

ATTACHMENT A

CONSULTANT AGREEMENT

THIS AGREEMENT for specialized professional Environmental Consultant Services, hereinafter referred to as the "AGREEMENT," is made and entered into this \_\_\_\_ day of \_\_\_\_\_2020, by and between the COUNTY OF FRESNO, a political subdivision of the State of California, hereinafter referred to as the "COUNTY"; and \_\_\_\_\_, a California Corporation, whose address is \_\_\_\_\_, hereinafter referred to as the "CONSULTANT".

WITNESSETH

WHEREAS, the COUNTY desires to retain the CONSULTANT to provide on-call specialized professional environmental consulting services to assist COUNTY in complying with federal and state environmental laws, regulations and guidelines as necessary for road, bridge, landfill and capital improvement projects (hereinafter referred to as "PROJECT(S)") proposed by the COUNTY; and

WHEREAS, said CONSULTANT has been selected in accordance with the COUNTY'S Ordinance Code Chapter 4.10 governing the selection of architects, engineers, and other professionals, and in accordance with Chapter 10 of the Local Assistance Procedures Manual (LAPM) issued by the California Department of Transportation (CALTRANS), to provide the environmental consulting services necessary for the PROJECTS; and

WHEREAS, the individual listed below

Erin Haagenson, Senior Staff Analyst

2220 Tulare Street, 6th Floor, Fresno, CA 93721

559-600-9908

[ehaagenson@fresnocountyca.gov](mailto:ehaagenson@fresnocountyca.gov)

is designated as the CONTRACT ADMINISTRATOR for the AGREEMENT on behalf of the COUNTY, and shall remain so unless the CONSULTANT is otherwise notified in writing by the COUNTY'S Director of Public Works and Planning or his/her designee (hereinafter referred to as "the DIRECTOR"); and

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WHEREAS, the individual listed below

NAME, TITLE

ADDRESS

CITY, STATE ZIP

PHONE NUMBER

EMAIL ADDRESS

is designated as the CONSULTANT'S PROJECT MANAGER for the AGREEMENT, and shall remain so unless the CONSULTANT requests and the DIRECTOR approves, in writing, a change of the CONSULTANT'S PROJECT MANAGER, for which approval will not be unreasonably withheld; and

WHEREAS, said AGREEMENT is subject to 49 Code of Federal Regulations (hereinafter referred to as "49 CFR"), Part 26 Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs, Disadvantaged Business Enterprise programs established by other federal agencies and/or the COUNTY'S Disadvantaged Business Enterprise Program (all of which hereinafter are referred to as "DBE PROGRAM(S)"),

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

I. GENERAL PROVISIONS

A. The COUNTY hereby contracts with the CONSULTANT as an independent contractor to provide all environmental consultant services required for the PROJECT(S). Said services are described generally in Article II and more specifically enumerated in Article III herein.

B. The CONSULTANT'S services shall be performed as in a manner consistent with professional skill and the orderly progress of the work, based on schedules for each specific PROJECT as mutually agreed upon in advance by the COUNTY'S CONTRACT ADMINISTRATOR and the CONSULTANT.

C. The CONSULTANT'S PROJECT team staff shall be as listed in Exhibit A,

1 attached hereto and incorporated herein. Any substitutions of personnel must be approved  
2 in advance by the COUNTY'S CONTRACT ADMINISTRATOR, which approval shall not be  
3 unreasonably withheld. The CONSULTANT shall notify the COUNTY'S CONTRACT  
4 ADMINISTRATOR of the names and classifications of employees assigned to each specific  
5 PROJECT and shall not reassign such employees to other PROJECTS of the  
6 CONSULTANT without notification to and prior approval by the COUNTY'S CONTRACT  
7 ADMINISTRATOR.

8 D. The CONSULTANT may retain, as subconsultants, specialists as the  
9 CONSULTANT requires to assist in completing the work. All subconsultants used by the  
10 CONSULTANT shall be approved in writing by the COUNTY'S CONTRACT  
11 ADMINISTRATOR before they are retained by the CONSULTANT, which approval shall not  
12 be unreasonably withheld. The subconsultants listed in Exhibit B, attached hereto and  
13 incorporated herein, shall be considered as approved by the COUNTY'S CONTRACT  
14 ADMINISTRATOR. Should the CONSULTANT retain any subconsultants, the maximum  
15 amount of compensation to be paid to the CONSULTANT under Article VI below shall not  
16 be increased. Any additional compensation to be paid to the CONSULTANT for such  
17 subconsultants' work shall be limited to administrative time as defined in the fee proposal.  
18 Additional fees other than those defined in the fee proposal shall not be reimbursed.

19 E. The CONSULTANT and affiliated subconsultants shall not submit bids, or  
20 sub-bids, for the contract construction phase of the PROJECT assigned to the  
21 CONSULTANT. The CONSULTANT and its subconsultants, and all other service providers,  
22 shall not provide any PROJECT-related services for, or receive any PROJECT-related  
23 compensation from any construction contractor (hereinafter referred to as the  
24 "CONTRACTOR"), subcontractor or service provider awarded a construction contract for all  
25 or any portion of the PROJECT(S) for which the CONSULTANT provides services  
26 hereunder. The CONSULTANT and its subconsultants, and all other service providers,  
27 may provide services for, and receive compensation from a CONTRACTOR who has been  
28 awarded a construction contract for all or any portion of the PROJECT(S) provided that any

1 such services which are rendered, and any compensation which is received therefor,  
2 relates to work outside the scope of the AGREEMENT and does not pose a conflict of  
3 interest.

4 F. Any subcontract in excess of \$25,000 entered into as a result of this  
5 AGREEMENT, shall contain all the provisions stipulated in the AGREEMENT to be  
6 applicable to subcontractors.

7 G. The CONSULTANT is responsible for being fully informed regarding the  
8 requirements of 49 CFR, Part 26 and the California Department of Transportation's  
9 (CALTRANS) Disadvantaged Business Enterprise program developed pursuant to the  
10 regulations, as detailed in Exhibit C, attached hereto and incorporated herein.

11 II. DESCRIPTION OF THE WORK COVERED BY THE AGREEMENT

12 A. The work to be performed by the CONSULTANT under the AGREEMENT  
13 includes on-call professional services under Article III for various PROJECTS, including but  
14 not limited to, technical services related to biological, cultural, visual, farmland, water  
15 quality, hazardous waste, noise, revegetation plans, focused plant or animal surveys,  
16 habitat assessment, wetland delineation, and other studies.

17 B. The CONSULTANT agrees to provide the professional services that are  
18 necessary for each PROJECT when expressly authorized in writing by the COUNTY'S  
19 CONTRACT ADMINISTRATOR. Such work by the CONSULTANT shall not begin until the  
20 CONSULTANT has received, from the COUNTY'S CONTRACT ADMINISTRATOR, a  
21 written Notice to Proceed as to a specific Task Order, authorizing the necessary service,  
22 agreed upon fee, and scope of work.

23 III. CONSULTANT'S SERVICES

24 The CONSULTANT shall submit proposals in response to requests issued by the  
25 COUNTY'S CONTRACT ADMINISTRATOR on a project-by-project basis. The  
26 CONSULTANT'S proposal at a minimum shall include, but not be limited to, staff  
27 qualifications, proposed method and schedule for completing the task(s), completed federal  
28 forms and a sealed cost proposal. The CONSULTANT agrees that each professional or

1 other individual performing work on any such PROJECT(S) shall be adequately trained to  
2 perform the work and shall possess the proper license, certification or registration as  
3 required by law or by accepted standards of the applicable profession. The CONSULTANT  
4 agrees to provide the professional services that are necessary to complete the following  
5 tasks when expressly authorized in writing by the COUNTY'S CONTRACT

6 ADMINISTRATOR:

7 A. Technical Reports:

8 1. The CONSULTANT shall ascertain the requirements for Technical Reports  
9 through communications with the COUNTY'S CONTRACT ADMINISTRATOR and  
10 CALTRANS and a review of existing information on the PROJECT(S).

11 2. The CONSULTANT shall prepare and submit technical reports to the  
12 COUNTY'S CONTRACT ADMINISTRATOR for each assigned PROJECT. Technical  
13 reports shall be prepared in accordance with the appropriate format required by local, state  
14 and federal laws, regulations and guidelines.

15 3. The CONSULTANT shall ascertain any requirements, unforeseen criteria, or  
16 issues for the PROJECT(S) that may be unknown to the COUNTY'S CONTRACT  
17 ADMINISTRATOR and communicate these requirements, criteria, or issues to the  
18 COUNTY'S CONTRACT ADMINISTRATOR.

19 4. The CONSULTANT shall prepare each environmental technical report for  
20 federally funded PROJECT(S) in accordance with the latest provisions of the Standard  
21 Environmental Reference published by CALTRANS and/or all other applicable local, state  
22 and federal regulations and guidance to the full extent that any provisions thereof related or  
23 have applicability to such PROJECT(S). The required technical reports for the PROJECTS  
24 will be determined by the Preliminary Environmental Study form for CALTRANS Local  
25 Assistance, the COUNTY'S California Environmental Quality Act (CEQA) process or  
26 Federal cross cutter forms for State Revolving Fund projects.

27 5. The CONSULTANT shall assist the COUNTY in determining all permits that  
28 may be required for the PROJECT and shall prepare all necessary permits for the

1 COUNTY submittal to outside agencies.

2 6. When requested by the COUNTY'S CONTRACT ADMINISTRATOR, the  
3 CONSULTANT shall attend meetings with the COUNTY, federal, state and/or local  
4 representatives to discuss and review the technical report. The CONSULTANT shall  
5 prepare brief minutes of meetings attended and promptly submit the minutes to the  
6 COUNTY'S CONTRACT ADMINISTRATOR within seven (7) days.

