

**CONSULTANT SERVICES AGREEMENT**

1 THIS AGREEMENT is made and entered into this 19th day of October, 2021,  
2 between the County of Fresno, a political subdivision of the State of California, (hereinafter  
3 called "COUNTY"), and **Southern Yosemite Engineering, Inc.**, a California Corporation,  
4 located at **PO Box 1617, Oakhurst, CA., 93644**, (California State PE License number  
5 E13015) (hereinafter called "CONSULTANT").

**WITNESSETH:**

6  
7 WHEREAS, the COUNTY desires to retain a professional CONSULTANT to assist the  
8 COUNTY Development Services and Capital Projects Division Manager or his/her designated  
9 Project Manager in completing various projects in the COUNTY's Capital Improvement  
10 Programs and other COUNTY projects; and

11 WHEREAS, consistent with COUNTY Ordinance Code Chapter 4.10 and the Board of  
12 Supervisors' adopted Policy governing the selection of architects, engineers, and other  
13 professionals, a selection committee selected said CONSULTANT to provide the COUNTY  
14 with Electrical Engineering services for said projects; and

15 WHEREAS, the COUNTY Development Services and Capital Projects Division  
16 Manager or his/her designated Project Manager shall administer this Agreement; and

17 WHEREAS, the professional Electrical Engineering services of the CONSULTANT may  
18 be utilized by the Department of Public Works and Planning and other COUNTY Departments;  
19 and

20 WHEREAS, staffing levels of COUNTY personnel may not be sufficient to perform  
21 Electrical Engineering services for all projects, and

22 WHEREAS, said CONSULTANT represents that it is qualified and willing to perform  
23 Electrical Engineering services.

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

**I. CONTRACTING OF CONSULTANT: BASIC PARAMETERS**

26  
27 A. The COUNTY hereby contracts with the CONSULTANT as an independent  
28 contractor to provide Electrical Engineering services as described in Article II and enumerated

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1 in Article III herein.

2           B. The CONSULTANT's services shall be performed as expeditiously as is  
3 consistent with professional skill and the orderly progress of the work, based on project  
4 schedules prepared by the COUNTY.

5           C. The CONSULTANT shall notify the COUNTY of the names and classifications of  
6 employees assigned to a project, and shall not change such assignments without prior  
7 notification to and approval by COUNTY.

8           D. If requested by the COUNTY, the CONSULTANT shall retain qualified sub  
9 consultant(s) to assist in completing the work. All sub consultants used by the CONSULTANT  
10 shall be approved by the COUNTY before they are retained by the CONSULTANT, which  
11 approval shall not be unreasonably withheld. Should CONSULTANT retain sub consultants,  
12 the maximum Total Fee compensation that may be paid to CONSULTANT hereunder, as  
13 specified in Article V below, shall not be increased.

14           E. The CONSULTANT shall not submit bids, or sub-bids, for the contract  
15 construction phase of any project for which CONSULTANT provides services hereunder. The  
16 CONSULTANT, and all other service providers, shall not provide any project related services  
17 for, or receive any project related compensation from any construction contractor,  
18 subcontractor or service provider awarded a construction contract for all or any portion of any  
19 project for which CONSULTANT provides services hereunder. The CONSULTANT, and all  
20 other service providers, may provide services for, and receive compensation from a  
21 construction contractor, subcontractor or service provider who has been awarded a  
22 construction contract for all or any portion of such a project, provided that such services are  
23 provided for, and compensation received for, work outside the scope of this Agreement.

24           The contact person(s) for the CONSULTANT shall be:

25           Name: Timothy D. Fickling, P.E.           Position: President

26           Telephone: (559) 786-1869

27           E-Mail: [fick@sti.net](mailto:fick@sti.net)

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### 1 **II. DESCRIPTION OF SERVICES COVERED BY THIS AGREEMENT:**

2 The services covered by this Agreement is for all or a portion of the services allowed  
3 within the professional discipline limits as defined in California State License Law for various  
4 projects on an as needed basis. The CONSULTANT agrees to provide the professional  
5 services that are necessary for each project when expressly authorized in writing by the  
6 County. Such work by CONSULTANT shall not begin until CONSULTANT has received a  
7 written Notice to Proceed from the COUNTY authorizing the necessary project services, the  
8 agreed upon not-to-exceed fee for the project in accordance with the approved hourly fee  
9 schedule (Exhibit A, attached) and scope of work. All submittals of documents associated with  
10 the project by the CONSULTANT shall be made in both hard copy and electronic format or as  
11 required by the County.

### 12 **III. CONSULTANT'S SERVICES:**

13 CONSULTANT shall be responsible to provide partial or complete services to COUNTY  
14 as allowed by State license law within his/her specific license category as requested by the  
15 COUNTY.

