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CONSULTANT AGREEMENT

THIS AGREEMENT for specialized professional Environmental Consultant Services,(Agreement), is made and entered into this \_\_\_\_ day of \_\_\_\_\_2026, by and between the County of Fresno, a political subdivision of the State of California, (County); and \_\_\_\_\_, a California Corporation, whose address is \_\_\_\_\_, (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, as well as work for Planning and Development Services (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 California Department of Transportation's (Caltrans) Local Assistance Procedures Manual (LAPM), to provide the environmental consulting services necessary for the Projects; and

WHEREAS, the individual listed below

Joseph Harrell, Interim Design Engineer  
2220 Tulare Street, 7th Floor, Fresno, CA 93721  
559-600-4505

[jharrell@fresnocountyca.gov](mailto:jharrell@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 (Director); and

WHEREAS, the individual listed below

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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, which approval will not be unreasonably withheld; and

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

I. GENERAL PROVISIONS

A. The County hereby contracts with the Consultant as an independent contractor to provide 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 mutually agreed upon in advance by the County's Contract Administrator, and the Consultant, and consistent with schedules established under Article V.

C. The Consultant's Project team staff shall be as listed in Exhibit A, attached hereto and incorporated herein. Any substitutions of personnel must be approved in advance by the County's Contract Administrator, which approval shall not be unreasonably withheld. The Consultant shall notify the County's Contract Administrator of the names and classifications of employees assigned to each specific Project and shall not reassign such employees to other Projects of the Consultant without notification to and prior approval by the County's Contract Administrator.

D. The Consultant may retain, as subconsultants, specialists as the Consultant requires to assist in completing the work. All subconsultants used by the Consultant shall be approved in writing by the County's Contract Administrator before they are retained by the Consultant, which approval shall not be unreasonably withheld. The subconsultants

1 listed in Exhibit B, attached hereto and incorporated herein, shall be considered as  
2 approved by the County's Contract Administrator. Should the Consultant retain any  
3 subconsultants, the maximum amount of compensation to be paid to the Consultant under  
4 Article VI below shall not be increased. Any additional compensation to be paid to the  
5 Consultant for such subconsultants' work shall be limited to administrative time as defined  
6 in the fee proposal. Additional fees other than those defined in the fee proposal shall not be  
7 reimbursed.

8 E. The Consultant and affiliated subconsultants shall not submit bids, or sub-  
9 bids, for the contract construction phase of the Project assigned to the Consultant. The  
10 Consultant and its subconsultants, and all other service providers, shall not provide any  
11 Project-related services for, or receive any Project-related compensation from any  
12 construction contractor (Contractor), subcontractor or service provider awarded a  
13 construction contract for all or any portion of the Project(s) for which the Consultant  
14 provides services hereunder. The Consultant and its subconsultants, and all other service  
15 providers, may provide services for, and receive compensation from a Contractor who has  
16 been awarded a construction contract for all or any portion of the Project(s) provided that  
17 any such services which are rendered, and any compensation which is received therefor,  
18 relates to work outside the scope of the Agreement and does not pose a conflict of interest.

19 F. Any subcontract in excess of \$25,000 entered into as a result of this  
20 Agreement, shall contain all the provisions stipulated in the Agreement to be applicable to  
21 subcontractors.

## 22 II. DESCRIPTION OF THE WORK COVERED BY THE AGREEMENT

23 A. The work to be performed by the Consultant under the Agreement includes  
24 on-call professional services under Article III for various Projects, including but not limited  
25 to, technical services related to biological, cultural, visual, farmland, water quality,  
26 hazardous waste, noise, revegetation plans, focused plant or animal surveys, habitat  
27 assessment, wetland delineation, and other studies.

28 B. The Consultant agrees to provide the professional services that are

1 necessary for each Project when expressly authorized in writing by the County's Contract  
2 Administrator. Such work by the Consultant shall not begin until the Consultant has received  
3 a written Notice to Proceed from the County's Contract Administrator authorizing the necessary  
4 service, agreed upon fee, and scope of work.

5 III. CONSULTANT'S SERVICES

6 The Consultant shall submit proposals in response to requests issued by the  
7 County's Contract Administrator on a project-by-project basis. The Consultant's proposal at  
8 a minimum shall include, but not be limited to, staff qualifications, proposed method and  
9 schedule for completing the task(s), completed federal forms and a sealed cost proposal.  
10 The Consultant agrees that each professional or other individual performing work on any  
11 such Project(s) shall be adequately trained to perform the work and shall possess the  
12 proper license, certification or registration as required by law or by accepted standards of  
13 the applicable profession. The Consultant agrees to provide the professional services  
14 listed in Exhibit L when expressly authorized in writing by the County's Contract  
15 Administrator.

16 IV. OBLIGATIONS OF COUNTY

17 The County will:

- 18 A. Issue task orders on a project-by-project basis. Task orders will at a minimum  
19 include scope of work, location, and schedule for the Project.
- 20 B. Compensate the Consultant as provided in the Agreement.
- 21 C. Provide a County Contract Administrator to serve as a representative of the  
22 County who will coordinate and communicate with the Consultant, to the extent  
23 appropriate, to facilitate the Consultant's performance of its obligations in accordance with  
24 the provisions of the Agreement.
- 25 D. Provide basic plan sheet layouts as required.
- 26 E. Examine documents submitted to the County by the Consultant and timely  
27 render decisions pertaining thereto.
- 28 F. Provide aerial photographs as required.

1 G. Provide copies of any available existing as-built plans and right-of-way  
2 drawings from the County's files.

3 H. Provide mailing lists and labels for notification of property owners upon the  
4 Consultant's request.

5 I. Provide preliminary engineering survey data on existing structures and  
6 topographic mapping in AutoCAD Civil 3D, version 2013 or later, format to the Consultant,  
7 if available.

8 J. Prepare all legal descriptions and drawings required for right-of-way  
9 acquisition and/or temporary construction permits.

10 K. Provide limited assistance to Consultant as may be appropriate in connection  
11 with Consultant's processing of required permits.

12 L. Give reasonably prompt consideration to all matters submitted for approval by  
13 the Consultant to the end that there will be no substantial delays in the Consultant's  
14 program of work. An approval, authorization or request to the Consultant given by the  
15 County will be binding upon the County under the terms of the Agreement only if it is made  
16 in writing and signed on behalf of the County by the County's Contract Administrator.