7 7. The CONSULTANT shall submit each technical report to the COUNTY'S  
8 CONTRACT ADMINISTRATOR for transmittal to other appropriate agencies for their  
9 review and approval. The CONSULTANT shall revise and resubmit each technical report  
10 as necessary until approved by all appropriate agencies. Standard submittal shall be two  
11 (2) reproducible copies and one (1) electronic copy of each technical report. The  
12 CONSULTANT shall verify compatible format and quantity prior to final delivery.

13 8. The CONSULTANT shall prepare technical studies and estimates on 8 ½" by  
14 11" pages, provide hard copy and electronic format as standard submittal; and prepare  
15 documents in Microsoft Word 2010 version or later, Microsoft Excel 2010 version or later,  
16 or Adobe 9.0 or later, ARC GIS or other mutually agreed upon format. Such submittals  
17 shall be sent via email and furnished on compact disc (CD). The CONSULTANT shall verify  
18 compatible format and quantity prior to final delivery.

19 B. CEQA Documents:

20 1. The CONSULTANT shall prepare CEQA documents, including but not limited  
21 to an Initial Study, Mitigated Negative Declaration, Negative Declaration and Environmental  
22 Impact Report, to complete CEQA review in accordance with CEQA Guidelines. The CEQA  
23 phase includes, but is not limited to, data compilation and review, impact assessment and  
24 determination, documentation preparation, development of mitigation measures, response  
25 to comments, as well as project management and public meeting attendance.

26 2. The CONSULTANT shall ascertain any requirements, unforeseen criteria, or  
27 issues for the PROJECT(S) that may be unknown to the COUNTY'S CONTRACT  
28 ADMINISTRATOR and communicate these requirements, criteria, or issues to the

1 COUNTY'S CONTRACT ADMINISTRATOR.

2 3. The CONSULTANT shall assist the COUNTY in determining all permits that  
3 may be required for the PROJECT and shall prepare all necessary permits for the  
4 COUNTY submittal to outside agencies.

5 C. Design Plans, Technical Specifications and Construction Estimate for  
6 Revegetation and Landscaping Projects:

7 1. The CONSULTANT shall ascertain the requirements the PROJECT(S)  
8 through meetings with COUNTY'S CONTRACT ADMINISTRATOR and a review of an  
9 existing schematic layout of PROJECT(S).

10 2. The CONSULTANT shall ascertain any requirements, unforeseen criteria, or  
11 issues for the PROJECT(S) that may be unknown to the COUNTY'S CONTRACT  
12 ADMINISTRATOR and communicate these requirements, criteria, or issues to the  
13 COUNTY'S CONTRACT ADMINISTRATOR.

14 3. The CONSULTANT shall provide surveying, if needed, for the PROJECT(S).

15 4. The CONSULTANT shall design the PROJECT(S) to conform to  
16 requirements of the reviewing agencies having jurisdiction over the PROJECT(S).

17 5. The CONSULTANT shall design the PROJECT(S) to include mitigation  
18 measures included in the environmental document.

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

25 7. The CONSULTANT shall assist the COUNTY in determining all permits that  
26 may be required for the PROJECT and shall prepare all necessary permits for the  
27 COUNTY submittal to outside agencies.

28 IV. OBLIGATIONS OF COUNTY

- 1 The COUNTY will:
- 2 A. Issue Task Orders on a project-by-project basis. Task Orders will, at a
  - 3 minimum, include a scope of work, location, and schedule for the PROJECT.
  - 4 B. Compensate the CONSULTANT as provided in the AGREEMENT.
  - 5 C. Provide a COUNTY'S CONTRACT ADMINISTRATOR to serve as a
  - 6 representative of the COUNTY who will coordinate and communicate with the
  - 7 CONSULTANT, to the extent appropriate, to facilitate the CONSULTANT'S performance of
  - 8 its obligations in accordance with the provisions of the AGREEMENT.
  - 9 D. Provide basic plan sheet layouts as required.
  - 10 E. Examine documents submitted to the COUNTY by the CONSULTANT and
  - 11 timely render decisions pertaining thereto.
  - 12 F. Provide aerial photographs as required.
  - 13 G. Provide copies of any available existing as-built plans and right-of-way
  - 14 drawings from the COUNTY'S files.
  - 15 H. Provide mailing lists and labels for notification of property owners upon the
  - 16 CONSULTANT'S request.
  - 17 I. Provide preliminary engineering survey data on existing structures and
  - 18 topographic mapping in AutoCAD Civil 3D, version 2013 or later, format to the
  - 19 CONSULTANT, if available.
  - 20 J. Prepare all legal descriptions and drawings required for right-of-way
  - 21 acquisition and/or temporary construction permits.
  - 22 K. Provide limited assistance to CONSULTANT as may be appropriate in
  - 23 connection with CONSULTANT'S processing of required permits.
  - 24 L. Give reasonably prompt consideration to all matters submitted for approval by
  - 25 the CONSULTANT to the end that there will be no substantial delays in the
  - 26 CONSULTANT'S program of work. An approval, authorization or request to the
  - 27 CONSULTANT given by the COUNTY will be binding upon the COUNTY under the terms
  - 28 of the AGREEMENT only if it is made in writing and signed on behalf of the COUNTY by

1 the COUNTY'S CONTRACT ADMINISTRATOR.

2 V. TERM OF AGREEMENT / PERFORMANCE PERIOD

3 A. The term of this AGREEMENT shall be for a period of three (3) years,  
4 commencing upon execution by the COUNTY, through and including the third anniversary  
5 of the execution date. This AGREEMENT may be extended for two additional one-year  
6 periods, upon written approval of the DIRECTOR and the CONSULTANT prior to the  
7 expiration of the AGREEMENT. The DIRECTOR or his designee is authorized to execute  
8 such written approval on behalf of COUNTY based on CONSULTANT'S satisfactory  
9 performance. The CONSULTANT shall commence work promptly after receipt of a notice  
10 to proceed issued by the COUNTY'S CONTRACT ADMINISTRATOR.

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

14 VI. ALLOWABLE COSTS AND PAYMENTS UNDER THIS AND OTHER RELATED ON-  
15 CALL ENVIRONMENTAL SERVICES CONSULTANT AGREEMENTS

16 A. Maximum Cumulative Amount Available for Payment Under This  
17 AGREEMENT and the Other Related Environmental Services Consultant Agreements:

18 1. COUNTY has or will enter into eight (8) separate agreements, including this  
19 AGREEMENT, for performance of the Scope of Services identified in Article III  
20 hereinabove. The other Agreements are to be entered into by COUNTY with the other  
21 seven (7) consultant firms listed, together with CONSULTANT, on the list of environmental  
22 consultant firms attached hereto as Attachment 1. The total amount payable by COUNTY  
23 for all the Agreements combined shall not exceed a cumulative maximum total value of  
24 Two Million Dollars (\$2,000,000) ("NTE Sum").

25 2. It is understood and agreed that there is no guarantee, either expressed or  
26 implied, that this cumulative maximum total dollar amount of Two Million Dollars  
27 (\$2,000,000) will be authorized under the Environmental Services Consultant Agreements  
28 through Task Orders. It is further understood and agreed that there is no guarantee, either

1 expressed or implied, that any Task Order will be assigned to CONSULTANT or that  
2 CONSULTANT will receive any payment whatsoever, under the terms of this  
3 AGREEMENT. Each time a Task Order is awarded under any of the Agreements, the  
4 COUNTY shall send written notification to CONSULTANT and each of the other  
5 consultants that entered into the Agreements. Each such notice shall identify the  
6 cumulative total of funds allocated under all Task Orders issued hereunder as of that date,  
7 and the remaining unencumbered amount of the NTE Sum. CONSULTANT acknowledges  
8 and agrees that COUNTY shall not pay any amount under this AGREEMENT that would  
9 exceed the NTE Sum, and CONSULTANT shall not enter into a Task Order that exceeds  
10 the NTE Sum.

11 B. Total Fee:

12 1. Subject to and consistent with the provisions of the immediately preceding  
13 Article VI, Section A, the Total Fee for the services required under this AGREEMENT, shall  
14 not exceed the total sum of Two Million Dollars (\$2,000,000) over the entire term of this  
15 AGREEMENT. Compensation for the services rendered shall be computed at the hourly  
16 and cost rates shown in Exhibit D, subject to any adjustments that may be approved in  
17 accordance with Article VI, Section B, Paragraph 3.

18 2. The hourly and cost rates listed herein for services rendered by the  
19 CONSULTANT and subconsultants shall remain in effect for the entire duration of the  
20 AGREEMENT unless adjusted in accordance with the provisions of Article VI, Section B,  
21 Paragraphs 3, 5, or 6.

22 3. The hourly rates paid for services performed by the CONSULTANT and by  
23 subconsultants of the CONSULTANT and the rates for expenses incidental to the  
24 CONSULTANT'S and subconsultant's performance of services may be adjusted no more  
25 than once annually for inflation, in accordance with the following provisions: the  
26 CONSULTANT may request new labor rates and new rates for expenses incidental to the  
27 CONSULTANT'S and subconsultant's performance of services subject to written approval  
28 of the COUNTY'S CONTRACT ADMINISTRATOR in accordance with the provisions of this

1 Article VI, Section B, Paragraph 3. The CONSULTANT shall initiate the rate adjustment  
2 process by submitting to the COUNTY'S CONTRACT ADMINISTRATOR a proposed  
3 adjusted fee schedule. The proposed adjusted fee schedule shall include proposed hourly  
4 rates for all categories of the CONSULTANT and subconsultants wage classifications and  
5 proposed rates for incidental expenses listed in Exhibit D. The proposed adjusted fee  
6 schedule shall not take effect unless approved in writing by the COUNTY'S CONTRACT  
7 ADMINISTRATOR. The CONSULTANT hereby acknowledges its understanding that  
8 approval by the COUNTY'S CONTRACT ADMINISTRATOR of any upward adjustment in  
9 the hourly and cost rates shall not provide a basis for any increase in the total fee of  
10 \$2,000,000, as set forth in Article VI, Section B, Paragraph 1.

