall extend for a  
9 minimum of three (3) years past the date of final payment to CONSULTANT, including the  
10 resolution of all claims, disputes, and matters in question regarding the Project.

11 d. In the event that CONSULTANT voluntarily changes, or involuntarily changes,  
12 due to circumstances beyond its control, its Project Specific Professional Liability Insurance policy  
13 carrier during the course of this Agreement, such new policy shall include prior acts coverage  
14 retroactive, at least, to the date of execution of this Agreement. CONSULTANT may, at its option  
15 and expense, purchase supplemental or "tail" coverage from the former policy carrier, negotiate a  
16 retroactive reporting date with the new policy carrier for claims incurred but not reported as of the  
17 date of change in policy carrier, and shall in any event maintain Project Specific Professional  
18 Liability Insurance policy in a manner that provides continuous coverage to the COUNTY  
19 throughout the term of this Agreement, and for a period of three (3) years past the issuance of final  
20 payment to the CONSULTANT.

21 e. The CONSULTANT shall provide Project Specific Professional Liability  
22 Insurance policy for itself and all sub-consultants for this Project, extending from the approval of  
23 this Agreement by the COUNTY to three (3) years past the issuance of final payment hereunder to  
24 the CONSULTANT. This time period specifically includes that time required for the resolution of  
25 all claims and disputes.

26 f. The CONSULTANT shall provide a vicarious interest endorsement to its

1 Project Specific Professional Liability Insurance policy, indemnifying the COUNTY and the  
2 Project/Construction Manager for liabilities, damages and/or judgments, and reasonable attorney's  
3 fees and related costs (a) to the proportionate extent caused by the negligent errors, acts or  
4 omissions of CONSULTANT and (b) in excess of the deductible obligation and subject to all of  
5 the terms, conditions and exclusions of the Professional Liability Insurance policy.

6 B. All policies shall be with admitted insurers licensed to do business in the State of  
7 California. CONSULTANT shall give COUNTY at least thirty (30) days written advance notice  
8 of any expiration, cancellation or reduction in the coverage of any of the aforesaid policies.  
9 Insurance purchased shall be purchased from companies possessing a current A. M. Best, Inc.  
10 rating of B+ FSC VIII or better.

11 C. The COUNTY, its officers, agents and employees, individually and collectively, shall  
12 be named as an additional insured in Commercial General Liability Insurance or Comprehensive  
13 General Liability Insurance, but only insofar as the operations under this Agreement are  
14 concerned. Such coverage of COUNTY as additional insured shall apply as primary insurance and  
15 any other insurance, or self-insurance, maintained by the COUNTY, its officers, agents, and  
16 employees, shall be excess only and not contributing with insurance provided under the  
17 CONSULTANT's policies herein.

18 D. In the event CONSULTANT fails to keep in effect at all times insurance coverage as  
19 herein provided, the COUNTY may, in addition to other remedies it may have, suspend or  
20 terminate this Agreement upon the occurrence of such event.

21 **XXI. OWNERSHIP OF DOCUMENTS:**

22 A. CONSULTANT understands and agrees that COUNTY shall retain full ownership  
23 rights of the drawings and the work-product of CONSULTANT for the Project, to the fullest  
24 extent permitted by law. In this regard, CONSULTANT acknowledges and agrees that  
25 CONSULTANT's services are on behalf of COUNTY and are "works made for hire," as that term  
26 is defined in copyright law, by COUNTY; that the drawings and work-product to be prepared by

