

CONSULTANT AGREEMENT

THIS AGREEMENT for Engineering Consultant Services, hereinafter referred to as "the AGREEMENT," is made and entered into this 12th day of September 2017, between the COUNTY OF FRESNO, a political subdivision of the State of California, hereinafter referred to as "the COUNTY"; and Avila & Associates, Inc., a California Corporation, whose address is 712 Bancroft Road #333, Walnut Creek, CA 94598, hereinafter referred to as "the CONSULTANT".

## WITNESSETH

WHEREAS, the COUNTY desires to retain the CONSULTANT to provide on-call engineering consulting services, encompassing structural, mechanical, transportation, environmental, water resources, surveying, geotechnical and other engineering disciplines, as necessary to assist the COUNTY in performing projects (hereinafter referred to as "the PROJECT(S)") proposed by the COUNTY; and

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

WHEREAS, the individual listed below

Erin Haagenson, Senior Staff Analyst

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

559-600-4528

ehaagenson@co.fresno.ca.us

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

WHEREAS, the individual listed below

1 Cathy Avila, Principal Engineer

2 712 Bancroft Road #333

3 Walnut Creek, CA 94598

4 (925) 673-0549

5 cavila@avilaassociates.com

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

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

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

18 I. GENERAL PROVISIONS

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

23 B. The CONSULTANT'S services shall be performed as expeditiously as is  
24 consistent with professional skill and the orderly progress of the work, based on schedules  
25 for each specific PROJECT mutually agreed upon in advance by the CONTRACT  
26 ADMINISTRATOR, and the CONSULTANT, and consistent with schedules established  
27 under Article V.

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

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

7 D. The CONSULTANT may retain, as subconsultants, specialists in such  
8 engineering disciplines (including, but not limited to, structural, mechanical, transportation,  
9 environmental, water resources, electrical, surveying and geotechnical) as the  
10 CONSULTANT requires to assist in completing the work. All subconsultants used by the  
11 CONSULTANT shall be approved in writing by the CONTRACT ADMINISTRATOR before  
12 they are retained by the CONSULTANT, which approval shall not be unreasonably  
13 withheld. The subconsultants listed in Appendix B, attached hereto and incorporated  
14 herein, shall be considered as approved by the CONTRACT ADMINISTRATOR. Should  
15 the CONSULTANT retain any subconsultants, the maximum amount of compensation to  
16 be paid to the CONSULTANT under Article VI below shall not be increased. Any additional  
17 compensation to be paid to the CONSULTANT for such subconsultants' work shall be  
18 limited to administrative time as defined in the fee proposal. Additional fees other than  
19 those defined in the fee proposal shall not be reimbursed.

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

1 construction contract for all or any portion of the PROJECT(S), provided that any such  
2 services which are rendered, and any compensation which is received therefor, relates to  
3 work outside the scope of the AGREEMENT and does not pose a conflict of interest.

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

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

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

12 A. The work to be performed by the CONSULTANT under the AGREEMENT  
13 includes on-call professional services under Article III for various COUNTY Public Works  
14 PROJECTS, including but not limited to, general civil and transportation engineering,  
15 structural engineering, geotechnical engineering and materials testing, water resources  
16 engineering, electrical and control systems engineering, and surveying. Work on roads  
17 and bridges shall be done in accordance with American Association of State Highway and  
18 Transportation Officials (AASHTO) requirements for applicable structures. All projects  
19 funded wholly or in part by CALTRANS must conform to all requirements by CALTRANS  
20 and Federal Highway Administration (FHWA) as contained in Section 11 of CALTRANS  
21 LAPM Volume 1.

22 B. The CONSULTANT agrees to provide the professional services that are  
23 necessary for each PROJECT when expressly authorized in writing by the CONTRACT  
24 ADMINISTRATOR. Such work by the CONSULTANT shall not begin until the  
25 CONSULTANT has received a written Notice to Proceed from the CONTRACT  
26 ADMINISTRATOR authorizing the necessary service, agreed upon fee, and scope of work.

## 27 III. CONSULTANT'S SERVICES

28 The CONSULTANT shall submit proposals in response to requests issued by the

1 CONTRACT ADMINISTRATOR on a project-by-project basis. The CONSULTANT'S  
2 proposal at a minimum shall include, but not be limited to, staff qualifications, proposed  
3 method and schedule for completing the task(s), completed federal forms and a sealed  
4 cost proposal. The CONSULTANT agrees that each professional or other individual  
5 performing work on any such PROJECT(S) shall be adequately trained to perform the work  
6 and shall possess the proper license, certification or registration as required by law or by  
7 accepted standards of the applicable profession. The CONSULTANT agrees to provide  
8 the professional services that are necessary to complete the following tasks when  
9 expressly authorized in writing by the CONTRACT ADMINISTRATOR:

10 A. Technical Reports:

11 1. Ascertain the requirements for Technical Reports through meetings with  
12 the CONTRACT ADMINISTRATOR and a review of existing information on the  
13 PROJECT(S).

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

18 3. When requested by the CONTRACT ADMINISTRATOR, the  
19 CONSULTANT shall attend meetings with the COUNTY, federal, state and/or local  
20 representatives to discuss and review the technical report. The CONSULTANT shall  
21 prepare brief minutes of meetings attended and promptly submit the minutes to the  
22 CONTRACT ADMINISTRATOR within seven (7) days.

23 4. The CONSULTANT shall submit each technical report to the CONTRACT  
24 ADMINISTRATOR for transmittal to other appropriate agencies for their review and  
25 approval. The CONSULTANT shall revise and resubmit each technical report as  
26 necessary until approved by all appropriate agencies. Standard submittal shall be five (5)  
27 reproducible copies and one (1) electronic copy of each technical report. The  
28 CONSULTANT shall verify compatible format and quantity prior to final delivery.

1                   5. The CONSULTANT shall prepare technical studies and estimates on 8 ½"  
2 by 11" pages, provide hard copy and electronic format as standard submittal; and prepare  
3 documents in Microsoft Word 2010 or later, Microsoft Excel 2010 or later, or Adobe 9.0 or  
4 later, or other mutually agreed upon format. Such submittals shall be furnished on  
5 compact disc (CD). The CONSULTANT shall verify compatible format and quantity prior to  
6 final delivery.

7                   6. The CONSULTANT shall submit five (5) hard copies of each drawing  
8 prepared with AutoCAD Civil 3D, version 2013 or later and an electronic copy in the form of  
9 .DXF or .DWG files. Such submittals shall be furnished on CD. The CONSULTANT shall  
10 verify a compatible format prior to final file delivery.

11           B. Prepare Design Plans, Technical Specifications and Construction Estimate:

12           The CONSULTANT shall:

13                   1. Ascertain the requirements for the assigned PROJECT(S) through  
14 meetings with the CONTRACT ADMINISTRATOR and a review of an existing schematic  
15 layout of the PROJECT(S).

16                   2. Ascertain any requirements, unforeseen criteria, or issues for the  
17 PROJECT(S) that may be unknown to the CONTRACT ADMINISTRATOR and  
18 communicate these requirements, criteria, or issues to the CONTRACT ADMINISTRATOR.