11 4. Expenses incidental to the CONSULTANT'S and subconsultant's  
12 performance of services under Article III of the AGREEMENT shall be charged at the rates  
13 listed in Exhibit D, subject to any adjustments that may be approved in accordance with  
14 Article VI, Section B, Paragraphs 3, 5, or 6. Unless incorporated in an adjusted fee  
15 schedule approved by the COUNTY'S CONTRACT ADMINISTRATOR in accordance with  
16 Article VI, Section B, Paragraphs 3, 5, or 6, all other expenses incidental to the  
17 CONSULTANT'S and subconsultant's performance of the services under Article III of the  
18 AGREEMENT that are not listed in Exhibit D shall be borne by the CONSULTANT.

19 5. In the event that, in accordance with Article I, Section D, the COUNTY'S  
20 CONTRACT ADMINISTRATOR approves the CONSULTANT to retain additional  
21 subconsultants not listed in Exhibit B, hourly rates paid for services performed by such  
22 additional subconsultants of the CONSULTANT and the rates for expenses incidental to  
23 subconsultants performance of services may be adjusted no more than once annually for  
24 inflation, in accordance with Article VI, Section B, Paragraph 3. The first annual adjustment  
25 of hourly and incidental expense rates for such additional subconsultants shall not be  
26 approved prior to one year after the COUNTY'S CONTRACT ADMINISTRATOR approval  
27 of the retention of such additional subconsultant(s) by the CONSULTANT.

28 6. Notwithstanding any other provisions in the AGREEMENT, the COUNTY'S

1 CONTRACT ADMINISTRATOR may, at any time, authorize in writing the revision of the  
2 CONSULTANT'S or subconsultant's charge rates for incidental expenses to include  
3 additional categories of such expenses if, in the opinion of the COUNTY'S CONTRACT  
4 ADMINISTRATOR, such revision is necessary to facilitate the CONSULTANT'S  
5 performance of the PROJECT(S).

6 C. Payments:

7 1. Progress payments will be made by the COUNTY upon receipt of the  
8 CONSULTANT'S monthly invoices and approval by the COUNTY'S CONTRACT  
9 ADMINISTRATOR thereof based on the COUNTY'S CONTRACT ADMINISTRATOR'S  
10 evaluation of the completion of the respective components of the assigned PROJECT.  
11 Invoices shall clearly identify the Phase and Task of the work, the date work performed,  
12 and shall be submitted with the documentation identified in Article VI, Section C, Paragraph  
13 5. Invoices shall be forwarded electronically to: [PWPBusinessOffice@fresnocountyca.gov](mailto:PWPBusinessOffice@fresnocountyca.gov).

14 2. Upon receipt of a proper invoice, the COUNTY'S CONTRACT  
15 ADMINISTRATOR will take a maximum of ten (10) working days to review, approve, and  
16 submit it to the COUNTY Auditor Controller/Treasurer Tax Collector. Unsatisfactory or  
17 inaccurate invoices will be returned to the CONSULTANT for correction and resubmittal.  
18 Payment, less retention, if applicable, will be issued to the CONSULTANT within forty (40)  
19 calendar days of the date the Auditor Controller/Treasurer Tax Collector receives the  
20 approved invoice.

21 3. The COUNTY is entitled to withhold a five percent (5%) retention from the  
22 CONSULTANT'S earned compensation in accordance with the provisions of Article VII of  
23 the AGREEMENT.

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

26 5. Concurrently with the invoices, the CONSULTANT shall certify (through  
27 copies of issued checks, receipts, or other COUNTY pre-approved documentation) that  
28 complete payment, less a five percent (5%) retention, except as otherwise specified in

1 Article VII, has been made to all subconsultants as provided herein for all previous invoices  
2 paid by the COUNTY. However, the parties do not intend that the foregoing create in any  
3 subconsultants or sub-contractor a third-party beneficiary status or any third-party  
4 beneficiary rights, and expressly disclaim any such status or rights.

5 6. Final invoices, and separate invoices for retentions, shall be submitted to the  
6 COUNTY'S CONTRACT ADMINISTRATOR no later than thirty (30) days after the  
7 PROJECT is completed. Payment for retentions, if any, shall not be made until all services  
8 for the PROJECT are completed.

9 7. In the event the DIRECTOR reduces the scope of CONSULTANT'S work  
10 under the AGREEMENT for a specific PROJECT (or discontinues a specific PROJECT),  
11 whether due to a deficiency in the appropriation of anticipated funding or otherwise, the  
12 CONSULTANT will be compensated on a pro rata basis for actual work completed and  
13 accepted by the DIRECTOR in accordance with the terms of the AGREEMENT.

#### 14 VII. RETENTION FROM EARNED COMPENSATION

15 In addition to any amounts withheld under Article III, the CONSULTANT agrees that  
16 the COUNTY, at the discretion of the COUNTY'S CONTRACT ADMINISTRATOR, may  
17 withhold a five percent (5%) retention from the earned compensation of the CONSULTANT.  
18 If the COUNTY'S CONTRACT ADMINISTRATOR determines that retention will be withheld  
19 for a PROJECT, the COUNTY'S CONTRACT ADMINISTRATOR will so state in writing  
20 prior to commencement of the PROJECT by the CONSULTANT and will identify the  
21 PROJECT-specific prerequisites (such as successful completion of a PROJECT phase, as  
22 an example) for the release of retentions.

#### 23 VIII. TERMINATION

24 A. The AGREEMENT may be terminated without cause at any time by the  
25 COUNTY upon thirty (30) calendar days' written notice. If the COUNTY terminates this  
26 AGREEMENT, the CONSULTANT shall be compensated for services satisfactorily  
27 completed to the date of termination based upon the compensation rates and subject to the  
28 maximum amounts payable agreed to in Article VI, together with such additional services

1 satisfactorily performed after termination which are expressly authorized by the COUNTY to  
2 conclude the work performed to date of termination.

3 B. If the CONSULTANT purports to terminate the AGREEMENT, or otherwise  
4 refuses to perform pursuant to the AGREEMENT, for reasons other than material breach  
5 by the COUNTY, the CONSULTANT shall reimburse the COUNTY, up to a maximum of  
6 \$10,000 for the actual expense of issuing a Request For Proposal (RFP), engaging a new  
7 consultant, and the new consultant's cost in becoming familiar with the previous  
8 CONSULTANT'S work. The COUNTY'S entitlement to such reimbursement shall in no way  
9 be construed as a limitation on other damages that may be recoverable by the COUNTY as  
10 a result of the CONSULTANT'S termination, in breach of its obligations hereunder.

11 C. The COUNTY may immediately suspend or terminate the AGREEMENT in  
12 whole or in part, where in the determination of the COUNTY there is:

- 13 1. An illegal or improper use of funds;
- 14 2. A failure to comply with any term of the AGREEMENT;
- 15 3. A substantially incorrect or incomplete report submitted to the COUNTY;
- 16 4. Improperly performed service.

17 D. In no event shall any payment by the COUNTY constitute a waiver by the  
18 COUNTY of any breach of the AGREEMENT or any default which may then exist on the  
19 part of the CONSULTANT, nor shall such payment impair or prejudice any remedy  
20 available to the COUNTY with respect to the breach or default. The DIRECTOR shall have  
21 the right to demand of the CONSULTANT the repayment to the COUNTY of any funds  
22 disbursed to the CONSULTANT under the AGREEMENT, which, in the judgment of the  
23 DIRECTOR and as determined in accordance with the procedures of Article XVI, were not  
24 expended in accordance with the terms of the AGREEMENT. The CONSULTANT shall  
25 promptly refund any such funds upon demand.

26 E. The terms of the AGREEMENT, and the services to be provided thereunder,  
27 are contingent on the approval of funds by the appropriating government agency. Should  
28 sufficient funds not be allocated, the services provided may be modified, or the

1 AGREEMENT terminated at any time by giving the CONSULTANT thirty (30) days advance  
2 written notice. In the event of termination on the basis of this Paragraph, the  
3 CONSULTANT'S entitlement to payment, in accordance with the payment provisions set  
4 forth hereinabove, shall apply only to work performed by the CONSULTANT prior to receipt  
5 of written notification of such non-allocation of sufficient funding.

6 F. In the event of termination, CONSULTANT shall be compensated as provided  
7 for in this AGREEMENT, except as provided in Article XII, Section C. Upon termination, the  
8 COUNTY shall be entitled to all work, including but not limited to, reports, investigations,  
9 appraisals, inventories, studies, analyses, drawings and data estimates performed to that  
10 date, whether completed or not.

11 IX. FUNDING REQUIREMENTS

12 A. It is mutually understood between the parties that the AGREEMENT may  
13 have been written before ascertaining the availability of funds or appropriation of funds, for  
14 the mutual benefit of both parties, in order to avoid program and fiscal delays that would  
15 occur if the AGREEMENT were executed after that determination was made.