17 V. TERM OF AGREEMENT / PERFORMANCE PERIOD

18 A. The term of this Agreement shall be for a period of five (5) years,  
19 commencing upon execution by the County, through and including the fifth anniversary of  
20 the execution date. The Consultant shall commence work promptly after receipt of a notice  
21 to proceed issued by the County's Contract Administrator.

22 B. The Consultant is advised and hereby acknowledges its understanding that  
23 any recommendation for award is not binding on the County until the Agreement is fully  
24 executed following its approval by the County's Board of Supervisors.

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

27 A. Maximum Cumulative Amount Available for Payment Under This Agreement  
28 and the Other Related Environmental Services Consultant Agreements:

1           1.       County has or will enter into eleven (11) separate Agreements, including this  
2 Agreement, for performance of the Scope of Services identified in Article III hereinabove.  
3 The other Agreements are to be entered into by County with the other ten (10) consultant  
4 firms listed, together with Consultant, on the list of environmental consultant firms attached  
5 hereto as Exhibit K. The total amount payable by County for all the Agreements combined  
6 shall not exceed a cumulative maximum total value of Five Million Dollars (\$5,000,000)  
7 (NTE Sum).

8           2.       It is understood and agreed that there is no guarantee, either expressed or  
9 implied, that this cumulative maximum total dollar amount of Five Million Dollars  
10 (\$5,000,000) will be authorized under the Environmental Services Consultant Agreements  
11 through Task Orders. It is further understood and agreed that there is no guarantee, either  
12 expressed or implied, that any Task Order will be assigned to Consultant or that Consultant  
13 will receive any payment whatsoever, under the terms of this Agreement. Each time a  
14 Task Order is awarded under any of the Agreements, the County shall send written  
15 notification to Consultant and each of the other consultants that entered into the  
16 Agreements. The notice shall identify the total funds allocated under issued Task Orders,  
17 and the remaining unencumbered amount of the NTE Sum. Consultant acknowledges and  
18 agrees that County shall not pay any amount under this Agreement that would exceed the  
19 NTE Sum, and Consultant shall not enter into a Task Order that exceeds the NTE Sum.

20           B.       Total Fee:

21           1.       Subject to and consistent with the provisions of the immediately preceding  
22 Article VI, Section A, the Total Fee for the services required under this Agreement, shall not  
23 exceed the total sum of Five Million Dollars (\$5,000,000) over the entire term of this  
24 Agreement. Compensation for the services rendered shall be computed at the hourly and  
25 cost rates shown in Exhibit C, subject to any adjustments that may be approved in  
26 accordance with Article VI, Section B, Paragraph 3.

27           2.       The hourly and cost rates listed herein for services rendered by the  
28 Consultant and subconsultants shall remain in effect for the entire duration of the

1 Agreement unless adjusted in accordance with the provisions of Article VI, Section B,  
2 Paragraphs 3, 5, or 6.

3 3. The hourly rates paid for services performed by the Consultant and by  
4 subconsultants of the Consultant and the rates for expenses incidental to the Consultant's  
5 and subconsultant's performance of services may be adjusted no more than once annually  
6 for inflation, in accordance with the following provisions: the Consultant may request new  
7 labor rates and new rates for expenses incidental to the Consultant's and subconsultant's  
8 performance of services subject to written approval of the County's Contract Administrator  
9 in accordance with the provisions of this Article VI, Section B, Paragraph 3. The Consultant  
10 shall initiate the rate adjustment process by submitting to the County's Contract  
11 Administrator a proposed adjusted fee schedule. The proposed adjusted fee schedule  
12 shall include proposed hourly rates for all categories of the Consultant and subconsultants  
13 wage classifications and proposed rates for incidental expenses listed in Exhibit C. The  
14 proposed adjusted fee schedule shall not take effect unless approved in writing by the  
15 County's Contract Administrator. The Consultant hereby acknowledges its understanding  
16 that approval by the County's Contract Administrator of any upward adjustment in the  
17 hourly and cost rates shall not provide a basis for any increase in the total fee of  
18 \$5,000,000, as set forth in Article VI, Section B, Paragraph 1.

19 4. Expenses incidental to the Consultant's and subconsultant's performance of  
20 services under Article III of the AGREEMENT shall be charged at the rates listed in Exhibit  
21 C, subject to any adjustments that may be approved in accordance with Article VI, Section  
22 B, Paragraphs 3, 5, or 6. Unless incorporated in an adjusted fee schedule approved by the  
23 County's Contract Administrator in accordance with Article VI, Section B, Paragraphs 3, 5,  
24 or 6, all other expenses incidental to the Consultant's and subconsultant's performance of  
25 the services under Article III of the Agreement that are not listed in Exhibit C shall be borne  
26 by the Consultant.

27 5. In the event that, in accordance with Article I, Section D, the County's  
28 Contract Administrator approves the Consultant to retain additional subconsultants not

1 listed in Exhibit B, hourly rates paid for services performed by such additional  
2 subconsultants of the Consultant and the rates for expenses incidental to subconsultants  
3 performance of services may be adjusted no more than once annually for inflation, in  
4 accordance with Article VI, Section B, Paragraph 3. The first annual adjustment of hourly  
5 and incidental expense rates for such additional subconsultants shall not be approved prior  
6 to one year after the County's Contract Administrator approval of the retention of such  
7 additional subconsultant(s) by the Consultant.

8           6. Notwithstanding any other provisions in the Agreement, the County's Contract  
9 Administrator may, at any time, authorize in writing the revision of the Consultant's or  
10 subconsultant's charge rates for incidental expenses to include additional categories of  
11 such expenses if, in the opinion of the County's Contract Administrator, such revision is  
12 necessary to facilitate the Consultant's performance of the Project(s).

13           C. Payments:

14           1. Progress payments will be made by the County upon receipt of the  
15 Consultant's monthly invoices and approval by the County's Contract Administrator thereof  
16 based on the County's Contract Administrator's evaluation of the completion of the  
17 respective components of the assigned Project. Invoices shall clearly identify the Phase  
18 and Task of the work, the date work was performed and shall be submitted with the  
19 documentation identified in Article VI, Section C, Paragraph 5. Invoices shall be forwarded  
20 electronically to: [PWPBusinessOffice@fresnocountyca.gov](mailto:PWPBusinessOffice@fresnocountyca.gov).