19                   3. Provide surveying, if needed, for the PROJECT(S).

20                   4. Design the PROJECT(S) to conform to requirements of the reviewing  
21 agencies having jurisdiction over the PROJECT(S).

22                   5. Design the PROJECT(S) to include mitigation measures included in the  
23 environmental document.

24                   6. Monitor and keep the CONTRACT ADMINISTRATOR informed regarding  
25 the impact of design issues on the PROJECT budget. Upon the written request of the  
26 CONTRACT ADMINISTRATOR, the CONSULTANT shall incorporate into the design, such  
27 reasonable design and operational changes as the CONTRACT ADMINISTRATOR deems  
28 appropriate as a result of the COUNTY'S review processes and impact on each PROJECT

1 budget or estimate.

2 7. Assist the COUNTY in determining all permits that may be required for the  
3 PROJECT and prepare all necessary permits for the COUNTY'S submittal to outside  
4 agencies.

5 8. Work with the CONTRACT ADMINISTRATOR to ensure that the plans,  
6 specifications and estimate meet all requirements to be advertised for construction bids.

7 9. Prepare a detailed estimate, which shall identify the construction  
8 components and requirements of the PROJECT.

9 10. If required by approval agencies, submit to the COUNTY in the  
10 appropriate agency forms, the PROJECT background information and recommended  
11 testing and inspection list for materials to be used, identifying type, quantity, frequency, and  
12 schedule, for each PROJECT. Submit required numbers of sets of plans, specifications,  
13 and other documents required by approval agencies to the CONTRACT  
14 ADMINISTRATOR.

15 11. Prepare technical specifications and estimate setting forth in detail the  
16 work to be done, the materials, workmanship, and equipment required for the other  
17 components of construction necessary to provide the COUNTY complete and functional  
18 the PROJECTS for its intended purpose within the requirements of the AGREEMENT.

19 12. Assist the CONTRACT ADMINISTRATOR in developing base bid and  
20 additive bid item schedules.

21 13. Submit to the CONTRACT ADMINISTRATOR the projected and final  
22 construction estimate. Verify the reasonableness of the estimated construction period for  
23 construction contract bidding purposes as provided by the CONTRACT ADMINISTRATOR  
24 and identify long delivery times of materials and equipment which will control length of  
25 construction contract.

26 14. Respond to Requests for Clarification during the bidding process and  
27 submit to the CONTRACT ADMINISTRATOR for review and approval any additional  
28 specifications, clarifications, or additional plan sheets deemed necessary. Responses

1 should be submitted within three (3) working days of receipt.

2 15. Assist the CONTRACT ADMINISTRATOR in evaluating the bids  
3 received.

4 16. Delete or otherwise change portions of the construction work at the  
5 request of the CONTRACT ADMINISTRATOR if the lowest bid proposal for the  
6 construction contract exceeds the COUNTY approved engineer's estimate (which will  
7 include the CONSULTANT'S design contingency amount approved by the COUNTY) by  
8 10% or more; and if the COUNTY rejects all bids, modifications performed by the  
9 CONSULTANT shall be completed on a time schedule commensurate with the scope of  
10 the changes and as set forth by the COUNTY, and the CONSULTANT will be  
11 compensated on a time and materials basis, as agreed to in writing, by the COUNTY and  
12 the CONSULTANT.

13 17. Submit to the CONTRACT ADMINISTRATOR ten (10) copies of the  
14 30%, 60% and 90% plans (22" X 34" format), specifications and estimates for review.  
15 Submit progress prints and final originals of the plans, specifications, and estimates. Prior  
16 to submission of plans, the CONSULTANT shall request from the CONTRACT  
17 ADMINISTRATOR examples of acceptable drafting format and reproducible standards.  
18 Verification of compatible format will be required prior to final file delivery. The CONTRACT  
19 ADMINISTRATOR, at his/her discretion, may reject a submittal that is determined  
20 insufficient.

21 a. 30% plans, specifications and estimates shall include copies of  
22 utility locations, centerline stationing, proposed and existing right-of-way, typical sections  
23 and structural sections.

24 b. 60% plans, specifications and estimates shall include 30% plan  
25 information and in addition, preliminary cross sections and earthwork calculations at 25' or  
26 50' intervals, adequate information to allow construction survey staking, permits,  
27 preliminary profile grade, an updated engineer's estimate, and also shall address  
28 comments and include necessary revisions as identified by the CONTRACT



1 ADMINISTRATOR in the 30% review.

2 c. 90% plans, specifications and estimates shall include 60% plan  
3 information and in addition, updated cross sections and earthwork, profile grade, technical  
4 specifications, typical sections and the PROJECT details, and also shall address  
5 comments and include necessary revisions as identified by the CONTRACT  
6 ADMINISTRATOR in the 60% review.

7 d. Final original plans, specifications and estimates to be delivered to  
8 the CONTRACT ADMINISTRATOR shall include:

9 i. One (1) original reproducible plan set on 22" by 34" sheets of  
10 4 mil thick double matte film.

11 ii. One (1) reproducible copy of cross sections on 22" by 34"  
12 sheets of 4 mil thick double matte film.

13 iii. One (1) CD or DVD with final plans, cross sections and  
14 slope stake information, design calculations, quantity calculations, and other design  
15 information as applicable to the PROJECT.

16 iv. One (1) stamped and wet signed paper copy and one (1) CD  
17 or DVD with final specifications and estimates.

18 18. Plan sheets, cross sections, earthwork calculations and slope stake  
19 information shall be in AutoCAD Civil 3D, version 2013 or later. Slope stake information  
20 shall include 50-foot intervals for tangent sections and 25-foot intervals for curved sections.  
21 Specifications shall be in Microsoft Word, version 2010 or later and on 8 ½" by 11" pages.  
22 Final engineer's estimates shall be in Microsoft Excel, version 2010 or later and on 8 ½" by  
23 11" pages. Estimates shall specify specialty and/or final pay items as described in the  
24 CALTRANS State Standard Specifications. Verification of compatible format will be  
25 required prior to final file delivery.

26 19. The COUNTY will package the CONSULTANT'S documents with those  
27 other documents that together will comprise the COUNTY'S construction contract and bid  
28 specifications.

1                   20. The CONSULTANT shall deliver to the CONTRACT ADMINISTRATOR  
2 three (3) weeks prior to the advertising date (which will be determined by the CONTRACT  
3 ADMINISTRATOR) the final completed original drawings and specifications for the  
4 COUNTY'S printing and distribution of bid sets to interested prospective contractors. The  
5 original drawings and specifications index sheet shall be stamped by a seal with the  
6 CONSULTANT'S and subconsultant's license numbers and license renewal dates and/or  
7 signed in accordance with the California Business and Professions Code.

8                   C. Construction Observation Services:

9                   The CONSULTANT shall:

10                   1. Attend the preconstruction conference scheduled by the CONTRACT  
11 ADMINISTRATOR.

12                   2. When requested by the CONTRACT ADMINISTRATOR, attend meetings  
13 with the COUNTY, and/or any federal, state and/or local representatives. The  
14 CONSULTANT shall prepare brief minutes of all meetings attended and promptly submit  
15 those minutes to the CONTRACT ADMINISTRATOR within seven (7) calendar days.