16 B. The AGREEMENT is subject to any additional restrictions, limitations,  
17 conditions, or any legislation enacted by the Congress, State Legislature or COUNTY'S  
18 Board of Supervisors that may affect the provisions, terms, or funding of the AGREEMENT  
19 in any manner.

20 C. It is mutually agreed that if sufficient funds are not appropriated, the  
21 AGREEMENT may be amended to reflect any reduction in funds.

22 D. The COUNTY has the option to void the AGREEMENT under the 30-day  
23 cancellation clause in Article VIII, Section A, or to amend the AGREEMENT in accordance  
24 with Article X, Section A by mutually acceptable modification of its provisions to reflect any  
25 reduction of funds.

26 X. CHANGE IN TERMS

27 A. The AGREEMENT may be amended or modified only by mutual written  
28 agreement of both parties. Except as provided in Article V, Section A, any such written

1 amendment to this AGREEMENT may be approved on the COUNTY'S behalf only by its  
2 Board of Supervisors.

3 B. The CONSULTANT shall only commence work covered by an amendment  
4 after the amendment has been fully executed and written notification to proceed has been  
5 issued by the COUNTY'S CONTRACT ADMINISTRATOR.

6 XI. DISADVANTAGED BUSINESS ENTERPRISES (DBE) PARTICIPATION

7 A. The CONSULTANT must give consideration to Disadvantaged Business  
8 Enterprise (hereinafter referred to as "DBE") firms as specified in 23 Code of Federal  
9 Regulations (hereinafter referred to as "CFR") Section 172.5(b), and in 49 CFR, Part 26.  
10 The CONSULTANT must meet the DBE goal established for PROJECT(S) by using DBEs  
11 as subconsultants or document a good faith effort to have met the goal. If a DBE  
12 subconsultant is unable to perform, the CONSULTANT must make a good faith effort to  
13 replace him/her with another DBE subconsultant if the goal is not otherwise met.

14 B. The CONSULTANT is responsible for being fully informed regarding the  
15 requirements of 49 CFR, Part 26 and CALTRANS' Disadvantaged Business Enterprise  
16 program developed pursuant to the regulations, as detailed in Exhibit C, Notice to  
17 Proposers DBE Information, attached hereto and incorporated herein.

18 C. A DBE subconsultant may be terminated only with written approval by the  
19 COUNTY'S CONTRACT ADMINISTRATOR and only for reasons specified in 49 CFR  
20 Section 26.53(f). Prior to requesting the CONTRACT ADMINISTRATOR'S consent for the  
21 proposed termination, the CONSULTANT must meet the procedural requirements specified  
22 in 49 CFR Section 26.53(f). If a DBE subconsultant is unable to perform, CONSULTANT  
23 must make a good faith effort to replace him/her with another DBE subconsultant, if the  
24 goal is not otherwise met.

25 XII. COST PRINCIPLES AND ADMINISTRATIVE REQUIREMENTS

26 A. The CONSULTANT agrees that 48 CFR Part 31, Contract Cost Principles  
27 and Procedures, shall be used to determine the allowability of individual terms of cost. The  
28 CONSULTANT shall sign the Certification of Contract Costs and Financial Management

1 System, attached hereto and incorporated herein as Exhibit E.

2 B. The CONSULTANT also agrees to comply with Federal procedures in  
3 accordance with 2 CFR, Part 200, Uniform Administrative Requirements, Cost Principles,  
4 and Audit Requirements for Federal Awards.

5 C. Any costs for which payment has been made to the CONSULTANT that are  
6 determined by subsequent audit to be unallowable under 48 CFR Part 31 or 2 CFR Part  
7 200 are subject to repayment by the CONSULTANT to the COUNTY.

8 D. When a CONSULTANT or Subconsultant is a Non-Profit Organization or an  
9 Institution of Higher Education, the Cost Principles for Title 2 CFR Part 200, Uniform  
10 Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards  
11 shall apply.

12 XIII. COVENANT AGAINST CONTINGENT FEES

13 A. The CONSULTANT warrants, by execution of the AGREEMENT, that the  
14 CONSULTANT has not employed or retained any company or person, other than a bona  
15 fide employee working for the CONSULTANT, to solicit or secure the AGREEMENT; and  
16 that CONSULTANT has not paid or agreed to pay any company or person other than a  
17 bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other  
18 consideration, contingent upon or resulting from the award or formation of the  
19 AGREEMENT. For breach or violation of this warranty, the COUNTY shall have the right  
20 to annul the AGREEMENT without liability, and to pay only for the value of the work  
21 actually performed by the CONSULTANT, or alternatively in the COUNTY'S discretion, to  
22 deduct from the contract price or consideration, or otherwise recover the full amount of  
23 such any such commission, percentage, brokerage fee, gift, contingent fee or similar form  
24 of consideration previously paid by the CONSULTANT.

25 B. The CONSULTANT shall sign the Certification of Consultant, Commissions &  
26 Fees, attached hereto and incorporated herein as Exhibit F, at the time of execution of the  
27 AGREEMENT.

28 XIV. RETENTION OF RECORDS/AUDIT

1 For the purpose of determining compliance with Gov. Code § 8546.7, the  
2 CONSULTANT, Subconsultants, and the COUNTY shall maintain all books, documents,  
3 papers, accounting records, Independent CPA Audited Indirect Cost Rate workpapers, and  
4 other evidence pertaining to the performance of the AGREEMENT including, but not limited  
5 to, the costs of administering the AGREEMENT. All parties, including the CONSULTANT's  
6 Independent CPA, shall make such workpapers and materials available at their respective  
7 offices at all reasonable times during the AGREEMENT period and for three (3) years from  
8 the date of final payment under the AGREEMENT. The COUNTY, Caltrans Auditor,  
9 FHWA, or any duly authorized representative of the Federal government having jurisdiction  
10 under Federal laws or regulations (including the basis of Federal funding in whole or in  
11 part) shall have access to any books, records, and documents of the CONSULTANT,  
12 Subconsultants, and the CONSULTANT's Independent CPA, that are pertinent to the  
13 AGREEMENT for audits, examinations, workpaper review, excerpts, and transactions, and  
14 copies thereof shall be furnished if requested without limitation.

15 XV. AUDIT REVIEW PROCEDURES

16 A. Any dispute concerning a question of fact arising under an interim or post  
17 audit of this AGREEMENT that is not disposed of by agreement between the parties, shall  
18 be reviewed by the COUNTY'S Auditor/Controller/Treasurer/Tax-Collector.

19 B. Not later than thirty (30) calendar days after issuance of the final audit report,  
20 the CONSULTANT may request a review by the COUNTY'S  
21 Auditor/Controller/Treasurer/Tax-Collector of unresolved audit issues. The request for  
22 review will be submitted in writing.

23 C. Neither the pendency of a dispute nor its consideration by the COUNTY will  
24 excuse the CONSULTANT from full and timely performance, in accordance with the terms  
25 of the AGREEMENT.

26 D. The CONSULTANT and subconsultant agreements, including cost proposals  
27 and indirect cost rates (ICR), are subject to audits or reviews such as, but not limited to, an  
28 AGREEMENT Audit, an Incurred Cost Audit, an ICR Audit, or a certified public accountant

1 (CPA) ICR Audit Workpaper Review. If selected for audit or review, the AGREEMENT, cost  
2 proposal and ICR and related workpapers, if applicable, will be reviewed to verify  
3 compliance with 48 CFR, Part 31 and other related laws and regulations. In the instances  
4 of a CPA ICR Audit Workpaper Review, it is the CONSULTANT's responsibility to ensure  
5 federal, state, COUNTY, or local government officials are allowed full access to the CPA's  
6 workpapers, including making copies as necessary. The AGREEMENT, cost proposal, and  
7 ICR shall be adjusted by CONSULTANT and approved by the COUNTY'S CONTRACT  
8 ADMINISTRATOR to conform to the audit or review recommendations. The CONSULTANT  
9 agrees that individual terms of costs identified in the audit report shall be incorporated into  
10 the AGREEMENT by this reference, if directed by the COUNTY in its sole discretion.  
11 Refusal by the CONSULTANT to incorporate audit or review recommendations, or to  
12 ensure that the federal, state, COUNTY, or local governments have access to CPA  
13 workpapers, will be considered a breach of the AGREEMENT terms and cause for  
14 termination of the AGREEMENT and disallowance of prior reimbursed costs.

15 E. CONSULTANT's Cost Proposal may be subject to a CPA ICR Audit Work  
16 Paper Review and/or audit by the Independent Office of Audits and Investigations (IOAI).  
17 IOAI, at its sole discretion, may review and/or audit and approve the CPA ICR  
18 documentation. The Cost Proposal shall be adjusted by the CONSULTANT and approved  
19 by the COUNTY'S CONTRACT ADMINISTRATOR to conform to the Work Paper Review  
20 recommendations included in the management letter or audit recommendations included in  
21 the audit report. Refusal by the CONSULTANT to incorporate the Work Paper Review  
22 recommendations included in the management letter or audit recommendations included in  
23 the audit report will be considered a breach of the AGREEMENT terms and cause for  
24 termination of this AGREEMENT and disallowance of prior reimbursed costs.

25 1. During IOAI's review of the ICR audit work papers created by the  
26 CONSULTANT's independent CPA, IOAI will work with the CPA and/or CONSULTANT  
27 toward a resolution of issues that arise during the review. Each party agrees to use its best  
28 efforts to resolve any audit disputes in a timely manner. If IOAI identifies significant issues  
during the review and is unable to issue a cognizant approval letter, the COUNTY will

1 reimburse the CONSULTANT at an accepted ICR until a FAR (Federal Acquisition  
2 Regulation) compliant ICR {e.g. 48 CFR Part 31; GAGAS (Generally Accepted Auditing  
3 Standards); CAS (Cost Accounting Standards), if applicable; in accordance with  
4 procedures and guidelines of the American Association of State Highways and  
5 Transportation Officials (AASHTO) Audit Guide; and other applicable procedures and  
6 guidelines} is received and approved by IOAI. Accepted rates will be as follows:

7 a. If the proposed rate is less than one hundred fifty percent (150%) -  
8 the accepted rate reimbursed will be ninety percent (90%) of the proposed rate.