21           2. Upon receipt of a proper invoice, the County's Contract Administrator will take  
22 a maximum of twenty (20) working days to review, approve, and submit it to the County  
23 Auditor Controller/Treasurer Tax Collector. Unsatisfactory or inaccurate invoices will be  
24 returned to the Consultant for correction and resubmittal. Payment, less retention, if  
25 applicable, will be issued to the Consultant within forty-five (45) calendar days of the date  
26 the Auditor Controller/Treasurer Tax Collector receives the approved invoice.

27           3. The County is entitled to withhold a five percent (5%) retention from the  
28 Consultant's earned compensation in accordance with the provisions of Article VII of the

1 Agreement.

2 4. An unresolved dispute over a possible error or omission may cause payment  
3 of the Consultant fees in the disputed amount to be withheld by the County.

4 5. Concurrently with the invoices, the Consultant shall certify (through copies of  
5 issued checks, receipts, or other COUNTY pre-approved documentation) that complete  
6 payment, less a five percent (5%) retention, except as otherwise specified in Article VII, has  
7 been made to all subconsultants as provided herein for all previous invoices paid by the  
8 County. However, the parties do not intend that the foregoing create in any subconsultants  
9 or sub-contractor a third-party beneficiary status or any third-party beneficiary rights and  
10 expressly disclaim any such status or rights.

11 6. Final invoices, and separate invoices for retention, shall be submitted to the  
12 County's Contract Administrator no later than thirty (30) days after the Project is completed.  
13 Payment for retentions, if any, shall not be made until all services for the Project are  
14 completed.

15 7. In the event the Director reduces the scope of Consultant's work under the  
16 Agreement for a specific Project (or discontinues a specific Project), whether due to a  
17 deficiency in the appropriation of anticipated funding or otherwise, the Consultant will be  
18 compensated on a pro rata basis for actual work completed and accepted by the Director in  
19 accordance with the terms of the Agreement.

20 VII. RETENTION FROM EARNED COMPENSATION

21 The Consultant agrees that the County, at the discretion of the County's Contract  
22 Administrator, may withhold a five percent (5%) retention from the earned compensation of  
23 the Consultant. If the County's Contract Administrator determines that retention will be  
24 withheld for a Project, the County's Contract Administrator will so state in writing prior to  
25 commencement of the Project by the Consultant and will identify the Project-specific  
26 prerequisites (such as successful completion of a Project phase, as an example) for the  
27 release of retentions.

28 VIII. TERMINATION

1           A.     The Agreement may be terminated without cause at any time by the County  
2 upon thirty (30) calendar days' written notice. If the County terminates this Agreement, the  
3 Consultant shall be compensated for services satisfactorily completed to the date of  
4 termination based upon the compensation rates and subject to the maximum amounts  
5 payable agreed to in Article VI, together with such additional services satisfactorily  
6 performed after termination which are expressly authorized by the County to conclude the  
7 work performed to the date of termination.

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

16           C.     The County may immediately suspend or terminate the Agreement in whole  
17 or in part, where in the determination of the County there is:

- 18           1.     An illegal or improper use of funds;
- 19           2.     A failure to comply with any term of the Agreement;
- 20           3.     A substantially incorrect or incomplete report submitted to the County;
- 21           4.     Improperly performed service.

22           D.     In no event shall any payment by the County constitute a waiver by the  
23 County of any breach of the Agreement or any default which may then exist on the part of  
24 the Consultant, nor shall such payment impair or prejudice any remedy available to the  
25 County with respect to the breach or default. The Director shall have the right to demand of  
26 the Consultant the repayment to the County of any funds disbursed to the Consultant under  
27 the Agreement, which, in the judgment of the Director and as determined in accordance  
28 with the procedures of Article XV, were not expended in accordance with the terms of the

1 Agreement. The Consultant shall promptly refund any such funds upon demand.

2 E. The terms of the Agreement, and the services to be provided thereunder, are  
3 contingent on the approval of funds by the appropriating government agency. Should  
4 sufficient funds not be allocated, the services provided may be modified, or the Agreement  
5 terminated at any time by giving the Consultant thirty (30) days advance written notice. In  
6 the event of termination on the basis of this paragraph, the Consultant's entitlement to  
7 payment, in accordance with the payment provisions set forth hereinabove, shall apply only  
8 to work performed by the Consultant prior to receipt of written notification of such non-  
9 allocation of sufficient funding.

10 F. In the event of termination, Consultant shall be compensated as provided for  
11 in this Agreement, except as provided in Article XI, Section C. Upon termination, the  
12 County shall be entitled to all work, including but not limited to, reports, investigations,  
13 appraisals, inventories, studies, analyses, drawings and data estimates performed to that  
14 date, whether completed or not.

15 IX. FUNDING REQUIREMENTS

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

20 B. The Agreement is subject to any additional restrictions, limitations, conditions,  
21 or any legislation enacted by the Congress, State Legislature or County's Board of  
22 Supervisors that may affect the provisions, terms, or funding of the Agreement in any  
23 manner.

24 C. It is mutually agreed that if sufficient funds are not appropriated, the  
25 Agreement may be amended to reflect any reduction in funds.

26 D. The County has the option to void the Agreement under the 30-day  
27 cancellation clause in Article VIII, Section A, or to amend the AGREEMENT in accordance  
28 with Article X, Section A by mutually acceptable modification of its provisions to reflect any

1 reduction of funds.

2 X. CHANGE IN TERMS

3 A. The Agreement may be amended or modified only by mutual written  
4 agreement of both parties. Except as provided in Article V, Section A and Article VI,  
5 Paragraphs 3, 5 or 6, any such written amendment to this Agreement may be approved on  
6 the COUNTY's behalf only by its Board of Supervisors.

7 B. The Consultant shall only commence work covered by an amendment after  
8 the amendment has been fully executed and written notification to proceed has been  
9 issued by the County's Contract Administrator.