### 16 **IV. COUNTY'S OBLIGATIONS:**

17 The COUNTY will, for each project:

- 18 A. Compensate the CONSULTANT as provided in this Agreement.  
19 B. Provide a "COUNTY Representative" who will represent the COUNTY and who will  
20 coordinate with the CONSULTANT as appropriate to facilitate CONSULTANT'S performance of  
21 its obligations under this Agreement.

22 The County shall:

- 23 Provide basic design layouts and drawing layouts as may be required for each project unless  
24 otherwise agreed by the COUNTY and the CONSULTANT.  
25 Prepare the title sheet for each project's plans unless otherwise agreed by the COUNTY and  
26 the CONSULTANT.  
27 Loan or provide copies of any available building plans to the CONSULTANT.  
28

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1 Examine documents submitted to the COUNTY by the CONSULTANT and timely render  
2 decisions pertaining thereto.

3 Provide communication between the CONSULTANT and COUNTY officials and commissions  
4 (including user Department).

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

### 11 **V. COMPENSATION:**

#### 12 A. Total Fee:

13 1. Notwithstanding any other provisions in this Agreement, the Total Fee for the  
14 services required under this Agreement shall not exceed a total amount of five hundred  
15 thousand dollars (\$500,000) over the entire term of this Agreement, which shall be computed  
16 at the hourly and cost rates shown in Exhibit A, attached hereto and incorporated herein, and  
17 not to exceed agreed maximums for each phase of each project.

18 2. The rates listed herein are to remain in effect for the duration of this Agreement.  
19 Rates may be renegotiated annually after the first anniversary from the date of execution of this  
20 Agreement at CONSULTANT's request. CONSULTANT's request for annual rate adjustments  
21 may not exceed the Engineering News Record's Construction Cost Index or the California  
22 Consumer Price Index as published by the California Department of Industrial Relations for the  
23 year, whichever is lower.

#### 24 B. Basic Fee:

25 1. Within the Total Fee amount of five hundred thousand dollars (\$500,000) over  
26 the entire term of this Agreement, the Basic Fee for each project shall be as mutually agreed to  
27 in writing between CONSULTANT and Capital Projects Division Manager or his/her designated  
28 representative.

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1           2. All expenses incidental to CONSULTANT's performance of services under  
2 Article III of this Agreement shall be borne by CONSULTANT. Incidental expenses include, but  
3 may not be limited to, transportation and travel, postage and courier services, photo and  
4 duplicating services, telephone and facsimile charges, computer storage media, drawing and  
5 plotting media, printing of "check print" plans and plan sets and documents specifically required  
6 by the provisions of Article III of this Agreement.

7           3. CONSULTANT shall not add markup percentages or costs to sub consultant's  
8 costs or incidental costs unless expressly authorized in writing by the COUNTY.

9           a. If the CONSULTANT becomes aware of potential unforeseen expenses that  
10 would not be covered by the Basic Fee agreed to for a project, CONSULTANT shall inform the  
11 COUNTY in writing of the extent and nature of such expenses or services. Upon mutual  
12 agreement of the CONSULTANT and the COUNTY, the scope of work and agreed fee for a  
13 project may be amended in writing to cover such unforeseen expense or cost.

### 14           C. Payments:

15           1. Progress payments will be made by the COUNTY upon receipt of the  
16 CONSULTANT's monthly invoices and approval by COUNTY thereof based on the COUNTY's  
17 evaluation of the completion of the respective components of the project(s). Invoices shall  
18 clearly identify the specific project, the phase of the project, the percent of the work completed,  
19 agreed maximum fee, and description of the work performed, and shall be submitted with the  
20 documentation identified in paragraph V.C.5 below. CONSULTANT shall submit separate  
21 invoices for each phase of each project for work being performed under this Agreement.

22 Invoices shall be forwarded to:

23           William Kettler, Manager

24           Development Services and Capital Projects Division

25           Fresno County Public Works & Planning Department

26           2220 Tulare Street, Suite 610

27           Fresno, CA 93721-2104

28           2. Upon receipt of a proper invoice, the COUNTY Department of Public Works &

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1 Planning will take a maximum of five (5) working days to review, approve, and submit it to the  
2 COUNTY Auditor-Controller / Treasurer-Tax Collector. Unsatisfactory or inaccurate invoices  
3 will be returned to the CONSULTANT for correction and resubmittal. Payment, less retention,  
4 will be issued to CONSULTANT within forty (40) calendar days of the date the Auditor-  
5 Controller/Treasurer-Tax Collector receives the approved invoice.