9 b. If the proposed rate is between one hundred fifty percent (150%)  
10 and two hundred percent (200%) - the accepted rate will be eighty-five percent (85%) of the  
11 proposed rate.

12 c. If the proposed rate is greater than two hundred percent (200%) -  
13 the accepted rate will be seventy-five percent (75%) of the proposed rate.

14 2. If IOAI is unable to issue a cognizant letter per paragraph E.1. above, IOAI may  
15 require CONSULTANT to submit a revised independent CPA-audited ICR and audit report  
16 within three (3) months of the effective date of the management letter. IOAI will then have  
17 up to six (6) months to review the CONSULTANT's and/or the independent CPA's  
18 revisions.

19 3. If the CONSULTANT fails to comply with the provisions of this paragraph E, or if  
20 IOAI is still unable to issue a cognizant approval letter after the revised independent CPA  
21 audited ICR is submitted, overhead cost reimbursement will be limited to the accepted ICR  
22 that was established upon initial rejection of the ICR and set forth in paragraph E.1. above  
23 for all rendered services. In this event, this accepted ICR will become the actual and final  
24 ICR for reimbursement purposes under this AGREEMENT.

25 4. CONSULTANT may submit to the COUNTY its final invoice only when all of the  
26 following items have occurred: (1) IOAI accepts or adjusts the original or revised  
27 independent CPA audited ICR; (2) all work under this AGREEMENT has been completed  
28 to the satisfaction of the COUNTY; and, (3) IOAI has issued its final ICR review letter. The  
CONSULTANT MUST SUBMIT ITS FINAL INVOICE TO THE COUNTY no later than sixty

1 (60) calendar days after occurrence of the last of these items. The accepted ICR will apply  
2 to this AGREEMENT and all other agreements executed between the COUNTY and the  
3 CONSULTANT, either as a prime or subconsultant, with the same fiscal period ICR.

4 XVI. ERRORS OR OMISSIONS CLAIMS AND DISPUTES

5 A. Definitions:

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

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

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

22 1. Claims, disputes or other matters in question between the parties,  
23 arising out of or relating to the AGREEMENT, shall not be subject to arbitration, but shall be  
24 subject to the following procedures.

25 2. The COUNTY and the CONSULTANT shall meet and confer and  
26 attempt to reach agreement on any dispute, including what damages have occurred, the  
27 measure of damages and what proportion of damages, if any, shall be paid by either party.  
28 The parties agree to consult and consider the use of mediation or other form of dispute

1 resolution prior to resorting to litigation.

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

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

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

23           D.     The CONSULTANT shall continue to perform its obligations under the  
24 AGREEMENT pending resolution of any dispute, and the COUNTY shall continue to make  
25 payments of all undisputed amounts due under the AGREEMENT.

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

1 provided.

2 XVII. SUBCONTRACTING

3 A. The CONSULTANT shall perform the work contemplated with resources  
4 available within its own organization and no portion of the work encompassed by this  
5 AGREEMENT shall be subcontracted without written authorization by the COUNTY'S  
6 CONTRACT ADMINISTRATOR, excepting only those portions of the work and the  
7 responsible subconsultants that are expressly identified in Exhibit B hereto.

8 B. Nothing contained in this AGREEMENT or otherwise, shall create any  
9 contractual relationship between the COUNTY and any Subconsultants, and no  
10 subcontract between the CONSULTANT and any Subconsultant shall relieve the  
11 CONSULTANT of any of its responsibilities and obligations hereunder. The CONSULTANT  
12 agrees to be as fully responsible to the COUNTY for the acts and omissions of its  
13 Subconsultants and of persons either directly or indirectly employed by any of its  
14 Subconsultants, as it is for the acts and omissions of persons directly employed by the  
15 CONSULTANT. The CONSULTANT's obligation to pay its Subconsultants is an  
16 independent obligation from the COUNTY's obligation to make payments to the  
17 CONSULTANT.

18 C. Any subcontract in excess of \$25,000 entered into by CONSULTANT,  
19 pertaining to work to be performed under the AGREEMENT, shall contain all the provisions  
20 stipulated in this AGREEMENT to be applicable to subconsultants.

21 D. Any substitution of subconsultants must be approved in writing by the  
22 COUNTY'S CONTRACT ADMINISTRATOR in advance of assigning work to a substitute  
23 subconsultant.

24 XVIII. EQUIPMENT PURCHASE

25 A. Prior authorization in writing by the COUNTY'S CONTRACT  
26 ADMINISTRATOR shall be required before the CONSULTANT enters into any unbudgeted  
27 purchase order, or subcontract exceeding \$5,000 for supplies, equipment, or services. The  
28 CONSULTANT shall provide an evaluation of the necessity or desirability of incurring such

1 costs.

2 B. Prior authorization by the COUNTY'S CONTRACT ADMINISTRATOR shall  
3 be required for purchase of any item, service or consulting work in excess of \$5,000 that is  
4 not covered in the CONSULTANT'S Cost Proposal; and the CONSULTANT'S request must  
5 be accompanied by at least three competitive quotations, unless the absence of bidding is  
6 adequately justified, to the satisfaction of the COUNTY'S CONTRACT ADMINISTRATOR  
7 in his or her discretion, by written explanation provided by the CONSULTANT with its  
8 submittal.

9 C. Any authorized purchase of equipment as a result of the AGREEMENT is  
10 subject to the following:

11 1. The CONSULTANT shall maintain an inventory of all nonexpendable  
12 property. Nonexpendable property is defined as having a useful life of at least two years  
13 and an acquisition cost of \$5,000 or more. If the purchased equipment needs replacement  
14 and is sold or traded in, the COUNTY shall receive a proper refund or credit at the  
15 conclusion of the contract, or if the contract is terminated, the CONSULTANT may either  
16 keep the equipment and credit the COUNTY in an amount equal to its fair market value, or  
17 sell such equipment at the best price obtainable at a public or private sale, in accordance  
18 with established COUNTY procedures; and credit the COUNTY in an amount equal to the  
19 sales price. If the CONSULTANT elects to keep the equipment, fair market value shall be  
20 determined at the CONSULTANT'S expense, based on a competent independent appraisal  
21 of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to  
22 by the COUNTY and the CONSULTANT, if it is determined to sell the equipment, the terms  
23 and conditions of such sale must be approved in advance by the COUNTY.

24 2. Federal regulations (2 CFR Part 200) require a credit to Federal funds  
25 when participating equipment with a fair market value greater than \$5,000 is credited to the  
26 PROJECT.

27 XIX. INSPECTION OF WORK

28 The CONSULTANT and any Subconsultant shall permit the COUNTY, the state,

1 and/or the FHWA to review and inspect the PROJECT activities and files at all reasonable  
2 times during the performance period of the AGREEMENT including review and inspection  
3 on a daily basis.

4 XX. SAFETY

5 A. The CONSULTANT shall comply with Occupational Safety and Health  
6 Administration (OSHA) regulations applicable to CONSULTANT regarding necessary  
7 safety equipment or procedures. CONSULTANT shall comply with safety instructions  
8 issued by COUNTY Safety Officer and other COUNTY representatives. The  
9 CONSULTANT personnel shall wear hard hats and safety vests at all times while working  
10 on the construction project site.

11 B. Pursuant to the authority contained in Vehicle Code 591, the COUNTY has  
12 determined that such areas are within the limits of the project and are open to public traffic.  
13 CONSULTANT shall comply with all of the requirements set forth in Divisions 11, 12, 13, 14  
14 and 15 of the Vehicle Code. The CONSULTANT shall take all reasonably necessary  
15 precautions for safe operation of its vehicles and the protection of the traveling public from  
16 injury and damage from such vehicles.

17 XXI. INSURANCE

18 A. Without limiting the COUNTY'S right to obtain indemnification from the  
19 CONSULTANT or any third parties, the CONSULTANT, at its sole expense, shall maintain  
20 in full force and effect, the following insurance policies prior to commencement of any work  
21 for the COUNTY and, thereafter, throughout the entire term of the AGREEMENT (with the  
22 exception of Professional Liability Insurance, which the CONSULTANT shall maintain in full  
23 force and effect for the additional period of time required by Paragraph 4 of this Article XXI,  
24 Section A).

25 1. Commercial General Liability Insurance with limits not less than One  
26 Million Dollars (**\$1,000,000**) per occurrence and an annual aggregate of not less than Two  
27 Million Dollars (**\$2,000,000**). This policy shall be issued on a per occurrence basis. The  
28 COUNTY may require specific coverages including completed operations, products liability,

1 contractual liability, Explosion-Collapse-Underground, fire legal liability or any other liability  
2 insurance deemed necessary because of the nature of the AGREEMENT.

3           2.     Comprehensive Automobile Liability Insurance with limits for bodily  
4 injury of Two Hundred Fifty Thousand Dollars **(\$250,000)** per person, Five Hundred  
5 Thousand Dollars **(\$500,000)** per accident and for property damages of Fifty Thousand  
6 Dollars **(\$50,000)**, or such coverage with a combined single limit of Five Hundred Thousand  
7 Dollars **(\$500,000)**. Coverage should include owned and non-owned vehicles used in  
8 connection with the AGREEMENT.