10 XI. COST PRINCIPLES

11 A. The Consultant agrees that 48 CFR Part 31, Contract Cost Principles and  
12 Procedures, shall be used to determine the allowability of individual terms of cost. The  
13 Consultant shall sign the Certification of Contract Costs and Financial Management  
14 System, attached hereto and incorporated herein as Exhibit D.

15 B. The Consultant also agrees to comply with Federal procedures in accordance  
16 with 2 CFR, Part 200, Uniform Administrative Requirements, Cost Principles, and Audit  
17 Requirements for Federal Awards.

18 C. Any costs for which payment has been made to the Consultant that are  
19 determined by subsequent audit to be unallowable under 48 CFR Part 31 or 2 CFR Part  
20 200 are subject to repayment by the Consultant to the County.

21 D. When a Consultant or subconsultant is a non-profit organization or an  
22 institution of higher education, the Cost Principles for Title 2 CFR Part 200, Uniform  
23 Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards  
24 shall apply.

25 XII. COVENANT AGAINST CONTINGENT FEES

26 A. The Consultant warrants by execution of the Agreement, that the Consultant  
27 has not employed or retained any company or person, other than a bona fide employee  
28 working for the Consultant; to solicit or secure the Agreement; and that the Consultant has

1 not paid or agreed to pay any company or person other than a bona fide employee, any  
2 fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent  
3 upon or resulting from the award or formation of the Agreement. For breach or violation of  
4 this warranty, the County shall have the right to annul the Agreement without liability, and to  
5 pay only for the value of the work actually performed by the Consultant, or alternatively in  
6 the County's discretion, to deduct from the contract price or consideration, or otherwise  
7 recover the full amount of such any such commission, percentage, brokerage fee, gift,  
8 contingent fee or similar form of consideration previously paid by the Consultant.

9 B. The Consultant shall sign the Certification of Consultant, Commissions &  
10 Fees, attached hereto and incorporated herein as Exhibit E, at the time of execution of the  
11 Agreement.

12 XIII. RETENTION OF RECORDS/AUDIT

13 For the purpose of determining compliance with Government Code section 8546.7,  
14 the Consultant, subconsultants, and the County shall maintain all books, documents,  
15 papers, accounting records, independent CPA audited Indirect Cost Rate workpapers, and  
16 other evidence pertaining to the performance of the Agreement including, but not limited to,  
17 the costs of administering the Agreement. All parties, including the Consultant's  
18 independent CPA, shall make such workpapers and materials available at their respective  
19 offices at all reasonable times during the Agreement period and for three (3) years from the  
20 date of final payment under the Agreement. The County, Caltrans Auditor, FHWA, or any  
21 duly authorized representative of the federal government having jurisdiction under federal  
22 laws or regulations (including the basis of federal funding in whole or in part) shall have  
23 access to any books, records, and documents of the Consultant, subconsultants, and the  
24 Consultant's independent CPA, that are pertinent to the Agreement for audits,  
25 examinations, workpaper review, excerpts, and transactions, and copies thereof shall be  
26 furnished if requested without limitation.

27 XIV. AUDIT REVIEW PROCEDURES

28 A. Any dispute concerning a question of fact arising under an interim or post

1 audit of this Agreement that is not disposed of by agreement between the parties, shall be  
2 reviewed by the County's Auditor/Controller/Treasurer/Tax-Collector.

3 B. Not later than thirty (30) calendar days after issuance of the final audit report,  
4 the Consultant may request a review by the County's Auditor/Controller/Treasurer/ Tax-  
5 Collector of unresolved audit issues. The request for review will be submitted in writing.

6 C. Neither the pendency of a dispute nor its consideration by the County will  
7 excuse the Consultant from full and timely performance, in accordance with the terms of  
8 the Agreement.

9 D. The Consultant and subconsultant agreements, including cost proposals and  
10 indirect cost rates (ICR), are subject to audits or reviews such as, but not limited to, an  
11 Agreement Audit, an Incurred Cost Audit, an ICR Audit, or a certified public accountant  
12 (CPA) ICR Audit Workpaper Review. If selected for audit or review, the Agreement, cost  
13 proposal and ICR and related workpapers, if applicable, will be reviewed to verify  
14 compliance with 48 CFR, Part 31 and other related laws and regulations. In the instances  
15 of a CPA ICR Audit Workpaper Review, it is the Consultant's responsibility to ensure  
16 federal, state, County, or local government officials are allowed full access to the CPA's  
17 workpapers, including making copies as necessary. The Agreement, cost proposal, and  
18 ICR shall be adjusted by Consultant and approved by the County's Contract Administrator  
19 to conform to the audit or review recommendations. The Consultant agrees that individual  
20 terms of costs identified in the audit report shall be incorporated into the Agreement by this  
21 reference, if directed by the County in its sole discretion. Refusal by the Consultant to  
22 incorporate audit or review recommendations, or to ensure that the federal, state, County,  
23 or local governments have access to CPA workpapers, will be considered a breach of the  
24 Agreement terms and cause for termination of the Agreement and disallowance of prior  
25 reimbursed costs.

26 E. Consultant's Cost Proposal may be subject to a CPA ICR Audit Work Paper  
27 Review and/or audit by the Independent Office of Audits and Investigations (IOAI). IOAI, at  
28 its sole discretion, may review and/or audit and approve the CPA ICR documentation. The

1 Cost Proposal shall be adjusted by the Consultant and approved by the County's Contract  
2 Administrator to conform to the Work Paper Review recommendations included in the  
3 management letter or audit recommendations included in the audit report. Refusal by the  
4 Consultant to incorporate the Work Paper Review recommendations included in the  
5 management letter or audit recommendations included in the audit report will be considered  
6 a breach of the Agreement terms and cause for termination of this Agreement and  
7 disallowance of prior reimbursed costs.

8 1. During IOAI's review of the ICR audit work papers created by the  
9 CONSULTANT's independent CPA, IOAI will work with the CPA and/or Consultant toward  
10 a resolution of issues that arise during the review. Each party agrees to use its best efforts  
11 to resolve any audit disputes in a timely manner. If IOAI identifies significant issues during  
12 the review and is unable to issue a cognizant approval letter, the County will reimburse the  
13 Consultant at an accepted ICR until a Federal Acquisition Regulation (FAR) compliant ICR  
14 (e.g. 48 CFR Part 31); Generally Accepted Auditing Standards (GAGAS); Cost Accounting  
15 Standards (CAS), if applicable; in accordance with procedures and guidelines of the  
16 American Association of State Highways and Transportation Officials (AASHTO) Audit  
17 Guide; and other applicable procedures and guidelines is received and approved by IOAI.