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

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

10 5. Concurrently with the invoices, the CONSULTANT shall provide on COUNTY  
11 request, pre-approved documentation, that complete payment, less a five percent (5%)  
12 retention, has been made by CONSULTANT to all sub consultants as provided herein for all  
13 previous invoices paid by the COUNTY. However, the parties do not intend that the foregoing  
14 creates in any sub consultant or subcontractor a third party beneficiary status or third party  
15 beneficiary rights, and expressly disclaim any such status or rights.

16 6. Final invoice, and separate invoice for retentions, shall be submitted to COUNTY no  
17 later than thirty (30) days after a specific project is completed. Payment for retentions for each  
18 project shall not be made until all services are completed for that project in accordance with the  
19 provisions of Article III.

20 7. In the event the COUNTY reduces the scope of a specific project, the  
21 CONSULTANT will be compensated on an hourly basis, not to exceed the agreed maximum  
22 for that authorized phase, for actual work completed and accepted by the COUNTY in  
23 accordance with the terms of this Agreement.

### 24 **VI. COMPENSATION RECORDS:**

25 The CONSULTANT shall keep complete records for the period of time referenced in Article  
26 VIII.C showing the hours and description of activities performed by each person who works on  
27 the project and all associated costs or charges applicable to work covered by the basic fee.  
28 The CONSULTANT will be responsible for all sub consultants keeping similar records.

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**VII. RETENTION FROM EARNED COMPENSATION:**

The COUNTY is entitled to and may withhold a five percent (5%) retention from the earned compensation of the CONSULTANT separately for each project. Such retention from earned compensation may, at the COUNTY'S option, be applied to all phases of the consultant services of a project to be provided under this Agreement, including those phases completed.

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

A. The CONSULTANT shall establish accounting and bookkeeping practices including, but not limited to, employee time cards, payrolls, and other records of transactions including those to be paid from State Grant and Federal Grant funds in accordance with the performance of this Agreement.

B. The CONSULTANT shall at any time during regular business hours, and as often as the COUNTY may deem necessary, make available for examination by the Comptroller General of the United States, HUD, State of California or the COUNTY Auditor-Controller / Treasurer-Tax Collector, or their authorized representatives, all of CONSULTANT'S records and data with respect to matters covered by this Agreement. The CONSULTANT shall permit Federal, State, or COUNTY authorities to audit and inspect all invoices, materials, payrolls, records of personnel, conditions of employment, and other data relating to matters covered by this Agreement.

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

**IX. ERRORS OR OMISSION CLAIMS AND DISPUTES:**

A. Definitions:

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

2. A "Claim" is a demand or assertion by one of the parties seeking, as a matter of

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

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

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

15 2. The Capital Projects Division Manager or his/her designated representative of  
16 and CONSULTANT shall meet and confer and attempt to reach agreement on any dispute,  
17 including what damages have occurred, the measure of damages and what proportion of  
18 damages, if any, shall be paid by either party. The parties agree to consult and consider the  
19 use of mediation or other form of dispute resolution prior to resorting to litigation.

20 3. If the COUNTY and CONSULTANT cannot reach agreement under the  
21 immediately preceding paragraph IX.B.2, the disputed issues may, upon concurrence by all  
22 parties, be submitted to a panel of three (3) for a recommended resolution. The  
23 CONSULTANT and the COUNTY shall each select one (1) member of the panel, and the third  
24 member shall be selected by the other two panel members. The discovery rights provided by  
25 California Code of Civil Procedure for civil proceedings shall be available and enforceable to  
26 resolve the disputed issues. Either party requesting this dispute resolution process shall, when  
27 invoking the rights to this panel, give to the other party a notice describing the claims, disputes  
28 and other matters in question. Prior to twenty (20) days before the initial meeting of the panel,



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1 both parties shall submit all documents such party intends to rely upon to resolve such dispute.  
2 If it is determined by the panel that any party has relied on such documentation, but has failed  
3 to previously submit such documentation on a timely basis to the other party, the other party  
4 shall be entitled to a twenty (20) day continuance of such initial meeting of the panel. The  
5 decision by the panel is not a condition precedent to arbitration, mediation or litigation.

6           4. Upon receipt of the panel's recommended resolution of the dispute issues, the  
7 COUNTY and the CONSULTANT shall again meet and confer and attempt to reach  
8 agreement. If the parties still are unable to reach agreement, each party shall have recourse to  
9 all appropriate legal and equitable remedies.

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

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

15 E.           When a claim by either party has been made alleging the CONSULTANT's  
16 negligent error, act, or omission, the COUNTY Capital Projects Division Manager or his/her  
17 designated representative and the CONSULTANT shall meet and confer within twenty-one (21)  
18 days after the written notice of the claim has been provided.