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

11           4.     Professional Liability Insurance:

12               a.     If the CONSULTANT employs licensed professional staff in  
13 providing services, Professional Liability Insurance with limits of One Million Dollars  
14 **(\$1,000,000)** per claim, Three Million Dollars **(\$3,000,000)** annual aggregate.

15               b.     The Professional Liability Insurance shall be kept in full force  
16 and effect for a period of three (3) years from the date of substantial completion of the  
17 CONSULTANT'S work as determined by the COUNTY.

18               c.     The CONSULTANT shall obtain endorsements to the  
19 Commercial General Liability insurance naming the COUNTY, its officers, agents, and  
20 employees, individually and collectively, as additional insured, but only insofar as the  
21 operations under the AGREEMENT are concerned. Such coverage for additional insured  
22 shall apply as primary insurance and any other insurance, or self-insurance, maintained by  
23 the COUNTY, its officers, agents and employees shall be excess only and not contributing  
24 with insurance provided under the CONSULTANT'S policies herein. The CONSULTANT  
25 shall give the COUNTY at least thirty (30) days advance written notice of any cancellation,  
26 expiration, reduction or other material change in coverage with respect to any of the  
27 aforesaid policies.

28               d.     Prior to commencing any such work under the AGREEMENT,

1 the CONSULTANT shall provide to the COUNTY certificates of insurance and  
2 endorsements for all of the required policies as specified above, stating that all such  
3 insurance coverage has been obtained and is in full force; that the COUNTY, its officers,  
4 agents and employees will not be responsible for any premiums on the policies; that such  
5 Commercial General Liability insurance names the COUNTY, its officers, agents and  
6 employees, individually and collectively, as additional insured, but only insofar as the  
7 operations under the AGREEMENT are concerned; that such coverage for additional  
8 insured shall apply as primary insurance and any other insurance, or self-insurance,  
9 maintained by the COUNTY, its officers, agents and employees, shall be excess only and  
10 not contributing with insurance provided under the CONSULTANT'S policies herein; and  
11 that this insurance shall not be cancelled or changed without a minimum of thirty (30) days  
12 advance, written notice given to the COUNTY. All certificates shall clearly indicate the  
13 COUNTY'S identifying Contract Number for this AGREEMENT, and the certificates shall be  
14 sent to the attention of the COUNTY'S CONTRACT ADMINISTRATOR.

15 e. In the event the CONSULTANT fails to keep in effect at all times  
16 insurance coverage as herein provided, the COUNTY may, in addition to other remedies it  
17 may have, suspend or terminate this AGREEMENT upon the occurrence of such event.

18 f. All policies shall be issued by admitted insurers licensed to do  
19 business in the State of California, and all such insurance shall be purchased from  
20 companies possessing a current A.M. Best, Inc. rating of A and FSC VII or better.

21 XXII. HOLD HARMLESS

22 A. The CONSULTANT shall defend, hold harmless and indemnify the COUNTY, its  
23 officers, agents, and employees, against the payment of any and all costs and expenses  
24 (including reasonable attorney fees and court costs), damages, claims, suits, losses, and  
25 liability for bodily and personal injury to or death of any person or for loss of any property to  
26 the extent resulting from or arising out of any negligent or wrongful acts, errors or  
27 omissions of the CONSULTANT, its officers, agents, and employees, in performing or  
28 failing to perform any work, services, or functions under the AGREEMENT.

1 B. The COUNTY and the CONSULTANT hereby declare their mutual intent to  
2 cooperate in the defense of any claim, suit, or other action alleging liability, arising from the  
3 negligent performance or failure to perform of any construction contractor or subcontractor  
4 involved in the construction of the COUNTY'S PROJECT(S). Such cooperation may  
5 include an agreement to prepare and present a cooperative defense after consultation with  
6 the CONSULTANT'S professional liability insurance carrier.

7 XXIII. OWNERSHIP OF DATA

8 A. All documents, including preliminary documents, calculations, and survey  
9 data, required in performing services under the AGREEMENT shall be submitted to, and  
10 shall remain at all times the property of the COUNTY regardless of whether they are in the  
11 possession of the CONSULTANT or any other person, firm, corporation or agency.

12 B. The CONSULTANT understands and agrees the COUNTY shall retain full  
13 ownership rights of the drawings and work product of the CONSULTANT for the PROJECT,  
14 to the fullest extent permitted by law. In this regard, the CONSULTANT acknowledges and  
15 agrees the CONSULTANT'S services are on behalf of the COUNTY and are "works made  
16 for hire," as that term is defined in copyright law, by the COUNTY; that the drawings and  
17 work product to be prepared by the CONSULTANT are for the sole and exclusive use of  
18 the COUNTY, and that the COUNTY shall be the sole owner of all patents, copyrights,  
19 trademarks, trade secrets and other rights and contractual interests in connection therewith  
20 which are developed and compensated solely under the AGREEMENT; that all the rights,  
21 title and interest in and to the drawings and work product will be transferred to the  
22 COUNTY by the CONSULTANT to the extent the CONSULTANT has an interest in and  
23 authority to convey such rights; and the CONSULTANT will assist the COUNTY to obtain  
24 and enforce patents, copyrights, trademarks, trade secrets, and other rights and contractual  
25 interests relating to said drawings and work product, free and clear of any claim by the  
26 CONSULTANT or anyone claiming any right through the CONSULTANT. The  
27 CONSULTANT further acknowledges and agrees the COUNTY'S ownership rights in such  
28 drawings or work product, shall apply regardless of whether such drawings or work product,

1 or any copies thereof, are in possession of the CONSULTANT, or any other person, firm,  
2 corporation, or entity. For purposes of this AGREEMENT the terms “drawings and work  
3 product” shall mean all reports and study findings commissioned to develop the PROJECT  
4 design, drawings and schematic or preliminary design documents, certified reproducibles of  
5 the original final construction contract drawings, specifications, the approved estimate,  
6 record drawings, as-built plans, and discoveries, developments, designs, improvement,  
7 inventions, formulas, processes, techniques, or specific know-how and data generated or  
8 conceived or reduced to practice or learning by the CONSULTANT, either alone or jointly  
9 with others, that result from the tasks assigned to the CONSULTANT by the COUNTY  
10 under the AGREEMENT.

11 C. If the AGREEMENT is terminated during or at the completion of any phase of  
12 the PROJECT under Article III, a reproducible copy of report(s) or preliminary documents  
13 shall be submitted by the CONSULTANT to the COUNTY, which may use them to  
14 complete the PROJECT(S) at a future time.

15 D. If the PROJECT is terminated at the completion of a construction document  
16 phase of the PROJECT, certified reproducibles on 4 mil thick double matte film of the  
17 original final construction contract drawings, specifications, and approved engineer’s  
18 estimate shall be submitted by the CONSULTANT to the COUNTY.

19 E. Documents, including drawings and specifications, prepared by the  
20 CONSULTANT pursuant to the AGREEMENT are intended to be suitable for reuse by the  
21 COUNTY or others on extensions of the services provided for the PROJECT. Any use of  
22 completed documents for projects other than the PROJECT(S) and/or any use of  
23 uncompleted documents will be at the COUNTY’S sole risk and without liability or legal  
24 exposure to the CONSULTANT.

25 The electronic files provided by the CONSULTANT to the COUNTY are submitted  
26 for an acceptance period lasting until the expiration of the AGREEMENT (i.e., throughout  
27 the duration of the contract term, including any extensions). Any defects the COUNTY  
28 discovers during such acceptance period will be reported to the CONSULTANT and will be

1 corrected as part of the CONSULTANT'S "Basic Scope of Work."

2 F. The CONSULTANT shall not be liable for claims, liabilities or losses arising  
3 out of, or connected with (1) the modification or misuse by the COUNTY or anyone  
4 authorized by the COUNTY, of such CAD data, or (2) decline of accuracy or readability of  
5 CAD data due to inappropriate storage conditions or duration; or (3) any use by the  
6 COUNTY, or anyone authorized by the COUNTY, of such CAD data or other PROJECT  
7 documentation for additions to the PROJECT for the completion of the PROJECT by  
8 others, or for other projects; except to the extent that said use may be expressly  
9 authorized, in writing, by the CONSULTANT.

10 G. The COUNTY, in the discretion of its Board of Supervisors, may permit the  
11 copyrighting of reports or other products of the AGREEMENT; and provided further, that if  
12 copyrights are permitted; the CONSULTANT hereby agrees and this AGREEMENT shall  
13 be deemed to provide that the Federal Highway Administration shall have the royalty-free  
14 nonexclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize  
15 others to use, the work for government purposes.

16 XXIV. CLAIMS FILED BY COUNTY'S CONSTRUCTION CONTRACTOR

17 A. If claims are filed by the COUNTY'S CONTRACTOR relating to work  
18 performed by the CONSULTANT'S personnel, and additional information or assistance  
19 from the CONSULTANT'S personnel is required in order to evaluate or defend against such  
20 claims, then the CONSULTANT hereby agrees in such event to make its personnel  
21 available for consultation with the COUNTY'S construction contract administration and legal  
22 staff and for testimony, if necessary, at depositions and at trial or arbitration proceedings.

23 B. The CONSULTANT'S personnel that the COUNTY considers essential to  
24 assist in defending against the CONTRACTOR claims will be made available on  
25 reasonable notice from the DIRECTOR. Services of the CONSULTANT'S personnel in  
26 connection with consultation or testimony for this purpose will be performed pursuant to a  
27 written contract amendment, if determined by the parties to be necessary or appropriate.