17 Accepted rates will be as follows:

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

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

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

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

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

7           4. Consultant may submit to the County its final invoice only when all of the following  
8 items have occurred: (1) IOAI accepts or adjusts the original or revised independent CPA  
9 audited ICR; (2) all work under this Agreement has been completed to the satisfaction of  
10 the County; and (3) IOAI has issued its final ICR review letter. The CONSULTANT MUST  
11 SUBMIT ITS FINAL INVOICE TO THE COUNTY no later than sixty (60) calendar days  
12 after occurrence of the last of these items. The accepted ICR will apply to this Agreement  
13 and all other agreements executed between the County and the Consultant, either as a  
14 prime or subconsultant, with the same fiscal period ICR.

15 **XV. ERRORS OR OMISSIONS CLAIMS AND DISPUTES**

16           A.     Definitions:

17           1.     A "Consultant" is a duly licensed Architect or Engineer, or other  
18 provider of professional services, acting as a business entity (owner, partnership,  
19 corporation, joint venture or other business association) in accordance with the terms of an  
20 agreement with the County.

21           2.     A "Claim" is a demand or assertion by one of the parties seeking, as a  
22 matter of right, adjustment or interpretation of contract terms, payment of money, extension  
23 of time, change orders, or other relief with respect to the terms of the Agreement. The term  
24 "Claim" also includes other disputes and matters in question between the County and the  
25 Consultant arising out of or relating to the Agreement. Claims must be made by written  
26 notice. The provisions of Government Code section 901, et seq., shall apply to every claim  
27 made to the County. The responsibility to substantiate claims shall rest with the party  
28 making the claim. The term "Claim" also includes any allegation of an error or omission by

1 the Consultant.

2 B. In the spirit of cooperation between the County and the Consultant, the  
3 following procedures are established in the event of any claim or dispute alleging a  
4 negligent error, act, or omission, of the Consultant.

5 1. Claims, disputes or other matters in question between the parties,  
6 arising out of or relating to the Agreement, shall not be subject to arbitration, but shall be  
7 subject to the following procedures.

8 2. The County and the Consultant shall meet and confer and attempt to  
9 reach agreement on any dispute, including what damages have occurred, the measure of  
10 damages and what proportion of damages, if any, shall be paid by either party. The parties  
11 agree to consult and consider the use of mediation or other form of dispute resolution prior  
12 to resorting to litigation.

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

28 4. Upon receipt of the panel's recommended resolution of the disputed

1 issue(s), the County and the Consultant shall again meet and confer and attempt to reach  
2 agreement. If the parties still are unable to reach agreement, each party shall have  
3 recourse to all appropriate legal and equitable remedies.

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

6 D. The Consultant shall continue to perform its obligations under the Agreement  
7 pending resolution of any dispute, and the County shall continue to make payments of all  
8 undisputed amounts due under the Agreement.

9 E. When a claim by either party has been made alleging the Consultant's  
10 negligent error, act, or omission, the County and the Consultant shall meet and confer  
11 within twenty-one (21) working days after the written notice of the claim has been provided.

12 XVI. SUBCONTRACTING

13 A. The Consultant shall perform the work contemplated with resources available  
14 within its own organization and no portion of the work encompassed by this Agreement  
15 shall be subcontracted without written authorization by the County's Contract Administrator,  
16 excepting only those portions of the work and the responsible subconsultants that are  
17 expressly identified in Exhibit B hereto.

18 B. Nothing contained in this Agreement or otherwise, shall create any  
19 contractual relationship between the County and any subconsultants, and no subcontract  
20 between the Consultant and any subconsultant shall relieve the Consultant of any of its  
21 responsibilities and obligations hereunder. The Consultant agrees to be as fully responsible  
22 to the County for the acts and omissions of its subconsultants and of persons either directly  
23 or indirectly employed by any of its subconsultants, as it is for the acts and omissions of  
24 persons directly employed by the Consultant. The Consultant's obligation to pay its  
25 subconsultants is an independent obligation from the County's obligation to make payments  
26 to the Consultant.

27 C. Any subcontract in excess of \$25,000 entered into by Consultant, pertaining  
28 to work to be performed under the Agreement, shall contain all the provisions stipulated in

1 this Agreement to be applicable to subconsultants.

2 D. Any substitution of subconsultants must be approved in writing by the  
3 County's Contract Administrator in advance of assigning work to a substitute subconsultant.

4 XVII. EQUIPMENT PURCHASE

5 A. Prior authorization in writing by the County's Contract Administrator shall be  
6 required before the Consultant enters into any unbudgeted purchase order, or subcontract  
7 exceeding \$5,000 for supplies, equipment, or services. The Consultant shall provide an  
8 evaluation of the necessity or desirability of incurring such costs.

9 B. Prior authorization by the County's Contract Administrator shall be required  
10 for purchase of any item, service or consulting work in excess of \$5,000 that is not covered  
11 in the Consultant's Cost Proposal; and the Consultant's request must be accompanied by  
12 at least three competitive quotations, unless the absence of bidding is adequately justified,  
13 to the satisfaction of the County's Contract Administrator in his or her discretion, by written  
14 explanation provided by the Consultant with its submittal.

15 C. Any authorized purchase of equipment as a result of the Agreement is subject  
16 to the following:

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

1 conditions of such sale must be approved in advance by the County.

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

5 XVIII. INSPECTION OF WORK

6           The Consultant and any subconsultant shall permit the County, the state, and/or the  
7 FHWA to review and inspect the Project activities and files at all reasonable times during  
8 the performance period of the Agreement including review and inspection on a daily basis.