19 **X.       JOINDER OF PARTIES:**

20 The CONSULTANT, the CONSULTANT's consultants of any tier, subcontractors of any tier,  
21 suppliers and construction lenders shall all be bound by the dispute resolution provisions of this  
22 Agreement, and immediately upon demand of COUNTY or CONSULTANT, shall participate in  
23 and shall become parties to the dispute resolution process, provided they have signed any  
24 document that incorporates or refers to the dispute resolution provisions of this Agreement.  
25 Failure of CONSULTANT, whether intended or inadvertent, to ensure that such nonparties  
26 have signed such a document shall inure only to CONSULTANT's detriment, if any there be.  
27 COUNTY shall not suffer a detriment by CONSULTANT's action or inaction in this regard. If  
28 such a party after due notice fails to appear at and participate in the dispute resolution

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1 proceedings, the panel established in accordance with the provisions of paragraph IX.B.3 shall  
2 make a decision based on evidence introduced by the party or parties who do participate.

3 **XI. CONSULTANT'S OBLIGATIONS RELATING TO CONSTRUCTION CLAIMS:**

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

6 B. Within a reasonable time after receipt of a claim, the CONSULTANT shall provide a  
7 written analysis of the claim to the COUNTY, signed by the CONSULTANT and any affected  
8 subconsultants. The written analysis shall include the CONSULTANT's professional opinion of  
9 the responsibility for payment of the claim, with supporting facts and documentation. A copy of  
10 the written analysis shall be provided to the respective insurance adjusters for CONSULTANT  
11 and any affected subconsultant.

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

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

16 2. Submit a schedule to the parties indicating when the CONSULTANT expects to  
17 respond to the claim, which schedule shall not exceed thirty (30) days from CONSULTANT's  
18 original receipt of the claim;

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

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

22 5. Suggest a compromise.

23 D. In every case, CONSULTANT shall provide its recommended resolution of a claim  
24 within thirty (30) days from the original receipt of claim, unless the CONSULTANT obtains  
25 COUNTY's prior written approval.

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1 **XII. INDEPENDENT CONTRACTOR:**

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

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

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

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

26 **XIV. REQUIRED APPROVALS:**

27 It is understood that the CONSULTANT shall not assign, sublet, subcontract, or transfer any of  
28 CONSULTANT's rights, duties, or obligations under this Agreement, without the prior express,

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1 written consent of the COUNTY. Such consent and approval may be given only by the  
2 COUNTY Board of Supervisors.

### 3 **XV. COMPLIANCE WITH LAWS:**

4 A. CONSULTANT shall comply with all Federal, State, and local laws, ordinances,  
5 regulations, and Fresno County Charter Provisions in effect at the time of CONSULTANT's  
6 performance of the professional services to be provided hereunder.

7 B. CONSULTANT shall submit a current version of its Illness and Injury Prevention  
8 Plan (IIPP), applicable safety programs and contact information for the CONSULTANT's  
9 responsible person for these programs to the COUNTY Representative at the time this  
10 Agreement is signed by the CONSULTANT. Throughout the term of this Agreement,  
11 Consultant shall provide updates to the safety plans and programs to the COUNTY  
12 Representative as they are implemented.

### 13 **XVI. GOVERNING LAW:**

14 A. Any controversy or claim arising out of or relating to this Agreement which cannot  
15 be amicably settled without court action shall be litigated either in a State court for Fresno  
16 County, California, or in the U.S. District Court for the Eastern District of California, located in  
17 Fresno County.

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

### 20 **XVII. AMENDMENTS:**

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

### 25 **XVIII. CONSULTANT'S LEGAL AUTHORITY:**

26 A. Each individual executing this Agreement on behalf of CONSULTANT hereby  
27 covenants, warrants, and represents:

28 1. That he or she is duly authorized to execute and deliver this Agreement on behalf of

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1 such corporation in accordance with a duly adopted resolution of the corporation's board of  
2 directors and in accordance with such corporation's articles of incorporation or charter and  
3 bylaws;

4 2. That this Agreement is binding upon such corporation; and

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

### 7 **XIX. HOLD HARMLESS:**

8 A. CONSULTANT shall defend, hold harmless and indemnify COUNTY, its officers,  
9 agents, and employees, against the payment of any and all costs and expenses (including  
10 reasonable attorney fees and court costs), damages, claims, suits, losses, and liability for  
11 bodily and personal injury to or death of any person or for loss of any property resulting from or  
12 arising out of any negligent or wrongful acts, errors or omissions of CONSULTANT, its officers,  
13 agents, and employees, in performing or failing to perform any work, services, or functions  
14 under this Agreement.