16                   3. Make recommendations to the COUNTY on all claims of the COUNTY or  
17 the construction contractor and all other matters relating to the execution and progress of  
18 work, including interpretation of the contract documents for the PROJECT.

19                   4. Within seven (7) calendar days of the COUNTY'S request, review and  
20 make recommendations for samples, schedules, shop drawings, and other submissions for  
21 general conformance with the design concept of the PROJECT(S) and for general  
22 compliance with the plans and specifications and information provided by the contract  
23 documents for the PROJECT.

24                   5. Within two (2) working days, respond to requests from the CONTRACT  
25 ADMINISTRATOR for information needed from the CONSULTANT in order to clarify  
26 construction plans and specifications and to review the construction contractor's cost  
27 estimates for all change orders.

28                   6. Recommend and assist in the preparation of such change orders as

1 deemed necessary with supporting documentation, calculations and estimate, for review  
2 and issuance of change orders by the COUNTY Construction Engineer to obtain  
3 appropriate agency acceptance and approval.

4               7. Assist the COUNTY, at the DIRECTOR's express, written authorization,  
5 with any claim resolution process involving the construction contractor and the COUNTY as  
6 specified hereunder, including serving as a witness in connection with any public hearings  
7 or legal proceeding, and also including dispute resolutions required by law or hereunder.  
8 The parties recognize that this clause is provided as a means of expediting resolution of  
9 claims among the construction contractor, the COUNTY, and the CONSULTANT.  
10 However, it is understood the construction contractor is not an intended third party  
11 beneficiary of this clause. Compensation for these services shall be computed and  
12 invoiced at hourly rates listed in Appendix D hereto. Any assistance provided by the  
13 CONSULTANT as described in this Article III, Section C, Paragraph 7 shall be subject to  
14 the provisions of Article VI, hereinafter, and shall also be subject to the following:

15               a. The DIRECTOR may believe the CONSULTANT'S work under the  
16 AGREEMENT to have included negligent errors or omissions, or that the CONSULTANT  
17 may otherwise have failed to comply with the provisions of the AGREEMENT, either  
18 generally or in connection with its duties as associated with a particular PROJECT; and  
19 that the cause(s) for a claim by the construction contractor may be attributable, in whole or  
20 in part, to such conduct on the part of the CONSULTANT. Upon notice by the DIRECTOR,  
21 the payments to the CONSULTANT for such arguably deficient services shall be held in  
22 suspense by the COUNTY until a final determination has been made, of the proportion that  
23 the CONSULTANT'S fault bears to the fault of all other parties concerned.

24               b. Such amounts held in suspense shall not be paid to the  
25 CONSULTANT, pending the final determination as to the CONSULTANT'S proportional  
26 fault. However, the appropriate percentage of such amount held in suspense shall be paid  
27 to the CONSULTANT, once a final determination has been made, and the CONSULTANT  
28 thereafter submits a proper invoice to the COUNTY. Payment shall be issued in

1 accordance with the procedure outlined in Article VI, Section B, Paragraph 2.

2           8. At intervals appropriate to the stage of construction, or as otherwise  
3 deemed necessary by the CONSULTANT, visit the site of the PROJECT(S) as necessary  
4 to become familiar generally with the progress and quality of the work and to determine  
5 whether the work is proceeding in general accordance with the contract documents. The  
6 CONSULTANT shall not be required to make exhaustive or continuous onsite inspections  
7 but shall give direction to the Construction Inspector as hereinafter more specifically  
8 provided. The CONSULTANT shall not be responsible for the construction contractor's  
9 failure to carry out the construction work in accordance with the contract documents.  
10 However, the CONSULTANT shall immediately advise the CONTRACT ADMINISTRATOR  
11 of any known or observed deviation from the contract documents.

12           9. Not have control over or charge of, and shall not be responsible for  
13 construction means, methods, techniques, sequence, or procedure, or for the safety  
14 precautions, programs, or equipment in use in connection with the work, since these are  
15 solely the construction contractor's responsibility under the contract for construction.

16           10. Submit progress reports on each specific PROJECT in accordance with  
17 the task order. These reports shall be submitted at least once a month. The report shall be  
18 sufficiently detailed for CONTRACT ADMINISTRATOR to determine if the CONSULTANT  
19 is performing to expectations or is on schedule, to provide communication of interim  
20 findings, and so sufficiently address any difficulties or special problems encountered so  
21 remedies can be developed.

22           11. Advise the CONTRACT ADMINISTRATOR of defects and deficiencies  
23 observed in the work of the construction contractor, and may recommend that the  
24 DIRECTOR reject work as failing to conform to the contract documents.

25           12. Conduct site visits and field observations to facilitate recommendations  
26 by the CONSULTANT regarding:

- 27                   a. dates of substantial completion.  
28                   b. dates of final completion.

- c. the DIRECTOR'S acceptance of the work.
- d. the DIRECTOR'S filing of the Notice of Completion and Issuance of Final Certificate for payment.
- e. other issues which may require site visits.

#### D. Control of Construction Project Site

The COUNTY agrees that in accordance with generally accepted practices, the COUNTY'S construction contractor will be required to assume sole and complete responsibility for job site conditions during the course of construction projects; including safety of all persons and property, and that this requirement shall be made to apply continuously during projects and not be limited to normal working hours. The CONSULTANT shall not have control over or charge of, and shall not be responsible for, project means, methods, techniques, sequences or procedures, as these are solely the responsibility of the construction contractor. The CONSULTANT shall not have the authority to stop or reject the work of the construction contractor.

#### IV. OBLIGATIONS OF THE COUNTY

The COUNTY will:

- A. Issue task orders on a project-by-project basis. Task orders will at a minimum include scope of work, location, and schedule for the PROJECT.
- B. Provide the CONSULTANT with a PROJECT Scope and Schedule, and compensate the CONSULTANT as provided in the AGREEMENT.
- C. Provide an individual CONTRACT ADMINISTRATOR to serve as a representative of the COUNTY who will coordinate and communicate with the CONSULTANT, to the extent appropriate, to facilitate the CONSULTANT'S performance of its obligations in accordance with the provisions of the AGREEMENT.
- D. Provide basic plan sheet layouts as required.
- E. Examine documents submitted to the COUNTY by the CONSULTANT and timely render decisions pertaining thereto.
- F. Provide aerial photographs as required.

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

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

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

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

10 K. Provide limited assistance to CONSULTANT, as may be appropriate under the  
11 circumstances, in connection with CONSULTANT'S processing of required permits.

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

18 V. TERM OF AGREEMENT / PERFORMANCE PERIOD

19 A. The term of this AGREEMENT shall be for a period of three (3) years,  
20 commencing upon execution by the COUNTY, through and including the third anniversary  
21 of the execution date. This AGREEMENT may be extended for two additional consecutive  
22 twelve-month periods upon written approval of both parties no later than thirty (30) days  
23 prior to the first day of the next twelve-month extension period. The DIRECTOR or his or  
24 her designee is authorized to execute such written approval on behalf of COUNTY based  
25 on CONSULTANT'S satisfactory performance. The CONSULTANT shall commence work  
26 promptly after receipt of a notice to proceed issued by the CONTRACT ADMINISTRATOR.