28 XXV. CONFIDENTIALITY OF DATA

1           A. All financial, statistical, personal, technical, or other data and information  
2 relative to the COUNTY'S operations, which are designated confidential by the COUNTY  
3 and made available to the CONSULTANT in order to carry out the AGREEMENT, shall be  
4 protected by the CONSULTANT from unauthorized use and disclosure.

5           B. Permission to disclose information on one occasion, or public hearing held by  
6 the COUNTY relating to the AGREEMENT, shall not authorize the CONSULTANT to  
7 further disclose such information, or disseminate the same on any other occasion.

8           C. The CONSULTANT shall not comment publicly to the press or any other  
9 media regarding the AGREEMENT or the COUNTY'S actions on the same, except to the  
10 COUNTY'S staff, the CONSULTANT'S own personnel involved in the performance of the  
11 AGREEMENT, at public hearings or in response to questions from a Legislative committee.

12           D. The CONSULTANT shall not issue any news release or public relations item  
13 of any nature, whatsoever, regarding work performed or to be performed under the  
14 AGREEMENT without prior review of the contents thereof by the COUNTY, and receipt of  
15 the COUNTY'S written permission.

16           E. All information related to the construction estimate is confidential and shall not  
17 be disclosed by the CONSULTANT to any entity other than the COUNTY.

18 XXVI. NATIONAL LABOR RELATIONS BOARD CERTIFICATION

19           In accordance with Public Contract Code Section 10296, the CONSULTANT hereby  
20 states under penalty of perjury that no more than one final unappealable finding of  
21 contempt of court by a federal court has been issued against the CONSULTANT within the  
22 immediately preceding two-year period, because of the CONSULTANT'S failure to comply  
23 with an order of a federal court that orders the CONSULTANT to comply with an order of  
24 the National Labor Relations Board.

25 XXVII. EVALUATION OF CONSULTANT

26           The CONSULTANT'S performance will be evaluated by the COUNTY using the form  
27 attached as Exhibit G. A copy of the evaluation will be sent to the CONSULTANT for  
28 comments. The evaluation together with the comments shall be retained as part of the

1 AGREEMENT record.

2 XXVIII. STATEMENT OF COMPLIANCE: NON-DISCRIMINATION

3 A. The CONSULTANT’S signature affixed herein, and dated, shall constitute a  
4 certification under penalty of perjury under the laws of the State of California that the  
5 CONSULTANT has, unless exempt, complied with the nondiscrimination program  
6 requirements of Government Code Section 12990 and Title 2, California  
7 Administrative Code, Section 8103.

8 B. During the performance of this AGREEMENT, CONSULTANT and its  
9 subconsultants shall not deny the AGREEMENT’s benefits to any person on the basis of  
10 race, religious creed, color, national origin, ancestry, physical disability, mental disability,  
11 medical condition, genetic information, marital status, sex, gender, gender identity, gender  
12 expression, age, sexual orientation, or military and veteran status, nor shall they unlawfully  
13 discriminate, harass, or allow harassment against any employee or applicant for  
14 employment because of race, religious creed, color, national origin, ancestry, physical  
15 disability, mental disability, medical condition, genetic information, marital status, sex,  
16 gender, gender identity, gender expression, age, sexual orientation, or military and veteran  
17 status. CONSULTANT and subconsultants shall insure that the evaluation and treatment of  
18 their employees and applicants for employment are free from such discrimination and  
19 harassment.

20 C. CONSULTANT and subconsultants shall comply with the provisions of the  
21 Fair Employment and Housing Act (California Government Code Section 12990 et seq.), the  
22 applicable regulations promulgated there under (2 CCR Section 11000 et seq.), the  
23 provisions of California Government Code Sections 11135-11139.5, and the regulations or  
24 standards adopted by the COUNTY to implement such article. The applicable regulations of  
25 the Fair Employment and Housing Commission implementing California Government Code  
26 Section 12990 (a-f), set forth 2 CCR Sections 8100-8504, are incorporated into this  
27 AGREEMENT by reference and made a part hereof as though fully set forth herein.

28 D. CONSULTANT shall permit access by representatives of the Department of

1 Fair Employment and Housing and the COUNTY upon reasonable notice at any time during  
2 the normal business hours, but in no case less than twenty-four (24) hours' notice, to such  
3 of its books, records, accounts, and all other sources of information and its facilities as said  
4 Department or the COUNTY shall require to ascertain compliance with this clause.

5 E. CONSULTANT and its Subconsultants shall give written notice of their  
6 obligations under this clause to labor organizations with which they have a collective  
7 bargaining or other Agreement.

8 F. CONSULTANT shall include the nondiscrimination and compliance provisions  
9 of this clause in all subcontracts to perform work under this AGREEMENT.

10 G. The CONSULTANT, with regard to the work performed under this  
11 AGREEMENT, shall act in accordance with Title VI of the Civil Rights Act of 1964 (42  
12 U.S.C. Section 2000d et seq.). Title VI provides that the recipients of federal assistance will  
13 implement and maintain a policy of nondiscrimination in which no person in the United  
14 States shall, on the basis of race, color, national origin, religion, sex, age, disability, be  
15 excluded from participation in, denied the benefits of or subject to discrimination under any  
16 program or activity by the recipients of federal assistance or their assignees and  
17 successors in interest.

18 H. The CONSULTANT shall comply with regulations relative to non-  
19 discrimination in federally assisted programs of the U.S. Department of Transportation (49  
20 CFR Part 21 - Effectuation of Title VI of the Civil Rights Act of 1964). Specifically, the  
21 CONSULTANT shall not participate either directly or indirectly in the discrimination  
22 prohibited by 49 CFR Section 21.5, including employment practices and the selection and  
23 retention of Subconsultants.

24 I. The CONSULTANT and subconsultants shall include the nondiscrimination  
25 and compliance provisions of this clause in all subcontracts to perform work under the  
26 AGREEMENT.

27 J. The CONSULTANT, subconsultant or subrecipient will never exclude any  
28 person from participation in, deny any person the benefits of, or otherwise discriminate

1 against anyone in connection with the award and performance of any contract covered by  
2 49 CFR 26 on the bases of race, color, sex, or national origin. In administering the  
3 COUNTY components of the DBE Program Plan, CONSULTANT, subconsultant or  
4 subrecipient will not, directly, or through contractual or other arrangements, use criteria or  
5 methods of administration that have the effect of defeating or substantially impairing  
6 accomplishment of the objectives of the DBE Program Plan with respect to individuals of a  
7 particular race, color, sex or national origin.

8 **XXIX. DEBARMENT AND SUSPENSION CERTIFICATION**

9       A.     The CONSULTANT’S signature affixed herein, shall constitute a certification  
10 under penalty of perjury under the laws of the State of California, that the CONSULTANT  
11 has complied with Title 49, Code of Federal Regulations, Part 29, Debarment and  
12 Suspension Certificate, which certifies that he/she or any person associated therewith in  
13 the capacity of owner, partner, director, officer, or manager, is not currently under  
14 suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal  
15 agency; has not been suspended, debarred, voluntarily excluded, or determined ineligible  
16 by any federal agency within the past three (3) years; does not have a proposed debarment  
17 pending; and has not been indicted, convicted, or had a civil judgment rendered against it  
18 by a court of competent jurisdiction in any matter involving fraud or official misconduct  
19 within the past three (3) years. Any exceptions to this certification must be disclosed to the  
20 COUNTY on Exhibit H.

21       B.     Exceptions will not necessarily result in denial of recommendation for award  
22 but will be considered in determining CONSULTANT responsibility. Disclosures must  
23 indicate to whom exceptions apply, initiating agency, and dates of action.

24       C.     Exceptions to the Federal Government Excluded Parties Listing System  
25 maintained by the General Services Administration are to be determined by the Federal  
26 Highway Administration.

27 **XXX. COMPLIANCE WITH LAWS AND STATE PREVAILING WAGE RATES**

28       A.     The CONSULTANT shall comply with the State of California’s General

1 Prevailing Wage Rate requirements in accordance with California Labor Code, Section  
2 1770, and all Federal, State, and local laws and ordinances applicable to the work.

3 B. Any subcontract entered into as a result of this contract if for more than  
4 \$25,000 for public works construction or more than \$15,000 for the alteration, demolition,  
5 repair, or maintenance of public works, shall contain all of the provisions of this Article.

6 XXXI. CONFLICT OF INTEREST

7 A. The CONSULTANT shall comply with the provisions of the COUNTY  
8 Department of Public Works and Planning Conflict of Interest Code, attached hereto as  
9 Exhibit I and incorporated herein. Such compliance shall include the filing of annual  
10 statements pursuant to the regulations of the State Fair Political Practices Commission  
11 including, but not limited to, portions of Form 700.

12 B. The CONSULTANT shall disclose any financial, business, or other  
13 relationship with the COUNTY that may have an impact upon the outcome of this  
14 AGREEMENT, or any ensuing COUNTY construction project. The CONSULTANT shall  
15 also list current clients who may have a financial interest in the outcome of this  
16 AGREEMENT, or any ensuing COUNTY construction project, which will follow.

17 C. The CONSULTANT hereby certifies that it does not now have, nor shall it  
18 acquire any financial or business interest that would conflict with the performance of  
19 services under this AGREEMENT.

20 D. The CONSULTANT hereby certifies that neither the CONSULTANT, nor any  
21 firm affiliated with the CONSULTANT will bid on any construction contract, or on any  
22 contract to provide construction inspection for any construction the PROJECT resulting  
23 from the AGREEMENT; provided, however, that this shall not be construed as disallowing  
24 the CONSULTANT or affiliated firm from performing, pursuant to the AGREEMENT or other  
25 agreement with the COUNTY, construction inspection services on behalf of the COUNTY  
26 for the PROJECT. An affiliated firm is one, which is subject to the control of the same  
27 persons through joint ownership, or otherwise.