15 B. COUNTY and CONSULTANT hereby declare their mutual intent to cooperate in the  
16 defense of any claim, suit, or other action alleging liability, arising from the performance or  
17 failure to perform of any COUNTY construction contractor or subcontractor in connection with  
18 any project for which CONSULTANT has been retained under Article III above. Such  
19 cooperation may include an agreement to prepare and present a cooperative defense after  
20 consultation with CONSULTANT's professional liability insurance carrier.

### 21 **XX. LIABILITY INSURANCE:**

22 A. Prior to commencing the duties under the Agreement with the COUNTY, the  
23 CONSULTANT shall furnish the COUNTY, at no additional cost to the COUNTY, certificates  
24 and endorsements for the following insurance policies as provided in this Article XX, each of  
25 which policies shall be kept in force throughout the entire term of the Agreement (i.e., until the  
26 Agreement is terminated or it expires), and for such additional time as may be specified herein  
27 with respect to a particular type of policy.

28 1. Commercial General Liability Insurance or Comprehensive General Liability

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1 Insurance, naming the COUNTY as an additional insured, with limits of not less than one  
2 million dollars (\$1,000,000) per occurrence, with an annual aggregate of not less than two  
3 million dollars (\$2,000,000).

4           2. Comprehensive Automobile Liability Insurance with limits for bodily injury of not  
5 less than two hundred fifty thousand dollars (\$250,000) per person, five hundred thousand  
6 dollars (\$500,000) per accident and for property damages of not less than fifty thousand dollars  
7 (\$50,000), or such coverage with a combined single limit of five hundred thousand dollars  
8 (\$500,000).

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

11           4. Professional Liability Insurance:

12           a. Professional Liability Insurance with limits of not less than two million dollars  
13 (\$2,000,000) per occurrence, two million dollars (\$2,000,000) annual aggregate, with a  
14 deductible not to exceed fifty thousand dollars (\$50,000).

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

18           c. Professional Liability Insurance shall be kept in force for a minimum of two  
19 (2) years past the date of final payment to CONSULTANT, and including the full and final  
20 resolution of all claims, disputes, and matters in question regarding the project.

21           d. In the event that CONSULTANT voluntarily changes, or involuntarily  
22 changes due to circumstances beyond its control, its Professional Liability Insurance policy  
23 carrier during the period such coverage is required to be in force (as specified in the  
24 immediately preceding subparagraph c. of this Article XX, Section A, Paragraph 4), such new  
25 policy shall include prior acts coverage retroactive, at least, to the date of execution of this  
26 Agreement. CONSULTANT may, at its option and expense, purchase supplemental or "tail"  
27 coverage from the former policy carrier, negotiate a retroactive reporting date with the new  
28 policy carrier for claims incurred but not reported as of the date of change in policy carrier, and

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1 shall in any event maintain Professional Liability Insurance in a manner that provides  
2 continuous coverage to the COUNTY throughout the term of this Agreement, and for a period  
3 of two (2) years past the issuance of final payment to the CONSULTANT.

4       B.       CONTRACTOR shall obtain endorsements to the Commercial General Liability  
5 insurance naming the County of Fresno, its officers, agents, and employees, individually and  
6 collectively, as additional insured, but only insofar as the operations under this Agreement are  
7 concerned. Such coverage for additional insured shall apply as primary insurance and any  
8 other insurance, or self-insurance, maintained by COUNTY, its officers, agents and employees  
9 shall be excess only and not contributing with insurance provided under CONTRACTOR's  
10 policies herein. This insurance shall not be cancelled or changed without a minimum of thirty  
11 (30) days advance written notice given to COUNTY.

12       C.       CONTRACTOR hereby waives its right to recover from COUNTY, its officers,  
13 agents, and employees any amounts paid by the policy of worker's compensation insurance  
14 required by this Agreement. CONTRACTOR is solely responsible to obtain any endorsement to  
15 such policy that may be necessary to accomplish such waiver of subrogation, but  
16 CONTRACTOR's waiver of subrogation under this paragraph is effective whether or not  
17 CONTRACTOR obtains such an endorsement.

18       D.       CONTRACTOR shall provide certificates of insurance and endorsements as  
19 stated above for each of the foregoing policies, as required herein, to the County of Fresno (to  
20 the attention of William Kettler, Manager, Development Services and Capital Projects Division,  
21 at the address specified above in Section V.C.), stating that such insurance coverages have  
22 been obtained and are in full force; that the County of Fresno, its officers, agents and  
23 employees will not be responsible for any premiums on the policies; that such Commercial  
24 General Liability insurance names the County of Fresno, its officers, agents and employees,  
25 individually and collectively, as additional insured, but only insofar as the operations under this  
26 Agreement are concerned; that such coverage for additional insured shall apply as primary  
27 insurance and any other insurance, or self-insurance, maintained by COUNTY, its officers,  
28 agents and employees, shall be excess only and not contributing with insurance provided  
under CONTRACTOR's policies herein; and that this insurance shall not be cancelled or  
changed without a minimum of thirty (30) days advance, written notice given to COUNTY.