27 B. The CONSULTANT is advised and hereby acknowledges its understanding that  
28 any recommendation for award is not binding on the COUNTY until the AGREEMENT is

1 fully executed following its approval by the COUNTY's Board of Supervisors.

2 VI. ALLOWABLE COSTS AND PAYMENTS

3 A. Total Fee:

4 1. Notwithstanding any other provisions in the AGREEMENT, the Total Fee  
5 for the services required under the AGREEMENT, shall not exceed the total sum of Seven  
6 Hundred Thousand and No/000 Dollars (\$700,000.00) over the entire term of the  
7 AGREEMENT. Compensation for the services  
8 rendered shall be computed at the hourly and cost rates shown in Appendix D, subject to  
9 any adjustments that may be approved in accordance with Article VI, Section A, Paragraph  
10 3.

11 2. The hourly and cost rates listed herein for services rendered by the  
12 CONSULTANT and subconsultants shall remain in effect for the entire duration of the  
13 AGREEMENT unless adjusted in accordance with the provisions of Article VI, Section A,  
14 Paragraphs 3, 5, or 6.

15 3. The hourly rates paid for services performed by the CONSULTANT and by  
16 subconsultants of the CONSULTANT and the rates for expenses incidental to the  
17 CONSULTANT'S and subconsultant's performance of services may be adjusted no more  
18 than once annually for inflation, in accordance with the following provisions: the  
19 CONSULTANT may request new labor rates and new rates for expenses incidental to the  
20 CONSULTANT'S and subconsultant's performance of services subject to written approval  
21 of the CONTRACT ADMINISTRATOR in accordance with the provisions of this Article VI,  
22 Section A, Paragraph 3. The CONSULTANT shall initiate the rate adjustment process by  
23 submitting to the CONTRACT ADMINISTRATOR a proposed adjusted fee schedule. The  
24 proposed adjusted fee schedule shall include proposed hourly rates for all categories of the  
25 CONSULTANT and subconsultants wage classifications and proposed rates for incidental  
26 expenses listed in Appendix D. The proposed adjusted fee schedule shall not take effect  
27 unless approved in writing by the CONTRACT ADMINISTRATOR. The CONSULTANT  
28 hereby acknowledges its understanding that approval by the CONTRACT

1 ADMINISTRATOR of any upward adjustment in the hourly and cost rates shall not provide  
2 a basis for any increase in the total fee of \$700,000.00, as set forth in Article VI, Section A,  
3 Paragraph 1.

4 4. Expenses incidental to the CONSULTANT'S and subconsultant's  
5 performance of services under Article III of the AGREEMENT shall be charged at the rates  
6 listed in Appendix D, subject to any adjustments that may be approved in accordance with  
7 Article VI, Section A, Paragraphs 3, 5, or 6. Unless incorporated in an adjusted fee  
8 schedule approved by the CONTRACT ADMINISTRATOR in accordance with Article VI,  
9 Section A, Paragraphs 3, 5, or 6, all other expenses incidental to the CONSULTANT'S and  
10 any subconsultant's performance of the services under Article III of the AGREEMENT that  
11 are not listed in Appendix D shall be borne by the CONSULTANT.

12 5. In the event that, in accordance with Article I, Section D, the CONTRACT  
13 ADMINISTRATOR approves the CONSULTANT to retain additional subconsultants not  
14 listed in Appendix B, hourly rates paid for services performed by such additional  
15 subconsultants of the CONSULTANT and the rates for expenses incidental to  
16 subconsultants performance of services may be adjusted no more than once annually for  
17 inflation, in accordance with Article VI, Section A, Paragraph 3. The first annual  
18 adjustment of hourly and incidental expense rates for such additional subconsultants shall  
19 not be approved prior to one year after the CONTRACT ADMINISTRATOR'S approval of  
20 the retention of such additional subconsultant(s) by the CONSULTANT.

21 6. Notwithstanding any other provisions in the AGREEMENT, the  
22 CONTRACT ADMINISTRATOR may, at any time, authorize in writing the revision of the  
23 CONSULTANT'S or subconsultant's list of rates for incidental expenses to include  
24 additional categories of such expenses if, in the opinion of the CONTRACT  
25 ADMINISTRATOR, such revision is necessary to facilitate the CONSULTANT'S  
26 performance of the PROJECT(S).

27 B. Payments:

28 1. Progress payments will be made by the COUNTY upon receipt of the



1 CONSULTANT'S monthly invoices and approval by the CONTRACT ADMINISTRATOR  
2 thereof based on the CONTRACT ADMINISTRATOR'S evaluation of the completion of the  
3 respective components of the assigned PROJECT. Invoices shall clearly identify the  
4 Phase and Task of the work, and the date(s) on which the work was performed, and shall  
5 be submitted with the documentation identified in Article VI, Section B, Paragraph 5.  
6 Invoices shall be forwarded electronically to: PWPBusinessOffice@co.fresno.ca.us

7           2. Upon receipt of a proper invoice, the CONTRACT ADMINISTRATOR will  
8 take a maximum of ten (10) working days to review, approve, and submit it to the COUNTY  
9 Auditor-Controller/Treasurer-Tax Collector. Unsatisfactory or inaccurate invoices will be  
10 returned to the CONSULTANT for correction and resubmittal. Payment, less retention, if  
11 applicable, will be issued to the CONSULTANT within forty (40) calendar days of the date  
12 the Auditor-Controller/Treasurer-Tax Collector receives the approved invoice.

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

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

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

26           6. Final invoices, and separate invoices for retentions, shall be submitted to  
27 CONTRACT ADMINISTRATOR no later than thirty (30) days after the phase is completed.  
28 Payment for retentions, if any, shall not be made until all services for the phase are

1 completed.

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

#### 8 VII. RETENTION FROM EARNED COMPENSATION

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

#### 17 VIII. TERMINATION

18                 A. The AGREEMENT may be terminated without cause at any time by the  
19 COUNTY upon thirty (30) calendar days' written notice. If the COUNTY terminates the  
20 AGREEMENT, the CONSULTANT shall be compensated for services satisfactorily  
21 completed to the date of termination based upon the compensation rates and subject to  
22 the maximum amounts payable agreed to in Article VI, together with such additional  
23 services satisfactorily performed after termination which are expressly authorized by the  
24 COUNTY to conclude the work performed to date of termination.

25                 B. If the CONSULTANT purports to terminate the AGREEMENT, or otherwise  
26 refuses to perform pursuant to the AGREEMENT, for reasons other than material breach  
27 by the COUNTY, the CONSULTANT shall reimburse the COUNTY, up to a maximum of  
28 \$10,000 for the actual expense of issuing a Request For Proposal (RFP), engaging a new

1 consultant, and the new consultant's cost in becoming familiar with the previous  
2 CONSULTANT'S work. The COUNTY'S entitlement to such reimbursement shall in no  
3 way be construed as a limitation on other damages that may be recoverable by the  
4 COUNTY as a result of the CONSULTANT'S termination, in breach of its obligations  
5 hereunder.

