

CONSULTANT SERVICES AGREEMENT ATTACHMENT A

1 THIS AGREEMENT is made and entered into this ___ day of, _____ 20___,
2 between the County of Fresno, a political subdivision of the State of California, (hereinafter
3 called "COUNTY"), and _____ (a California Corp., if applicable),
4 located at (Address) (California State License number and expiration date, if
5 applicable)(hereinafter called "CONSULTANT").

6 **WITNESSETH:**

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 (professional discipline) 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 (professional discipline) services of the CONSULTANT
18 may be utilized by the Department of Public Works and Planning and other COUNTY
19 Departments; and

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

22 WHEREAS, said CONSULTANT represents that it is qualified and willing to perform
23 (professional discipline) services.

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

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

26 A. The COUNTY hereby contracts with the CONSULTANT as an independent
27 contractor to provide (professional discipline) services as described in Article II and enumerated
28 in Article III herein.

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

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

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

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

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

24 Name: Position

25 Telephone:

26 E-Mail:

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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 services
5 that are necessary for each project when expressly authorized in writing by the County. Such
6 work by CONSULTANT shall not begin until CONSULTANT has received a written Notice to
7 Proceed from the COUNTY authorizing the necessary project services, the agreed upon not-to-
8 exceed fee for the project in accordance with the approved hourly fee schedule (Exhibit A,
9 attached) and scope of work. All submittals of documents associated with the project by the
10 CONSULTANT shall be made in both hard copy and electronic format or as required by the
11 County.

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

13 CONSULTANT shall be responsible to provide partial or complete services to
14 COUNTY as allowed by State license law within his/her specific license category as requested
15 by the 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
20 will coordinate with the CONSULTANT as appropriate to facilitate CONSULTANT'S
21 performance of its obligations under this Agreement.

22 The County shall:

- 23 1. Provide basic design layouts and drawing layouts as may be required for each
24 project unless otherwise agreed by the COUNTY and the CONSULTANT.
25 2. Prepare the title sheet for each project's plans unless otherwise agreed by the
26 COUNTY and the CONSULTANT.
27 3. Loan or provide copies of any available building plans to the CONSULTANT.
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1 4. Examine documents submitted to the COUNTY by the CONSULTANT and
2 timely render decisions pertaining thereto.

3 5. Provide communication between the CONSULTANT and COUNTY officials
4 and commissions (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) / six hundred thousand dollars (\$600,000)] over the entire term of
16 this Agreement, which shall be computed at the hourly and cost rates shown in Exhibit A,
17 attached hereto and incorporated herein, and not to exceed agreed maximums for each phase of
18 each project.

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

25 B. Basic Fee:

26 1. Within the Total Fee amount of [five hundred thousand dollars (\$500,000) / six
27 hundred thousand dollars (\$600,000)] over the entire term of this Agreement, the Basic Fee for
28 each project shall be as mutually agreed to in writing between CONSULTANT and Capital

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1 Projects Division Manager or his/her designated representative.

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

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

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

15 C. Payments:

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

24 William Kettler, Manager

25 Development Services and Capital Projects Division

26 Fresno County Public Works & Planning Department

27 2220 Tulare Street, Suite 610

28 Fresno, CA 93721-2104

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

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

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

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

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

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

25 **VI. COMPENSATION RECORDS:**

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

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1 CONSULTANT will be responsible for all sub consultants keeping similar records.

2 **VII. RETENTION FROM EARNED COMPENSATION:**

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

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

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

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

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

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

24 A. Definitions:

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

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

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

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

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

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

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

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

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

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

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

20 **X. JOINDER OF PARTIES:**

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

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1 such a party after due notice fails to appear at and participate in the dispute resolution
2 proceedings, the panel established in accordance with the provisions of paragraph IX.B.3 shall
3 make a decision based on evidence introduced by the party or parties who do participate.

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

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

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

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

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

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

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

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

23 5. Suggest a compromise.

24 D. In every case, CONSULTANT shall provide its recommended resolution of a claim
25 within thirty (30) days from the original receipt of claim, unless the CONSULTANT obtains
26 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 an
6 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
9 shall retain the right to administer this Agreement so as to verify that CONSULTANT is
10 performing its obligations in accordance with the terms and conditions thereof.
11 CONSULTANT and COUNTY shall comply with all applicable provisions of law and the rules
12 and regulations, if any, of governmental authorities having jurisdiction over matters the subject
13 thereof.

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

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

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

27 **XIV. REQUIRED APPROVALS:**

28 It is understood that the CONSULTANT shall not assign, sublet, subcontract, or transfer any of

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1 CONSULTANT's rights, duties, or obligations under this Agreement, without the prior express,
2 written consent of the COUNTY. Such consent and approval may be given only by the
3 COUNTY Board of Supervisors.