1 CONSULTANT are for the sole and exclusive use of COUNTY, and shall be the sole property of  
2 COUNTY and its assigns, and the COUNTY and its assigns shall be the sole owner of all patents,  
3 copyrights, trademarks, trade secrets and other rights and contractual interests in connection  
4 therewith which are developed and compensated solely under this Agreement; that all the rights,  
5 title, and interest in and to the drawings and work-product will be transferred to COUNTY by  
6 CONSULTANT to the extent CONSULTANT has an interest in and authority to convey such  
7 rights; and CONSULTANT will assist COUNTY to obtain and enforce patents, copyrights,  
8 trademarks, trade secrets, and other rights and contractual interests relating to said drawings and  
9 work-product; that COUNTY shall be and become the owner of such drawings and work product,  
10 free and clear of any claim by CONSULTANT or anyone claiming any right through  
11 CONSULTANT. CONSULTANT further acknowledges and agrees that COUNTY's ownership  
12 rights in such drawings and work product shall apply regardless of whether such drawings or work  
13 product, or any copies thereof, are in the possession of CONSULTANT, or any other person, firm,  
14 corporation, or entity. For the purpose of this Agreement the terms "drawings and work-product"  
15 shall mean all reports and study findings commissioned to develop the design of the Project,  
16 drawings and schematic or preliminary design documents of the Project, certified reproducibles of  
17 the original final construction contract drawings of the Project, specifications of the Project, the  
18 approved opinion of probable construction cost of the Project, record drawings of the Project,  
19 as-built plans of the Project, and discoveries, developments, designs, improvements, inventions,  
20 formulas, processes, techniques, or specific know-how and data generated or conceived or reduced  
21 to practice or learning by CONSULTANT, either alone or jointly with others, that result from the  
22 tasks assigned to CONSULTANT by COUNTY under this Agreement. COUNTY acknowledges  
23 and agrees that details, concepts, ideas, devices, configurations, and designs previously developed  
24 or used by CONSULTANT, or developed by CONSULTANT without COUNTY compensation,  
25 shall remain the property of CONSULTANT and use is granted to COUNTY only for the specific  
26 Project undertaken under this Agreement.

1 B. If the Agreement is terminated during or at the completion of the preliminary design  
2 under Article XXIII, a copy of the preliminary design documents shall be submitted by  
3 CONSULTANT to the COUNTY, which may use them to complete the Project in future phases.

4 C. If the Project is terminated at the completion of the construction document phase,  
5 electronic final BIM model and construction contract drawings (both .dwg and .plt files),  
6 specifications, and approved opinion of probable construction cost shall be submitted by  
7 CONSULTANT to COUNTY.

8 D. Electronic building models, documents, including drawings and specifications,  
9 prepared by CONSULTANT pursuant to this Agreement are not intended or represented to be  
10 suitable for reuse by COUNTY or others on extensions of the services provided for this Project or  
11 any other Project. Any use of completed documents for other Projects and/or any use of  
12 uncompleted documents will be at COUNTY's sole risk and without liability or legal exposure to  
13 CONSULTANT.

14 E. COUNTY has requested that CONSULTANT provide certain machine-readable  
15 information and data ("CADD data") under this Agreement. Such CADD data is more specifically  
16 described in Article III. CONSULTANT shall not be liable for claims, liabilities or losses arising  
17 out of, or connected with (1) the modification or misuse by COUNTY, or anyone authorized by  
18 COUNTY, of such CADD data; or (2) decline of accuracy or readability of CADD data due to  
19 inappropriate storage conditions or duration; or (3) any use by COUNTY, or anyone authorized by  
20 COUNTY, of such CAD data for additions to this Project or for the completion of this Project by  
21 others, or for other Projects.

22 **XXII. TIME OF COMPLETION:**

23 A. The parties hereto agree to the Project Schedule shown in Exhibit C, attached hereto  
24 and incorporated herein.

25 B. CONSULTANT shall diligently proceed with the agreed scope of services and shall  
26 provide such services in a timely manner. Failure of the CONSULTANT to meet any deadline

1 listed in the above-referenced schedules once such failure continues more than seven (7) calendar  
2 days past the specified completion date (unless the delay is attributable to the COUNTY or State),  
3 is sufficient cause to immediately terminate this Agreement, at the option of the COUNTY, in  
4 accordance with Article XXIII. Section C.

5 C. CONSULTANT shall complete all services required under this Agreement and this  
6 Agreement shall expire on December 31, 2019, unless it is extended in writing by the Director of  
7 Department of Public Works and Planning or his/her designee, or it is terminated earlier in  
8 accordance with the provisions of Article XXIII.

9 **XXIII. TERMINATION OF AGREEMENT:**

10 A. This Agreement may be terminated without cause at any time by the COUNTY upon  
11 thirty (30) calendar days' written notice. If the COUNTY terminates this Agreement, the  
12 CONSULTANT shall be compensated for services satisfactorily completed to the date of  
13 termination based upon the compensation rates and subject to the maximum amounts payable  
14 agreed to in Article V, together with such additional services satisfactorily performed after  
15 termination which are expressly authorized by the COUNTY Representative in order to conclude  
16 the work performed to date of termination.