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

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

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

21 E. The terms of the AGREEMENT, and the services to be provided thereunder, are  
22 contingent on the approval of funds by the appropriating government agency. Should  
23 sufficient funds not be allocated, the services provided may be modified, or the  
24 AGREEMENT terminated at any time by giving the CONSULTANT thirty (30) days advance  
25 written notice. In the event of termination on the basis of this Paragraph, the  
26 CONSULTANT'S entitlement to payment, in accordance with the payment provisions set  
27 forth hereinabove, shall apply only to work performed by the CONSULTANT prior to receipt  
28 of written notification of such non-allocation of sufficient funding.

1 IX. FUNDING REQUIREMENTS

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

6 B. The AGREEMENT is subject to any additional restrictions, limitations, conditions,  
7 or any legislation enacted by the Congress, State Legislature or County Board of  
8 Supervisors that may affect the provisions, terms, or funding of the AGREEMENT in any  
9 manner.

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

12 D. The COUNTY has the option to void the AGREEMENT under the 30-day  
13 cancellation clause, or to amend the AGREEMENT by mutually acceptable modification of  
14 its provisions to reflect any reduction of funds.

15 X. CHANGE IN TERMS

16 A. The AGREEMENT may be amended or modified only by mutual written  
17 agreement of both parties. Except as provided in Article V, Section A, any such written  
18 amendment to the AGREEMENT may be approved on the COUNTY's behalf only by its  
19 Board of Supervisors.

20 B. The CONSULTANT shall only commence work covered by an amendment after  
21 the amendment has been fully executed and written notification to proceed has been  
22 issued by the CONTRACT ADMINISTRATOR.

23 XI. DISADVANTAGED BUSINESS ENTERPRISES (DBE) PARTICIPATION

24 A. The CONSULTANT must give consideration to Disadvantaged Business  
25 Enterprise (hereinafter referred to as "DBE") firms as specified in 23 Code of Federal  
26 Regulations (hereinafter referred to as "CFR") Section 172.5(b), and in 49 CFR, Part 26.  
27 The CONSULTANT must meet the DBE goal established for PROJECTS by using DBEs  
28 as subconsultants or document a good faith effort to have met the goal. If a DBE

1 subconsultant is unable to perform, the CONSULTANT must make a good faith effort to  
2 replace him/her with another DBE subconsultant if the goal is not otherwise met.

3 B. The CONSULTANT is responsible for being fully informed regarding the  
4 requirements of Title 49 CFR, Part 26 and CALTRANS' Disadvantaged Business  
5 Enterprise program developed pursuant to the regulations, as detailed in Appendix C,  
6 Notice to Proposers DBE Information, attached hereto and incorporated herein.

7 C. A DBE subconsultant may be terminated only with written approval by the  
8 CONTRACT ADMINISTRATOR and only for reasons specified in 49 CFR Section 26.53(f).  
9 Prior to requesting the CONTRACT ADMINISTRATOR consent for the proposed  
10 termination, the CONSULTANT must meet the procedural requirements specified in 49  
11 CFR Section 26.53(f).

## 12 XII. COST PRINCIPLES

13 A. The CONSULTANT agrees that the Contract Cost Principles and Procedures,  
14 Title 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq.  
15 (Appendix E), shall be used to determine the allowability of cost for individual items.

16 B. The CONSULTANT also agrees to comply with federal procedures in  
17 accordance with Title 49 CFR, Part 18, Uniform Administrative Requirements for Grants  
18 and Cooperative Agreements to State and Local Governments.

19 C. Any costs for which payment has been made to the CONSULTANT that are  
20 determined by subsequent audit to be unallowable under 49 CFR Part 18 and 48 CFR,  
21 Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., are subject to  
22 repayment by the CONSULTANT to the COUNTY.

## 23 XIII. COVENANT AGAINST CONTINGENT FEES

24 A. The CONSULTANT warrants, by execution of the AGREEMENT, that the  
25 CONSULTANT has not employed or retained any company or person, other than a bona  
26 fide employee working for the CONSULTANT; to solicit or secure the AGREEMENT; and  
27 that CONSULTANT has not paid or agreed to pay any company or person other than a  
28 bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other

1 consideration, contingent upon or resulting from the award or formation of the  
2 AGREEMENT. For breach or violation of this warranty, the COUNTY shall have the right  
3 to annul the AGREEMENT without liability, and to pay only for the value of the work  
4 actually performed by the CONSULTANT, or alternatively in the COUNTY's discretion, to  
5 deduct from the contract price or consideration, or otherwise recover the full amount of  
6 such any such commission, percentage, brokerage fee, gift, contingent fee or similar form  
7 of consideration previously paid by the CONSULTANT.

#### 8 XIV. RETENTION OF RECORDS/AUDIT

9 A. For the purpose of determining the sufficiency of the CONSUTLANT'S  
10 performance of the contract (and compliance with Public Contract Code 10115, et seq. and  
11 Title 21, California Code of Regulations, Chapter 21, Section 2500 et seq., when  
12 applicable), the CONSULTANT, subcontractors, and the COUNTY, and each of them, shall  
13 maintain all books, documents, papers, accounting records, and other evidence pertaining  
14 to the performance of the AGREEMENT, including but not limited to, the costs of  
15 administering the AGREEMENT.

16 B. All parties shall make such materials available at their respective offices at all  
17 reasonable times throughout the entirety of the contract term and for three years from the  
18 date of final payment under the contract, pursuant to Government Code 8546.7. The state,  
19 the State Auditor, the COUNTY, Federal Highway Administration, or any duly authorized  
20 representative of the federal government shall have access to any books, records, and  
21 documents of the CONSULTANT that are pertinent to the contract for audit, examinations,  
22 excerpts, and transactions, and copies thereof shall be furnished if requested. It shall be  
23 the responsibility of the CONSULTANT to ensure that all subcontracts in excess of  
24 \$25,000 shall contain this provision.

25 C. The CONSULTANT and subconsultants' contracts, including cost proposals and  
26 indirect cost rates (ICR), are subject to audits or reviews such as, but not limited to, a  
27 Contract Audit, an Incurred Cost Audit, an ICR Audit, or a certified public accountant (CPA)  
28 ICR Audit Workpaper Review. If selected for audit or review, the AGREEMENT, cost

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

#### 14 XV. AUDIT REVIEW PROCEDURES

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

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

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

24 D. The CONSULTANT and subconsultants' contracts, including cost proposals and  
25 indirect cost rates (ICR), are subject to audits or reviews such as, but not limited to, a  
26 Contract Audit, an Incurred Cost Audit, an ICR Audit, or a certified public accountant (CPA)  
27 ICR Audit Workpaper Review. If selected for audit or review, the contract, cost proposal  
28 and ICR and related workpapers, if applicable, will be reviewed to verify compliance with 48

CFR, Part 31 and other related laws and regulations. In the instances of a CPA ICR Audit Workpaper Review it is the CONSULTANT's responsibility to ensure federal, state, or local government officials are allowed full access to the CPA's workpapers. The AGREEMENT, cost proposal, and ICR shall be adjusted by the CONSULTANT and approved by the CONTRACT ADMINISTRATOR to conform to the audit or review recommendations. The CONSULTANT agrees that individual terms of costs identified in the audit report shall be incorporated into the contract by this reference if directed by the COUNTY at its sole discretion. Refusal by the CONSULTANT to incorporate audit or review recommendations, or to ensure that the Federal, State, or local governments have access to CPA workpapers, will be considered a breach of contract terms and cause for termination of the AGREEMENT and disallowance of prior reimbursed costs.