9 XIX. SAFETY

10           A. The Consultant shall comply with Occupational Safety and Health  
11 Administration (OSHA) regulations applicable to Consultant regarding necessary safety  
12 equipment or procedures. Consultant shall comply with safety instructions issued by a  
13 County Safety Officer and other County representatives. The Consultant personnel shall  
14 wear hard hats and safety vests at all times while working on the construction project site.  
15 Pursuant to the authority contained in Vehicle Code Section 591, the County has  
16 determined that such areas are within the limits of the project and are open to public traffic.  
17 Consultant shall comply with all requirements set forth in Divisions 11, 12, 13, 14 and 15 of  
18 the Vehicle Code. The Consultant shall take all reasonably necessary precautions for safe  
19 operation of its vehicles and the protection of the traveling public from injury and damage  
20 from such vehicles.

21 XX. INSURANCE

22           A. Without limiting the County's right to obtain indemnification from the  
23 Consultant or any third parties, the Consultant, at its sole expense, shall maintain in full  
24 force and effect, the following insurance policies prior to commencement of any work for  
25 the County and, thereafter, throughout the entire term of the Agreement (with the exception  
26 of Professional Liability Insurance, which the Consultant shall maintain in full force and  
27 effect for the additional period of time required by Paragraph 4 of this Article XX, Section  
28 A).

1           1.     Commercial General Liability Insurance with limits not less than One  
2 Million Dollars **(\$1,000,000)** per occurrence and an annual aggregate of not less than Two  
3 Million Dollars **(\$2,000,000)**. This policy shall be issued on a per occurrence basis. The  
4 County may require specific coverages including completed operations, products liability,  
5 contractual liability, Explosion-Collapse-Underground, fire legal liability or any other liability  
6 insurance deemed necessary because of the nature of the Agreement.

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

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

15           4.     Professional Liability Insurance:

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

19               b.     The Professional Liability Insurance shall be kept in full force  
20 and effect for a period of three (3) years from the date of substantial completion of the  
21 Consultant's work as determined by the County.

22               c.     The Consultant shall obtain endorsements to the Commercial  
23 General Liability insurance naming the County, its officers, agents, and employees,  
24 individually and collectively, as additional insured, but only insofar as the operations under  
25 the Agreement are concerned. Such coverage for additional insured shall apply as primary  
26 insurance and any other insurance, or self-insurance, maintained by the County, its  
27 officers, agents and employees shall be excess only and not contributing with insurance  
28 provided under the Consultant's policies herein. The Consultant shall give the County at

1 least thirty (30) days advance written notice of any cancellation, expiration, reduction or  
2 other material change in coverage with respect to any of the aforesaid policies.

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

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

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

24 XXI. HOLD HARMLESS

25 A. The Consultant shall defend, hold harmless and indemnify the County, its  
26 officers, agents, and employees, against the payment of any and all costs and expenses  
27 (including reasonable attorney fees and court costs), damages, claims, suits, losses, and  
28 liability for bodily and personal injury to or death of any person or for loss of any property to

1 the extent resulting from or arising out of any negligent or wrongful acts, errors or  
2 omissions of the Consultant, its officers, agents, and employees, in performing or failing to  
3 perform any work, services, or functions under the Agreement.

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

10 XXII. OWNERSHIP OF DATA

11 A. All documents, including preliminary documents, calculations, and survey  
12 data, required in performing services under the Agreement shall be submitted to, and shall  
13 remain at all times the property of the County regardless of whether they are in the  
14 possession of the Consultant or any other person, firm, corporation or agency.

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

1 Consultant. The Consultant further acknowledges and agrees the County's ownership  
2 rights in such drawings or work product, shall apply regardless of whether such drawings or  
3 work product, or any copies thereof, are in possession of the Consultant, or any other  
4 person, firm, corporation, or entity. For purposes of this Agreement the terms "drawings  
5 and work product" shall mean all reports and study findings commissioned to develop the  
6 Project design, drawings and schematic or preliminary design documents, certified  
7 reproducibles of the original final construction contract drawings, specifications, the  
8 approved estimate, record drawings, as-built plans, and discoveries, developments,  
9 designs, improvement, inventions, formulas, processes, techniques, or specific know-how  
10 and data generated or conceived or reduced to practice or learning by the Consultant,  
11 either alone or jointly with others, that result from the tasks assigned to the Consultant by  
12 the County under the Agreement.

13 C. If the Agreement is terminated during or at the completion of any phase of the  
14 Project under Article III, a reproducible copy of report(s) or preliminary documents shall be  
15 submitted by the Consultant to the County, which may use them to complete the Project(s)  
16 at a future time.

17 D. If the Project is terminated at the completion of a construction document  
18 phase of the Project, certified reproducibles on 4 mil thick double matte film of the original  
19 final construction contract drawings, specifications, and approved engineer's estimate shall  
20 be submitted by the Consultant to the County.

21 E. Documents, including drawings and specifications, prepared by the  
22 Consultant pursuant to the Agreement are intended to be suitable for reuse by the County  
23 or others on extensions of the services provided for the Project. Any use of completed  
24 documents for projects other than the Project(s) and/or any use of uncompleted documents  
25 will be at the County's sole risk and without liability or legal exposure to the Consultant.

26 The electronic files provided by the Consultant to the County are submitted for an  
27 acceptance period lasting until the expiration of the Agreement (i.e., throughout the  
28 duration of the contract term, including any extensions). Any defects the County discovers

1 during such acceptance period will be reported to the Consultant and will be corrected as  
2 part of the Consultant's "Basic Scope of Work."

3 F. The Consultant shall not be liable for claims, liabilities or losses arising out of,  
4 or connected with (1) the modification or misuse by the County or anyone authorized by the  
5 County, of such CAD data, or (2) decline of accuracy or readability of CAD data due to  
6 inappropriate storage conditions or duration; or (3) any use by the County, or anyone  
7 authorized by the County, of such CAD data or other Project documentation for additions to  
8 the Project for the completion of the Project by others, or for other projects; except to the  
9 extent that said use may be expressly 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 be  
13 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 XXIII. CLAIMS FILED BY COUNTY'S CONSTRUCTION CONTRACTOR

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

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

28 XXIV. 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 and  
3 made available to the Consultant in order to carry out the Agreement, shall be protected by  
4 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 further disclose  
7 such information, or disseminate the same on any other occasion.

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

12 D. The Consultant shall not issue any news release or public relations item of  
13 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 the  
15 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 XXV. 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 with  
23 an order of a federal court that orders the Consultant to comply with an order of the  
24 National Labor Relations Board.