17 B. If the CONSULTANT purports to terminate the Agreement or otherwise refuses to  
18 perform pursuant to the Agreement, for reasons other than material breach by the COUNTY, the  
19 CONSULTANT shall reimburse the COUNTY, up to a maximum of \$7,500.00 for the actual  
20 expense of issuing a Request For Proposal (RFP), engaging a new CONSULTANT, and the new  
21 CONSULTANT's cost in becoming familiar with the previous CONSULTANT's design in  
22 addition to any other legal or equitable remedy or expense available to the COUNTY.

23 C. The COUNTY may immediately suspend or terminate this Agreement in whole or in  
24 part, where in the determination of the COUNTY there is:

- 25 1. An illegal or improper use of funds;
- 26 2. A failure to comply with any term of this Agreement;

1           3. A substantially incorrect or incomplete report submitted to the COUNTY;

2           4. Improperly performed service.

3           D. In no event shall any payment by the COUNTY constitute a waiver by the COUNTY of  
4 any breach of this Agreement or any default which may then exist on the part of the  
5 CONSULTANT. Neither shall such payment impair or prejudice any remedy available to the  
6 COUNTY with respect to the breach or default. The COUNTY shall have the right to demand of  
7 the CONSULTANT the repayment to the COUNTY of any funds disbursed to the  
8 CONSULTANT under this Agreement, which, in the judgment of the COUNTY and as  
9 determined in accordance with the procedures of Article IX ("Errors or Omissions Claims and  
10 Disputes"), were not expended in accordance with the terms of this Agreement. The  
11 CONSULTANT shall promptly refund any such funds upon demand.

12           E. The terms of this Agreement, and the services to be provided thereunder, are contingent  
13 on the approval of funds by the appropriating government agency. Should sufficient funds not be  
14 allocated, the services provided may be modified, or this Agreement terminated at any time by  
15 giving the CONSULTANT thirty (30) calendar days' advance written notice.

16 **XXIV. CONFLICT OF INTEREST:**

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

21 **XXV. ENTIRE AGREEMENT:**

22           This Agreement constitutes the entire agreement between the COUNTY and the  
23 CONSULTANT with respect to the subject matter hereof and supersedes all previous negotiations,  
24 proposals, commitments, writings, advertisements, publications, and understandings of any nature  
25 whatsoever unless expressly included in this Agreement.

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**XXVI. SEVERABILITY:**

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

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1 IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as  
2 of the day and year first above written.

3 **CONSULTANT**

4 BY: *Darrell Stelling*  
5 TITLE: *Principal*  
6 Darrell Stelling, Principal,  
7 California Justice + Civic Sector Leader  
8 DLR Group Inc. of California  
9 1050 20<sup>th</sup> Street, Suite 250  
10 Sacramento, CA 95811  
11 Phone: 916.446.0206 Fax: 916.446.0894  
12 FEDERAL ID NO.

13 REVIEWED AND RECOMMENDED  
14 FOR APPROVAL

15 BY: *Alan Weaver*  
16 ALAN WEAVER, DIRECTOR  
17 DEPARTMENT OF PUBLIC WORKS  
18 and PLANNING

19 Budget Unit: 1910  
20 Account: 8150  
21 Program: 91000

22 SGS:jo  
23 1104\_WAJ Architectural Services\_Agreement.docx

- 24 Exhibit A: Hourly Rates and Subconsultants List  
25 Exhibit B: Public Contract Code Section 22330  
26 Exhibit C: Project Schedule  
Exhibit D: Conflict of Interest

**COUNTY OF FRESNO**

BY: *[Signature]*  
CHAIRMAN, BOARD OF SUPERVISORS

ATTEST:

BERNICE E. SEIDEL, Clerk  
Board of Supervisors

By: *[Signature]*  
Deputy

APPROVED AS TO LEGAL FORM  
DANIEL CEDERBORG, COUNTY  
COUNSEL

BY: *[Signature]*  
DEPUTY

APPROVED AS TO ACCOUNTING  
FORM  
VICKI CROW, C.P.A.  
AUDITOR-CONTROLLER/  
TREASURER-TAX COLLECTOR

BY: *[Signature]*  
DEPUTY