#### XVI. ERRORS OR OMISSIONS CLAIMS AND DISPUTES

##### A. Definitions:

1. A "Consultant" is a duly licensed Architect or Engineer, 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 right, adjustment or interpretation of contract terms, payment of money, extension of time, change orders, or other relief with respect to the terms of the contract. The term "Claim" also includes other disputes and matters in question between the COUNTY and the CONSULTANT arising out of or relating to the contract. Claims must be made by written notice. The provisions of Government Code section 901, et seq., shall apply to every claim made to the COUNTY. The responsibility to substantiate claims shall rest with the party making the claim. The term "Claim" also includes any allegation of an error or omission by the CONSULTANT.

B. In the spirit of cooperation between the COUNTY and the CONSULTANT, the following procedures are established in the event of any claim or dispute alleging a



1 negligent error, act, or omission, of the CONSULTANT.

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

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

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

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

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

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

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

#### 10 XVII. SUBCONTRACTING

11 A. The CONSULTANT shall perform the work contemplated with resources  
12 available within its own organization; and no portion of the work pertinent to this contract  
13 shall be subcontracted without prior written authorization by the CONTRACT  
14 ADMINISTRATOR, excepting only those portions of the work and the responsible  
15 subconsultants that are expressly identified in Appendix B hereto.

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

19 C. Any substitution of subconsultant(s) must be approved in writing by the  
20 CONTRACT ADMINISTRATOR prior to the start of work by such subconsultant(s).

#### 21 XVIII. EQUIPMENT PURCHASE

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

27 B. Prior authorization by the CONTRACT ADMINISTRATOR shall be required for  
28 purchase of any item, service or consulting work in excess of \$5,000 that is not covered in

1 the CONSULTANT'S Cost Proposal; and the CONSULTANT'S request must be  
2 accompanied by at least three competitive quotations, unless the absence of bidding is  
3 adequately justified, to the satisfaction of the CONTRACT ADMINISTRATOR in his or her  
4 discretion, by written explanation provided by the CONSULTANT with its submittal.

5 C. Any authorized purchase of equipment as a result of the AGREEMENT is  
6 subject to the following: "The CONSULTANT shall maintain an inventory of all  
7 nonexpendable property. Nonexpendable property is defined as having a useful life of at  
8 least two years and an acquisition cost of \$5,000 or more. If the purchased equipment  
9 needs replacement and is sold or traded in, the COUNTY shall receive a proper refund or  
10 credit at the conclusion of the contract, or if the contract is terminated, the CONSULTANT  
11 may either keep the equipment and credit the COUNTY in an amount equal to its fair  
12 market value, or sell such equipment at the best price obtainable at a public or private sale,  
13 in accordance with established COUNTY procedures; and credit the COUNTY in an  
14 amount equal to the sales price. If the CONSULTANT elects to keep the equipment, fair  
15 market value shall be determined at the CONSULTANT'S expense, on the basis of a  
16 competent independent appraisal of such equipment. Appraisals shall be obtained from an  
17 appraiser mutually agreeable to by the COUNTY and the CONSULTANT, if it is determined  
18 to sell the equipment, the terms and conditions of such sale must be approved in advance  
19 by the COUNTY." Title 49 CFR, Part 18 requires a credit to Federal funds when  
20 participating equipment with a fair market value greater than \$5,000.00 is credited to the  
21 PROJECT.

## 22 XIX. INSPECTION OF WORK

23 The CONSULTANT and any subcontractor shall permit the COUNTY, the state, and  
24 the FHWA to review and inspect the PROJECT activities and files at all reasonable times  
25 during the performance period of the AGREEMENT including review and inspection on a  
26 daily basis.

## 27 XX. LIABILITY INSURANCE

28 A. Without limiting the COUNTY'S right to obtain indemnification from the

1 CONSULTANT or any third parties, the CONSULTANT, at its sole expense, shall maintain  
2 in full force and effect, the following insurance policies prior to commencement of any work  
3 for the COUNTY and, thereafter, throughout the entire term of the AGREEMENT (with the  
4 exception of Professional Liability Insurance, which the CONSULTANT shall maintain in full  
5 force and effect for the additional period of time required by Article XX, Section A,  
6 Paragraph 4).

7 1. Commercial General Liability Insurance with limits not less than One  
8 Million Dollars (**\$1,000,000.00**) per occurrence and an annual aggregate of not less than  
9 Two Million Dollars (**\$2,000,000.00**). This policy shall be issued on a per occurrence basis.  
10 The COUNTY may require specific coverages including completed operations, products  
11 liability, contractual liability, Explosion-Collapse-Underground, fire legal liability or any other  
12 liability insurance deemed necessary because of the nature of the AGREEMENT.

13 2. Comprehensive Automobile Liability Insurance with limits for bodily injury  
14 of Two Hundred Fifty Thousand Dollars (**\$250,000.00**) per person, Five Hundred Thousand  
15 Dollars (**\$500,000.00**) per accident and for property damages of Fifty Thousand Dollars  
16 (**\$50,000.00**), or such coverage with a combined single limit of Five Hundred Thousand  
17 Dollars (**\$500,000.00**). Coverage should include owned and non-owned vehicles used in  
18 connection with the AGREEMENT.

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

21 4. Professional Liability Insurance:

22 a. If the CONSULTANT employs licensed professional staff in  
23 providing services, Professional Liability Insurance with limits of One Million Dollars  
24 (**\$1,000,000.00**) per claim, Three Million Dollars (**\$3,000,000.00**) annual aggregate.

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

28 c. The CONSULTANT shall obtain endorsements to the Commercial

1 General Liability insurance naming the COUNTY, its officers, agents, and employees,  
2 individually and collectively, as additional insured, but only insofar as the operations under  
3 the AGREEMENT are concerned. Such coverage for additional insured shall apply as  
4 primary insurance and any other insurance, or self-insurance, maintained by the COUNTY,  
5 its officers, agents and employees shall be excess only and not contributing with insurance  
6 provided under the CONSULTANT'S policies herein. The CONSULTANT shall give the  
7 COUNTY at least thirty (30) days advance written notice of any cancellation, expiration,  
8 reduction or other material change in coverage with respect to any of the aforesaid policies.