25 XXVI. EVALUATION OF CONSULTANT

26 The Consultant's performance will be evaluated by the County using the form  
27 attached as Exhibit F. 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 XXVII. STATEMENT OF COMPLIANCE: NON-DISCRIMINATION

3 A. The Consultant's signature affixed herein, and dated, shall constitute a certification  
4 under penalty of perjury under the laws of the State of California that the Consultant has,  
5 unless exempt, complied with the nondiscrimination program requirements of Government  
6 Code Section 12990 and Title 2, California Administrative Code, Section 11103.

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

18 C. Consultant and subconsultants shall comply with the provisions of the Fair  
19 Employment and Housing Act (California Government Code Section 12990 et seq.), the  
20 applicable regulations promulgated there under (2 CCR Section 11000 et seq.), the  
21 provisions of California Government Code Sections 11135-11139, and the regulations or  
22 standards adopted by the County to implement such article. The applicable regulations of  
23 the Fair Employment and Housing Commission implementing California Government Code  
24 Section 12990 (a-f), set forth 2 CCR Sections 8101-8504, are incorporated into this  
25 Agreement by reference and made a part hereof as though fully set forth herein.

26 D. Consultant shall permit access by representatives of the Department of Fair  
27 Employment and Housing and the County upon reasonable notice at any time during the  
28 normal business hours, but in no case less than twenty-four (24) hours' notice, to such of

1 its books, records, accounts, and all other sources of information and its facilities as said  
2 Department or the County shall require to ascertain compliance with this clause.

3 E. Consultant and its subconsultants shall give written notice of their obligations  
4 under this clause to labor organizations with which they have a collective bargaining or  
5 other agreement.

6 F. Consultant shall include the nondiscrimination and compliance provisions of  
7 this clause in all subcontracts to perform work under this Agreement.

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

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

20 I. The Consultant and subconsultants shall include the nondiscrimination and  
21 compliance provisions of this clause in all subcontracts to perform work under the  
22 Agreement.

23 J. The Consultant, subconsultant or subrecipient will never exclude any person  
24 from participation in, deny any person the benefits of, or otherwise discriminate against  
25 anyone in connection with the award and performance of any contract covered by 49 CFR  
26 26. In administering the COUNTY components of the DBE Program Plan, Consultant,  
27 subconsultant or subrecipient will not, directly, or through contractual or other  
28 arrangements, use criteria or methods of administration that have the effect of defeating or

1 substantially impairing accomplishment of the objectives of the DBE Program Plan.

2 XXVIII. DEBARMENT AND SUSPENSION CERTIFICATION

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

15 B. Exceptions will not necessarily result in denial of recommendation for award  
16 but will be considered in determining Consultant responsibility. Disclosures must indicate to  
17 whom exceptions apply, initiating agency, and dates of action.

18 C. Exceptions to the Federal Government Excluded Parties Listing System  
19 maintained by the General Services Administration are to be determined by the Federal  
20 Highway Administration.

21 XXIX. COMPLIANCE WITH LAWS AND STATE PREVAILING WAGE RATES

22 A. The Consultant shall comply with the State of California's General Prevailing  
23 Wage Rate requirements in accordance with California Labor Code, Section 1770, and all  
24 Federal, State, and local laws and ordinances applicable to the work.

25 B. Any subcontract entered into as a result of this Agreement if for more than  
26 \$25,000 for public works construction or more than \$15,000 for the alteration, demolition,  
27 repair, or maintenance of public works, shall contain all the provisions of this Article.

28 XXX. CONFLICT OF INTEREST

1           A.     The Consultant shall comply with the provisions of the County Department of  
2 Public Works and Planning Conflict of Interest Code, attached hereto as Exhibit H and  
3 incorporated herein. Such compliance shall include the filing of annual statements  
4 pursuant to the regulations of the State Fair Political Practices Commission including, but  
5 not limited to, portions of Form 700.

6           B.     The Consultant shall disclose any financial, business, or other relationship  
7 with the County that may have an impact upon the outcome of this Agreement, or any  
8 ensuing County construction project. The Consultant shall also list current clients who may  
9 have a financial interest in the outcome of this Agreement, or any ensuing County  
10 construction project, which will follow.

11          C.     The Consultant hereby certifies that it does not now have, nor shall it acquire  
12 any financial or business interest that would conflict with the performance of services under  
13 this Agreement.

14          D.     The Consultant hereby certifies that neither the Consultant, nor any firm  
15 affiliated with the Consultant will bid on any construction contract, or on any contract to  
16 provide construction inspection for any construction the Project resulting from the  
17 Agreement; provided, however, that this shall not be construed as disallowing the  
18 Consultant or affiliated firm from performing, pursuant to the A or other agreement with the  
19 County, construction inspection services on behalf of the County for the Project. An  
20 affiliated firm is one which is subject to the control of the same persons through joint  
21 ownership, or otherwise.

22          E.     Except for subconsultants or subcontractors whose services are limited to  
23 providing surveying or materials testing information, no subcontractor who has provided  
24 design services in connection with this Agreement shall be eligible to bid on any  
25 construction contract, or on any contract to provide construction inspection for any  
26 construction project resulting from this Agreement; provided, however, that this shall not be  
27 construed as disallowing subcontractors who have provided design services for the Project  
28 from performing, pursuant to this Agreement or other agreement with the County,

1 construction inspection services on behalf of the County for the Project.

2 XXXI. REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION

3 The C warrants that this Agreement was not obtained or secured through rebates,  
4 kickbacks or other unlawful consideration, either promised or paid to any County employee.  
5 For breach or violation of this warranty, the County shall have the right, in its discretion, to  
6 do any of the following: terminate the Agreement without liability; or to pay only for the  
7 value of the work actually performed; or to deduct from the Agreement price, or otherwise  
8 recover the full amount of such rebate, kickback or other unlawful consideration.

9 XXXII. PROHIBITION OF EXPENDING COUNTY, STATE OR FEDERAL FUNDS FOR  
10 LOBBYING

11 A. The Consultant shall sign the lobbying forms, attached hereto and  
12 incorporated herein as Exhibit I, as required by the instructions found on each form.