28 E. Except for subconsultants or subcontractors whose services are limited to

1 providing surveying or materials testing information, no subcontractor who has provided  
2 design services in connection with this AGREEMENT shall be eligible to bid on any  
3 construction contract, or on any contract to provide construction inspection for any  
4 construction project resulting from this AGREEMENT; provided, however, that this shall not  
5 be construed as disallowing subcontractors who have provided design services for the  
6 PROJECT from performing, pursuant to this AGREEMENT or other agreement with the  
7 COUNTY, construction inspection services on behalf of the COUNTY for the PROJECT.

8 XXXII. REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION

9 The CONSULTANT warrants that this AGREEMENT was not obtained or secured  
10 through rebates, kickbacks or other unlawful consideration, either promised or paid to any  
11 COUNTY employee. For breach or violation of this warranty, the COUNTY shall have the  
12 right, in its discretion, to do any of the following: terminate the AGREEMENT without  
13 liability; or to pay only for the value of the work actually performed; or to deduct from the  
14 AGREEMENT price, or otherwise recover the full amount of such rebate, kickback or other  
15 unlawful consideration.

16 XXXIII. PROHIBITION OF EXPENDING COUNTY, STATE OR FEDERAL FUNDS FOR  
17 LOBBYING

18 A. The CONSULTANT shall sign the lobbying forms, attached hereto and  
19 incorporated herein as Exhibit J, as required by the instructions found on each form.

20 B. The CONSULTANT certifies to the best of his or her knowledge and belief  
21 that:

22 1. No state, federal or COUNTY appropriated funds have been paid, or  
23 will be paid by or on behalf of the CONSULTANT to any person for influencing or  
24 attempting to influence an officer or employee of any state or federal agency; a Member of  
25 the State Legislature or United States Congress; an officer or employee of the Legislature  
26 or Congress; or any employee of a Member of the Legislature or Congress, in connection  
27 with any of the following:

28 a. the awarding of any state or federal contract;

1                   b.     the making of any state or federal grant;  
2                   c.     the making of any state or federal loan;  
3                   d.     the entering into of any cooperative agreement, or  
4                   e.     the extension, continuation, renewal, amendment, or  
5 modification of any state or federal contract, grant, loan, or cooperative agreement.

6                   2.     If any funds other than federally appropriated funds have been paid, or  
7 will be paid to any person for influencing or attempting to influence an officer or employee  
8 of any federal agency; a Member of Congress; an officer or employee of Congress, or an  
9 employee of a Member of Congress; in connection with this federal contract, grant, loan, or  
10 cooperative agreement, then the CONSULTANT shall complete and submit Standard  
11 Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

12                  C.     The certification required by the provisions of this Article is a material  
13 representation of fact upon which reliance was placed when this transaction was made or  
14 entered into. Submission of this certification is a prerequisite for making or entering into this  
15 transaction imposed by Title 31, U.S. Code Section 1352. Any person who fails to file the  
16 required certification shall be subject to a civil penalty of not less than \$10,000 and not  
17 more than \$100,000 for each such failure.

18                  D.     The CONSULTANT also agrees by signing this document that he or she shall  
19 require that the language of this certification be included in all lower-tier subcontracts,  
20 which exceed \$100,000, and that all such sub-recipients shall certify and disclose  
21 accordingly.

#### 22 XXXIV. INDEPENDENT CONTRACTOR

23                  A.     In performance of the work, duties and obligations assumed by the  
24 CONSULTANT under the AGREEMENT, it is mutually understood and agreed that the  
25 CONSULTANT, including any and all of the CONSULTANT'S officers, agents, and employees  
26 will at all times be acting and performing as an independent contractor, and shall act in an  
27 independent capacity and not as an officer, agent, servant, employee, joint venturer, partner,  
28 or associate of the COUNTY. Furthermore, the COUNTY shall have no right to control or

1 supervise or direct the manner or method by which the CONSULTANT shall perform its work  
2 and function. However, the COUNTY shall retain the right to administer the AGREEMENT so  
3 as to verify that the CONSULTANT is performing its obligations in accordance with the terms  
4 and conditions thereof.

5 B. The CONSULTANT and the COUNTY shall comply with all applicable  
6 provisions of law and the rules and regulations, if any, of governmental authorities having  
7 jurisdiction over matters the subject thereof.

8 C. Because of its status as an independent contractor, the CONSULTANT shall  
9 have absolutely no right to employment rights and benefits available to COUNTY employees.  
10 The CONSULTANT shall be solely liable and responsible for providing to, or on behalf of, its  
11 employees all legally-required employee benefits. In addition, the CONSULTANT shall be  
12 solely responsible and save the COUNTY harmless from all matters relating to payment of the  
13 CONSULTANT'S employees, including compliance with Social Security withholding and all  
14 other regulations governing such matters. It is acknowledged that during the term of this  
15 AGREEMENT, the CONSULTANT may be providing services to others unrelated to the  
16 COUNTY or to this AGREEMENT.

17 XXXV. DISCLOSURE OF SELF-DEALING TRANSACTIONS

18 This provision is only applicable if the CONSULTANT is operating as a corporation  
19 (a for-profit or non-profit corporation) or if during the term of the AGREEMENT, the  
20 CONSULTANT changes its status to operate as a corporation. Members of the  
21 CONSULTANT'S Board of Directors shall disclose any self-dealing transactions that they  
22 are a party to while the CONSULTANT is providing goods or performing services under the  
23 AGREEMENT. A self-dealing transaction shall mean a transaction to which the  
24 CONSULTANT is a party and in which one or more of its directors has a material financial  
25 interest. Members of the Board of Directors shall disclose any self-dealing transactions to  
26 which they are a party, by completing and signing a Self-Dealing Transaction Disclosure  
27 Form, attached hereto and incorporated as Exhibit K and submitting it to the COUNTY prior  
28 to commencing with the self-dealing transaction or immediately thereafter.

1 XXXVI. NOTIFICATION

2 All notices hereunder and communications regarding interpretation of the terms of  
3 the AGREEMENT and changes thereto, shall be effected by the mailing thereof by  
4 registered or certified mail, return receipt requested, postage prepaid, and addressed to the  
5 COUNTY'S CONTRACT ADMINISTRATOR and the CONSULTANT'S Project Manager  
6 identified on Pages 1 and 2 of this AGREEMENT.

7 XXXVII. NON-ASSIGNMENT

8 Neither party shall assign, transfer or sub-contract the AGREEMENT or any of its  
9 respective rights or duties hereunder, without the prior written consent of the other party.

10 XXXVIII. CONSULTANT'S LEGAL AUTHORITY

11 Each individual executing or attesting the AGREEMENT on behalf of the  
12 CONSULTANT hereby covenants, warrants, and represents: (i) that he or she is duly  
13 authorized by or in accordance with the CONSULTANT'S corporate by-laws to execute or  
14 attest and deliver the AGREEMENT on behalf of the CONSULTANT; and (ii) that the  
15 AGREEMENT, once he or she has executed it, is and shall be binding upon such  
16 corporation.

17 XXXIX. BINDING UPON SUCCESSORS

18 The AGREEMENT shall be binding upon and inure to the benefit of the parties and  
19 their respective successors in interest, assigns, legal representatives, and heirs.

20 XL. INCONSISTENCIES

21 In the event of any inconsistency in interpreting the documents which constitute the  
22 AGREEMENT, the inconsistency shall be resolved by giving precedence in the following  
23 order of priority: (1) the text of the AGREEMENT (excluding Appendices); (2) Appendices  
24 to the AGREEMENT.

25 XLI. SEVERABILITY

26 Should any part of the AGREEMENT be determined to be invalid or unenforceable,  
27 then the AGREEMENT shall be construed as not containing such provision, and all other  
28 provisions which are otherwise lawful shall remain in full force and effect, and to this end

1 the provisions of the AGREEMENT are hereby declared to be severable.

2 XLII. FINAL AGREEMENT

3 Both of the above-named parties to the AGREEMENT hereby expressly agree that  
4 the AGREEMENT constitutes the entire agreement which is made and concluded in  
5 duplicate between the two parties with respect to the subject matter hereof and supersedes  
6 all previous negotiations, proposals, commitments, writing, advertisements, publications,  
7 and understandings of any nature whatsoever unless expressly included in this  
8 AGREEMENT. In consideration of promises, covenants and conditions contained in the  
9 AGREEMENT, the CONSULTANT and the COUNTY, and each of them, do hereby agree  
10 to diligently perform in accordance with the terms and conditions of the AGREEMENT, as  
11 evidenced by the signatures below.

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

CONSULTANT

COUNTY OF FRESNO

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

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

NAME: \_\_\_\_\_

STEVEN E. WHITE, DIRECTOR

TITLE: \_\_\_\_\_

DEPARTMENT OF PUBLIC WORKS

ADDRESS:

AND PLANNING

APPROVED AS TO LEGAL FORM:  
DANIEL C. CEDERBORG, COUNTY  
COUNSEL

BY: \_\_\_\_\_  
DEPUTY COUNTY COUNSEL

APPROVED AS TO ACCOUNTING  
FORM  
OSCAR J. GARCIA, CPA  
AUDITOR-CONTROLLER/  
TREASURER-TAX COLLECTOR

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

ORG: 0130 1910 1912 4360 4510 7205  
FUND: 0001 0001 0001 0001 0010 0001  
SUBCLASS: 10000 10000 11000 00001  
ACCOUNT: 7295