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

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

27 f. All policies shall be issued by admitted insurers licensed to do  
28 business in the State of California, and all such insurance shall be purchased from

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

2 XXI. HOLD HARMLESS

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

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

16 XXII. OWNERSHIP OF DATA

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

21 B. The CONSULTANT understands and agrees the COUNTY shall retain full  
22 ownership rights of the drawings and work product of the CONSULTANT for the  
23 PROJECT, to the fullest extent permitted by law. In this regard, the CONSULTANT  
24 acknowledges and agrees the CONSULTANT'S services are on behalf of the COUNTY  
25 and are "works made for hire," as that term is defined in copyright law, by the COUNTY;  
26 that the drawings and work product to be prepared by the CONSULTANT are for the sole  
27 and exclusive use of the COUNTY, and that the COUNTY shall be the sole owner of all  
28 patents, copyrights, trademarks, trade secrets and other rights and contractual interests in

1 connection therewith which are developed and compensated solely under the  
2 AGREEMENT; that all the rights, title and interest in and to the drawings and work product  
3 will be transferred to the COUNTY by the CONSULTANT to the extent the CONSULTANT  
4 has an interest in and authority to convey such rights; and the CONSULTANT will assist  
5 the COUNTY to obtain and enforce patents, copyrights, trademarks, trade secrets, and  
6 other rights and contractual interests relating to said drawings and work product, free and  
7 clear of any claim by the CONSULTANT or anyone claiming any right through the  
8 CONSULTANT. The CONSULTANT further acknowledges and agrees the COUNTY's  
9 ownership rights in such drawings or work product, shall apply regardless of whether such  
10 drawings or work product, or any copies thereof, are in possession of the CONSULTANT,  
11 or any other person, firm, corporation, or entity. For purposes of the AGREEMENT the  
12 terms "drawings and work product" shall mean all reports and study findings commissioned  
13 to develop the PROJECT design, drawings and schematic or preliminary design  
14 documents, certified reproducibles of the original final construction contract drawings,  
15 specifications, the approved estimate, record drawings, as-built plans, and discoveries,  
16 developments, designs, improvement, inventions, formulas, processes, techniques, or  
17 specific know-how and data generated or conceived or reduced to practice or learning by  
18 the CONSULTANT, either alone or jointly with others, that result from the tasks assigned to  
19 the CONSULTANT by the COUNTY under the AGREEMENT.

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

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

28 E. Documents, including drawings and specifications, prepared by the

1 CONSULTANT pursuant to the AGREEMENT are intended to be suitable for reuse by the  
2 COUNTY or others on extensions of the services provided for PROJECT. Any use of  
3 completed documents for projects other than PROJECT(S) and/or any use of uncompleted  
4 documents will be at the COUNTY'S sole risk and without liability or legal exposure to the  
5 CONSULTANT.

6 The electronic files provided by the CONSULTANT to the COUNTY are submitted  
7 for an acceptance period lasting until the expiration of the AGREEMENT (i.e., throughout  
8 the duration of the contract term, including any extensions). Any defects the COUNTY  
9 discovers during such acceptance period will be reported to the CONSULTANT and will be  
10 corrected as part of the CONSULTANT'S "Basic Scope of Work."

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

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

25 XXIII. CLAIMS FILED BY THE COUNTY'S CONSTRUCTION CONTRACTOR

26 A. If claims are filed by the COUNTY's construction contractor relating to work  
27 performed by the CONSULTANT'S personnel, and additional information or assistance  
28 from the CONSULTANT'S personnel is required in order to evaluate or defend against



1 such claims, then the CONSULTANT hereby agrees in such event to make its personnel  
2 available for consultation with the COUNTY's construction contract administration and legal  
3 staff and for testimony, if necessary, at depositions and at trial or arbitration proceedings.

4 B. The CONSULTANT'S personnel that the COUNTY considers essential to assist  
5 in defending against the construction contractor's claims will be made available on  
6 reasonable notice from the DIRECTOR. Services of the CONSULTANT'S personnel in  
7 connection with consultation or testimony for this purpose will be performed pursuant to a  
8 written contract amendment, if determined by the parties to be necessary or appropriate.

#### 9 XXIV. CONFIDENTIALITY OF DATA

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

14 B. Permission to disclose information on one occasion, or public hearing held by  
15 the COUNTY relating to the contract, shall not authorize the CONSULTANT to further  
16 disclose such information, or disseminate the same on any other occasion.

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

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

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

#### 27 XXV. NATIONAL LABOR RELATIONS BOARD CERTIFICATION

28 In accordance with Public Contract Code Section 10296, the CONSULTANT hereby

1 states under penalty of perjury that no more than one final unappealable finding of  
2 contempt of court by a federal court has been issued against the CONSULTANT within the  
3 immediately preceding two-year period, because of the CONSULTANT'S failure to comply  
4 with an order of a federal court that orders the CONSULTANT to comply with an order of  
5 the National Labor Relations Board.

6 XXVI. EVALUATION OF THE CONSULTANT

7 The CONSULTANT'S performance will be evaluated by the COUNTY using the form  
8 attached to the RFQ as Attachment C. A copy of the evaluation will be sent to the  
9 CONSULTANT for comments. The evaluation together with the comments shall be  
10 retained as part of the contract record.

11 XXVII. STATEMENT OF COMPLIANCE: NON-DISCRIMINATION

12 A. The CONSULTANT'S signature affixed herein, and dated, shall constitute a  
13 certification under penalty of perjury under the laws of the State of California that the  
14 CONSULTANT has, unless exempt, complied with, the nondiscrimination program  
15 requirements of Government Code Section 12990 and Title 2, California  
16 Administrative Code, Section 8103.

17 B. During the performance of the AGREEMENT, the CONSULTANT and its  
18 subconsultants shall not unlawfully discriminate, harass, or allow harassment against any  
19 employee or applicant for employment because of sex, race, color, ancestry, religious  
20 creed, national origin, physical disability (including HIV and AIDS), mental disability,  
21 medical condition (e.g., cancer), age (over 40), marital status, and denial of family care  
22 leave. The CONSULTANT and subconsultants shall ensure that the evaluation and  
23 treatment of their employees and applicants for employment are free from such  
24 discrimination and harassment. The CONSULTANT and subconsultants shall comply with  
25 the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.)  
26 and the applicable regulations promulgated thereunder (California Code of Regulations,  
27 Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and  
28 Housing Commission implementing Government Code Section 12990 (a-f), set forth in

Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into the AGREEMENT by reference and made a part hereof as if set forth in full. The CONSULTANT and subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