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

      F.       All policies shall be issued by admitted insurers licensed to do business in the State

## CONSULTANT SERVICES AGREEMENT

1 of California and possessing a current A.M. Best, Inc. rating of A FSC VII or better.

2 **XXI. OWNERSHIP OF DOCUMENTS:**

3 A. CONSULTANT understands and agrees that COUNTY shall retain full ownership  
4 rights of the drawings and the work-product of CONSULTANT for each project, to the fullest  
5 extent permitted by law. In this regard, CONSULTANT acknowledges and agrees that  
6 CONSULTANT's services are on behalf of COUNTY and are "works made for hire," as that  
7 term is defined in copyright law, by COUNTY; that the drawings and work-product to be  
8 prepared by CONSULTANT are for the sole and exclusive use of COUNTY, and shall be the  
9 sole property of COUNTY and its assigns, and the COUNTY and its assigns shall be the sole  
10 owner of all patents, copyrights, trademarks, trade secrets and other contractual and intangible  
11 rights of any kind or nature in connection therewith; that all the contractual or intangible rights  
12 of any kind or nature, title, and interest in and to the drawings and work-product will be  
13 transferred to COUNTY by CONSULTANT, and CONSULTANT will assist COUNTY to obtain  
14 and enforce patents, copyrights, trademarks, trade secrets, and other contractual and  
15 intangible rights relating to said drawings and work-product; that COUNTY shall be and  
16 become the owner of such drawings and work product, free and clear of any claim by  
17 CONSULTANT or anyone claiming any right through CONSULTANT. CONSULTANT further  
18 acknowledges and agrees that COUNTY's ownership rights in such drawings and work product  
19 shall apply regardless of whether such drawings or work product, or any copies thereof, are in  
20 the possession of CONSULTANT, or any other person, firm, corporation, or entity. For the  
21 purpose of this Agreement the terms "drawings and work-product" shall mean all reports and  
22 study findings commissioned to develop the design of each project, drawings and schematic or  
23 preliminary design documents of each project, certified reproducibles of the original final  
24 construction contract drawings of each project, specifications of each project, the approved  
25 opinion of probable construction cost of each project, record drawings of each project, as-built  
26 plans of each project, and discoveries, developments, designs, improvements, inventions,  
27 formulas, processes, techniques, or specific know-how and data generated or conceived or  
28 reduced to practice or learning by CONSULTANT, either alone or jointly with others, that result



## CONSULTANT SERVICES AGREEMENT

1 from the tasks assigned to CONSULTANT by COUNTY under this Agreement. County  
2 acknowledges and agrees that details, concepts, ideas, devices, configurations, and designs  
3 previously developed or used by the CONSULTANT, or developed by the CONSULTANT  
4 without COUNTY compensation, shall remain the property of the CONSULTANT and use is  
5 granted to COUNTY only for the specific project undertaken under this Agreement.

6 B. If a project is terminated prior to completion of the construction document phase of  
7 any project under Article III, a reproducible copy and electronic files of documents as  
8 completed at the time of termination of the project shall be submitted by CONSULTANT to the  
9 COUNTY, which may use them to complete each project in future phases.

10 C. If the project is terminated at the completion of the construction document phase of  
11 any project, a reproducible copy and electronic files of final construction contract drawings  
12 (both .dwg and .plt files), specifications, and approved opinion of probable construction cost  
13 shall be submitted by CONSULTANT to COUNTY.

14 D. Documents, including drawings and specifications, prepared by CONSULTANT for  
15 any project pursuant to this Agreement are not intended or represented to be suitable for reuse  
16 by COUNTY or others on extensions of the services provided for that project or any other  
17 project. Any use of completed documents for other projects and/or any use of uncompleted  
18 documents will be at COUNTY's sole risk and without liability or legal exposure to  
19 CONSULTANT.