4 **XV. COMPLIANCE WITH LAWS:**

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

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

14 **XVI. GOVERNING LAW:**

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

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

21 **XVII. AMENDMENTS:**

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

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

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

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1 1. That he or she is duly authorized to execute and deliver this Agreement on behalf of
2 such corporation in accordance with a duly adopted resolution of the corporation's board of
3 directors and in accordance with such corporation's articles of incorporation or charter and
4 bylaws;

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

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

8 **XIX. HOLD HARMLESS:**

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

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

22 **XX. LIABILITY INSURANCE:**

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

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

5 2. Comprehensive Automobile Liability Insurance with limits for bodily injury of
6 not less than two hundred fifty thousand dollars (\$250,000) per person, five hundred thousand
7 dollars (\$500,000) per accident and for property damages of not less than fifty thousand dollars
8 (\$50,000), or such coverage with a combined single limit of five hundred thousand dollars
9 (\$500,000).

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

12 4. Professional Liability Insurance:

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

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

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

22 d. In the event that CONSULTANT voluntarily changes, or involuntarily
23 changes due to circumstances beyond its control, its Professional Liability Insurance policy
24 carrier during the period such coverage is required to be in force (as specified in the
25 immediately preceding subparagraph c. of this Article XX, Section A, Paragraph 4), such new
26 policy shall include prior acts coverage retroactive, at least, to the date of execution of this
27 Agreement. CONSULTANT may, at its option and expense, purchase supplemental or "tail"
28 coverage from the former policy carrier, negotiate a retroactive reporting date with the new

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1 policy carrier for claims incurred but not reported as of the date of change in policy carrier, and
2 shall in any event maintain Professional Liability Insurance in a manner that provides
3 continuous coverage to the COUNTY throughout the term of this Agreement, and for a period
4 of two (2) years past the issuance of final payment to the CONSULTANT.

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

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

19 D. CONTRACTOR shall provide certificates of insurance and endorsements as
20 stated above for each of the foregoing policies, as required herein, to the County of Fresno (to
21 the attention of William Kettler, Manager, Development Services and Capital Projects Division,
22 at the address specified above in Section V.C.), stating that such insurance coverages have been
23 obtained and are in full force; that the County of Fresno, its officers, agents and employees will
24 not be responsible for any premiums on the policies; that such Commercial General Liability
25 insurance names the County of Fresno, its officers, agents and employees, individually and
26 collectively, as additional insured, but only insofar as the operations under this Agreement are
27 concerned; that such coverage for additional insured shall apply as primary insurance and any
28 other insurance, or self-insurance, maintained by COUNTY, its officers, 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

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1 herein provided, the COUNTY may, in addition to other remedies it may have, suspend or
2 terminate this Agreement upon the occurrence of such event.

3 F. All policies shall be issued by admitted insurers licensed to do business in the State
4 of California and possessing a current A.M. Best, Inc. rating of A FSC VII or better.

5 **XXI. OWNERSHIP OF DOCUMENTS:**

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

CONSULTANT SERVICES AGREEMENT ATTACHMENT A

1 plans of each project, and discoveries, developments, designs, improvements, inventions,
2 formulas, processes, techniques, or specific know-how and data generated or conceived or
3 reduced to practice or learning by CONSULTANT, either alone or jointly with others, that
4 result from the tasks assigned to CONSULTANT by COUNTY under this Agreement. County
5 acknowledges and agrees that details, concepts, ideas, devices, configurations, and designs
6 previously developed or used by the CONSULTANT, or developed by the CONSULTANT
7 without COUNTY compensation, shall remain the property of the CONSULTANT and use is
8 granted to COUNTY only for the specific project undertaken under this Agreement.

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

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

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

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

- 28 1. The modification or misuse by COUNTY, or anyone authorized by COUNTY, of

CONSULTANT SERVICES AGREEMENT ATTACHMENT A

1 such machine readable information and CAD data; or

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

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

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

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

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

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

1 **XXIII. TERMINATION OF AGREEMENT:**

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

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

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

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

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

CONSULTANT SERVICES AGREEMENT ATTACHMENT A

1 CONSULTANT shall promptly refund any such funds upon demand.

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

6 **XXIV. CONFLICT OF INTEREST:**

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

11 **XXV. DISCLOSURE OF SELF-DEALING TRANSACTIONS**

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

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

24 **XXVI. ENTIRE AGREEMENT:**

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

1 **XXVII. SEVERABILITY:**

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

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CONSULTANT SERVICES AGREEMENT ATTACHMENT A

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

3
4 **CONSULTANT**

COUNTY OF FRESNO

5 BY: _____

BY: _____

6 STEVEN E. WHITE, DIRECTOR
7 DEPARTMENT OF PUBLIC WORKS AND
8 PLANNING

9 TITLE: _____

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

13 BY: _____
14 DEPUTY

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

19 BY: _____
20 DEPUTY

21 FUND: 0001, 0010, 0105, 0107, 0110, 0400
22 ORG: 4360, 4510, 8840, 8845, 8846, 8847, 8848, 8849
23 ACCT: 7295, 8150
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