13 B. The Consultant certifies to the best of his or her knowledge and belief that:

14 1. No state, federal or County appropriated funds have been paid, or will  
15 be paid by or on behalf of the Consultant to any person for influencing or attempting to  
16 influence an officer or employee of any state or federal agency; a Member of the State  
17 Legislature or United States Congress; an officer or employee of the Legislature or  
18 Congress; or any employee of a Member of the Legislature or Congress, in connection with  
19 any of the following:

- 20 a. the awarding of any state or federal contract;
- 21 b. the making of any state or federal grant;
- 22 c. the making of any state or federal loan;
- 23 d. the entering into of any cooperative agreement, or
- 24 e. the extension, continuation, renewal, amendment, or
- 25 f. the modification of any state or federal contract, grant, loan, or  
26 cooperative agreement.

27 2. If any funds other than federally appropriated funds have been paid, or  
28 will be paid to any person for influencing or attempting to influence an officer or employee

1 of any federal agency; a Member of Congress; an officer or employee of Congress, or an  
2 employee of a Member of Congress; in connection with this federal contract, grant, loan, or  
3 cooperative agreement, then the Consultant shall complete and submit Standard Form-  
4 LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

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

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

15 XXXIII. INDEPENDENT CONTRACTOR

16 A. In performance of the work, duties and obligations assumed by the Consultant  
17 under the Agreement, it is mutually understood and agreed that the Consultant, including any  
18 and all of the Consultant's officers, agents, and employees will at all times be acting and  
19 performing as an independent contractor, and shall act in an independent capacity and not as  
20 an officer, agent, servant, employee, joint venturer, partner, or associate of the County.  
21 Furthermore, the County shall have no right to control or supervise or direct the manner or  
22 method by which the Consultant shall perform its work and function. However, the County  
23 shall retain the right to administer the Agreement so as to verify that the Consultant is  
24 performing its obligations in accordance with the terms and conditions thereof.

25 B. The Consultant and the County shall comply with all applicable provisions of law  
26 and the rules and regulations, if any, of governmental authorities having jurisdiction over  
27 matters the subject thereof.

28 C. Because of its status as an independent contractor, the Consultant shall have

1 absolutely no right to employment rights and benefits available to County employees. The  
2 Consultant shall be solely liable and responsible for providing to, or on behalf of, its  
3 employees all legally-required employee benefits. In addition, the Consultant shall be solely  
4 responsible and save the County harmless from all matters relating to payment of the  
5 Consultant's employees, including compliance with Social Security withholding and all other  
6 regulations governing such matters. It is acknowledged that during the term of this  
7 Agreement, the Consultant may be providing services to others unrelated to the County or to  
8 this Agreement.

9 **XXXIV. DISCLOSURE OF SELF-DEALING TRANSACTIONS**

10 This provision is only applicable if the Consultant is operating as a corporation (a for-  
11 profit or non-profit corporation) or if during the term of the Agreement, the Consultant  
12 changes its status to operate as a corporation. Members of the Consultant's Board of  
13 Directors shall disclose any self-dealing transactions that they are a party to while the  
14 Consultant is providing goods or performing services under the Agreement. A self-dealing  
15 transaction shall mean a transaction to which the Consultant is a party and in which one or  
16 more of its directors has a material financial interest. Members of the Board of Directors  
17 shall disclose any self-dealing transactions to which they are a party, by completing and  
18 signing a Self-Dealing Transaction Disclosure Form, attached hereto and incorporated as  
19 Exhibit J and submitting it to the County prior to commencing with the self-dealing  
20 transaction or immediately thereafter.

21 **XXXV. NOTIFICATION**

22 All notices hereunder and communications regarding interpretation of the terms of  
23 the Agreement and changes thereto, shall be effected by the mailing thereof by registered  
24 or certified mail, return receipt requested, postage prepaid, and addressed to the County's  
25 Contract Administrator and the Consultant's Project Manager identified on Pages 1 and 2 of  
26 this Agreement.

27 **XXXVI. NON-ASSIGNMENT**

28 Neither party shall assign, transfer or sub-contract the Agreement or any of its

1 respective rights or duties hereunder, without the prior written consent of the other party.

2 XXXVII. CONSULTANT’S LEGAL AUTHORITY

3 Each individual executing or attesting the Agreement on behalf of the Consultant  
4 hereby covenants, warrants, and represents: (i) that he or she is duly authorized by or in  
5 accordance with the Consultant’s corporate by-laws to execute or attest and deliver the  
6 Agreement on behalf of the Consultant; and (ii) that the Agreement, once he or she has  
7 executed it, is and shall be binding upon such corporation.

8 XXXVIII. BINDING UPON SUCCESSORS

9 The Agreement shall be binding upon and inure to the benefit of the parties and their  
10 respective successors in interest, assigns, legal representatives, and heirs.

11 XXXIX. INCONSISTENCIES

12 In the event of any inconsistency in interpreting the documents which constitute the  
13 Agreement, the inconsistency shall be resolved by giving precedence in the following order  
14 of priority: (1) the text of the Agreement (excluding Appendices); (2) Appendices to the  
15 Agreement.

16 XL. SEVERABILITY

17 Should any part of the Agreement be determined to be invalid or unenforceable,  
18 then the Agreement shall be construed as not containing such provision, and all other  
19 provisions which are otherwise lawful shall remain in full force and effect, and to this end  
20 the provisions of the Agreement are hereby declared to be severable.

21 XLI. FINAL AGREEMENT

22 Both above-named parties to the Agreement hereby expressly agree that the  
23 Agreement constitutes the entire agreement which is made and concluded in duplicate  
24 between the two parties with respect to the subject matter hereof and supersedes all  
25 previous negotiations, proposals, commitments, writing, advertisements, publications, and  
26 understandings of any nature whatsoever unless expressly included in this Agreement. In  
27 consideration of promises, covenants and conditions contained in the Agreement, the  
28 Consultant and the County, and each of them, do hereby agree to diligently perform in

1 accordance with the terms and conditions of the Agreement, as evidenced by the  
2 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

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

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

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

ADDRESS:

COUNTY OF FRESNO

BY: \_\_\_\_\_  
Steven E. White, Director  
Department of Public Works and Planning

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