20 E. COUNTY has requested that certain machine readable information and CAD data  
21 on documents of service be provided by CONSULTANT for each project under this Agreement.  
22 Such machine-readable information and CAD data are more specifically described in Article III.  
23 CONSULTANT shall not be liable for claims, liabilities or losses arising out of, or connected  
24 with:

25 1. The modification or misuse by COUNTY, or anyone authorized by COUNTY, of  
26 such machine readable information and CAD data; or

27 2. Decline of accuracy or readability of machine readable information and CAD  
28 data due to inappropriate storage conditions or duration; or

## CONSULTANT SERVICES AGREEMENT

1           3. Any use by COUNTY, or anyone authorized by COUNTY, of such machine-  
2 readable information and CAD data for additions to any such project or for the completion of  
3 any such project by others, or for other projects.

4 **XXII. TERM AND TIME OF COMPLETION:**

5           A. Upon request of the Capital Projects Division Manager or his/her designated  
6 representative, the CONSULTANT shall submit for the Capital Projects Division Manager or  
7 his/her designated representative's approval, schedules for the performance of the  
8 CONSULTANT's services which may be adjusted by mutual agreement as the projects  
9 proceed, and shall include allowances for periods of time required for the COUNTY's review  
10 and approval of submissions by authorities having jurisdiction over the projects. Time limits  
11 established by these schedules approved by Capital Projects Division Manager or his/her  
12 designated representative shall not, except as provided in this Agreement, be exceeded by the  
13 CONSULTANT.

14           B. CONSULTANT shall diligently proceed with the agreed scope of services and shall  
15 provide such services in a timely manner. Failure of the CONSULTANT to meet any deadline  
16 listed in the above-referenced schedules once such failure continues more than seven (7)  
17 calendar days past the specified completion date (unless the delay is attributable to the  
18 COUNTY or State), is sufficient cause to immediately terminate this Agreement, at the option of  
19 the COUNTY, in accordance with Section XXIII.C.

20           C. This Agreement shall become effective upon approval by COUNTY's Board of  
21 Supervisors, on the date first set forth above, for a base term of three (3) years, and shall  
22 expire at the conclusion of said base term unless extended by COUNTY for a maximum of two  
23 (2) additional one-year periods upon provision of written notice by the Director of the  
24 Department of Public Works and Planning or his/her designee, or unless it is terminated earlier  
25 in accordance with the provisions of Article XXIII.

26 **XXIII. TERMINATION OF AGREEMENT:**

27           A. This Agreement may be terminated without cause at any time by the COUNTY upon  
28 thirty (30) calendar days written notice. If the COUNTY terminates this Agreement, the

## CONSULTANT SERVICES AGREEMENT

1 CONSULTANT shall be compensated for services satisfactorily completed to the date of  
2 termination based upon the compensation rates and subject to the maximum amounts payable  
3 agreed to in Article V, together with such additional services satisfactorily performed after  
4 termination which are expressly authorized by the COUNTY Representative in order to  
5 conclude the work performed to date of termination.

6 B. If the CONSULTANT purports to terminate the Agreement, or otherwise refuses to  
7 perform pursuant to the Agreement, for reasons other than material breach by the COUNTY,  
8 the CONSULTANT shall reimburse the COUNTY, up to a maximum of seven thousand, five  
9 hundred dollars (\$7,500) for the actual expense of issuing a Request For Proposal (RFP),  
10 engaging a new CONSULTANT, and the new CONSULTANT's cost in becoming familiar with  
11 the previous CONSULTANT's design.

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

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

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

27 E. The terms of this Agreement, and the services to be provided thereunder, are  
28 contingent on the approval of funds by the appropriating government agency. Should sufficient

## CONSULTANT SERVICES AGREEMENT

1 funds not be allocated, the services provided may be modified, or this Agreement terminated at  
2 any time by giving the CONSULTANT thirty (30) days advance written notice.

### 3 **XXIV. CONFLICT OF INTEREST:**

4 The CONSULTANT shall comply with the provisions of the Fresno County Department of  
5 Public Works Conflict of Interest Code, attached hereto as Exhibit B and incorporated herein.  
6 Such compliance shall include the filing of annual statements pursuant to the regulations of the  
7 State Fair Political Practices Commission.

### 8 **XXV. DISCLOSURE OF SELF-DEALING TRANSACTIONS**

9 A. This provision is only applicable if the CONSULTANT is operating as a corporation  
10 (a for-profit or non-profit corporation) or if during the term of this Agreement, the  
11 CONSULTANT changes its status to operate as a corporation.

12 B. Members of the CONSULTANT'S Board of Directors shall disclose any self-dealing  
13 transactions that they are a party to while the CONSULTANT is providing goods or performing  
14 services under this Agreement. A self-dealing transaction shall mean a transaction to which  
15 the CONSULTANT is a party and in which one or more of its directors has a material financial  
16 interest. Members of the CONSULTANT'S Board of Directors shall disclose any self-dealing  
17 transactions that they are a party to by completing and signing a Self-Dealing Transaction  
18 Disclosure Form (attached as Exhibit C and incorporated herein by this reference); and  
19 submitting it to the COUNTY prior to commencing with the self-dealing transaction or  
20 immediately thereafter.

### 21 **XXVI. ENTIRE AGREEMENT:**

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

### 26 **XXVII. SEVERABILITY:**

27 Should any provision herein be found or deemed to be invalid, this Agreement shall be  
28 construed as not containing such provision, and all other provisions which are otherwise lawful

**CONSULTANT SERVICES AGREEMENT**

1 shall remain in full force and effect, and to this end the provisions of this Agreement are hereby  
2 declared to be severable.

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**CONSULTANT SERVICES AGREEMENT**

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

3 **CONTRACTOR AND/OR CONSULTANT**

**COUNTY OF FRESNO**

4 Timothy D Fickling  
5 (Authorized Signature)

Steve Brandau  
Steve Brandau, Chairman  
of the Board of Supervisors of  
the County of Fresno

7 Timothy D Fickling, PRES.  
8 Print Name and Title

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

9 PO Box 11617  
10 Mailing Address

11 Oakhurst CA 93644  
12 City, State, and Zip Code

By Rishi Cuyt  
Deputy

19 **FOR ACCOUNTING USE ONLY**

20 ORG No 4360, 4510, 8840, 8845, 8846, 8847, 8848, 8849  
21 Account No. 7295, 8150  
22 Fund No. 0001, 0010, 0105, 0107, 0110, 0400

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PO Box 1617  
 OAKHURST, CA 93644

## FEE SCHEDULE FOR PROFESSIONAL SERVICES

EFFECTIVE: JANUARY 1, 2021

### ENGINEERING SERVICES

Principal Engineer.....	\$150.00/hr
Electrical Engineer.....	\$120.00/hr
Construction Administration.....	\$120.00/hr
CAD Technician.....	\$90.00/hr
Clerical.....	\$60.00/hr

### CONSULTATION SERVICES\*

Investigative / Expert Witness.....	\$350.00/hr
Professional Consultation.....	\$300.00/hr

### REIMBURSABLE EXPENSES (WHERE APPLICABLE)\*\*

Mileage.....	\$0.535/mi
Prints (24"X32").....	\$1.00/sheet
Prints (24"X36").....	\$1.00/sheet
Prints (30"X42").....	\$2.00/sheet
Prints (11"X17").....	\$0.15/sheet
Subconsultants.....	Invoice plus 15%
Other Direct Costs.....	Cost plus 15%

\*Charges for Investigative Services, Expert Witness, or Professional Consultation are not generally applicable to projects involving preparation of plans and/or Specifications for Construction Projects.

\*\*Reimbursable Expenses will be charged according to Contract Provisions in place for specific Project.

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

In the matter of )  
Amendment of Standard Conflict of ) No.  
Interest Code for All County )  
Departments )

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

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

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

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

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



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Conflict of interest forms shall be filed as follows:

1. As required by Government Code section 87500, subdivision (e), the County Administrative Officer, District Attorney, County Counsel, and Auditor-Controller/Treasurer-Tax Collector shall file one original of their statements with the County Clerk, who shall make and retain a copy and forward the original to the Fair Political Practices Commission, which shall be the filing officer.

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

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

Adopted at a regular meeting of the Board of Supervisors, held on the 2nd day of October, 2007, by the following vote, to wit:

Ayes: Supervisors Larson, Perea, Anderson, Case and Waterston  
Noes: None  
Absent: None



Chairman, Board of Supervisors

Attest:



Clerk

## CERTIFICATE OF DELIVERY OF DOCUMENT

I am employed by the County of Fresno as a Deputy Clerk of the Board of Supervisors. On October 2, 2007, I delivered a copy of Resolution No. 07-525 to the Chairperson of the Fresno County Board of Supervisors.

  
\_\_\_\_\_  
Gael Storm, Deputy Clerk

EXHIBIT "A"

PUBLIC WORKS AND PLANNING

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

**Classification**

**Category**

Senior Business Systems Analyst	2
Senior Staff Analyst	1
Staff Analyst I / II / III	1
Supervising Accountant	1
Supervising Building Inspector	1
Supervising Engineer	1
Supervising Water/Wastewater Specialist	1
Systems and Procedures Manager	2
Traffic Maintenance Supervisor	2
Water & Natural Resources Manager	1

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

## EXHIBIT "B"

### PUBLIC WORKS AND PLANNING

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

# SELF-DEALING TRANSACTION DISCLOSURE FORM

**(1) Company Board Member Information:**

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

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

**(2) Company/Agency Name and Address:**

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

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

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

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**(5) Authorized Signature**

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