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

#### XXVIII. DEBARMENT AND SUSPENSION CERTIFICATION

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

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

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

#### XXIX. COMPLIANCE WITH LAWS AND STATE PREVAILING WAGE RATES

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

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

7 XXX. CONFLICT OF INTEREST

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

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

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

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

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

9 XXXI. REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION

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

17 XXXII. PROHIBITION OF EXPENDING COUNTY STATE OR FEDERAL FUNDS FOR  
18 LOBBYING

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

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

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

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

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

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

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

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

### XXXIII. INDEPENDENT CONTRACTOR

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

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

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

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

#### 17 XXXIV. DISCLOSURE OF SELF-DEALING TRANSACTIONS

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

1 XXXV. NOTIFICATION

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

7 XXXVI. NON-ASSIGNMENT

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

10 XXXVII. CONSULTANT'S LEGAL AUTHORITY

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

17 XXXVIII. BINDING UPON SUCCESSORS

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

20 XXXIX. INCONSISTENCIES

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

25 XL. SEVERABILITY

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



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

2 XLI. FINAL AGREEMENT

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

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

3 AVILA & ASSOCIATES, INC.

4  
5 BY: Cathy Avila  
6 Cathy Avila  
Principal Engineer

COUNTY OF FRESNO

Brian Pacheco  
Brian Pacheco, Chairman  
Board of Supervisors

7  
8 REVIEWED AND RECOMMENDED  
9 FOR APPROVAL

ATTEST:  
Bernice E. Seidel, Clerk  
Board of Supervisors

10 By: Steven E. White  
11 Steven E. White, Director  
12 Department of Public Works and  
Planning

By: Rosemary Cuyler  
Deputy

13  
14 APPROVED AS TO LEGAL FORM  
15 Daniel C. Cederborg  
County Counsel

16 By: [Signature]  
17 Deputy

18  
19 APPROVED AS TO ACCOUNTING  
20 FORM

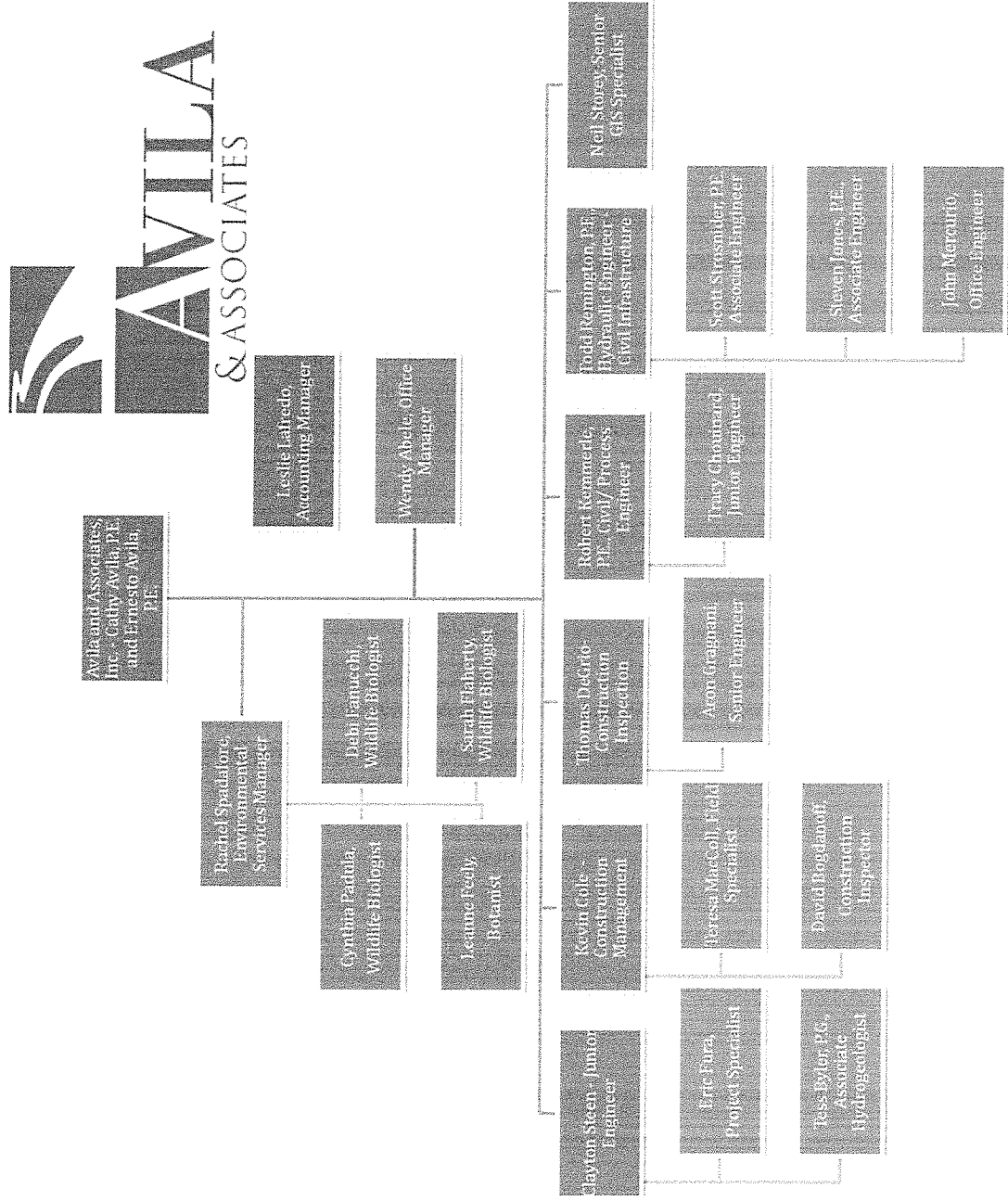
21 Oscar J. Garcia CPA  
Auditor-Controller/ Treasurer-Tax  
Collector

22 By: [Signature]  
23 Deputy

24  
25 FOR ACCOUNTING USE ONLY

26 Fund: 0001  
27 Subclass: 10000  
28 Org. No: 4510  
Account: 7295

# AVILA ORGANIZATIONAL CHART



## **APPENDIX B**

### **SUBCONSULTANTS (NONE)**

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**NOTICE TO PROPOSERS DBE INFORMATION**

The Agency has not established a goal for this Contract. However, proposers are encouraged to obtain DBE participation for this contract.

**1. TERMS AS USED IN THIS DOCUMENT**

- The term "Disadvantaged Business Enterprise" or "DBE" means a for-profit small business concern owned and controlled by a socially and economically disadvantaged person(s) as defined in Title 49, Code of Federal Regulations (CFR), Part 26.5.
- The term "Agreement" also means "Contract."
- Agency also means the local entity entering into this contract with the Contractor or Consultant.
- The term "Small Business" or "SB" is as defined in 49 CFR 26.65.

**2. AUTHORITY AND RESPONSIBILITY**

- A. DBEs and other small businesses are strongly encouraged to participate in the performance of Contracts financed in whole or in part with federal funds (See 49 CFR 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs"). The Consultant must ensure that DBEs and other small businesses have the opportunity to participate in the performance of the work that is the subject of this solicitation and should take all necessary and reasonable steps for this assurance. The proposer must not discriminate on the basis of race, color, national origin, or sex in the award and performance of subcontracts.
- B. Proposers are encouraged to use services offered by financial institutions owned and controlled by DBEs.

**3. SUBMISSION OF DBE INFORMATION**

If there is a DBE goal on the contract, Exhibit 10-O1 *Consultant Proposal DBE Commitment* must be included in the Request for Proposal. In order for a proposer to be considered responsible and responsive, the proposer must make good faith efforts to meet the goal established for the contract. If the goal is not met, the proposer must document adequate good faith efforts. All DBE participation will be counted towards the contract goal; therefore, all DBE participation shall be collected and reported.

Exhibit 10-O2 *Consultant Contract DBE Information* must be included with the Request for Proposal. Even if no DBE participation will be reported, the successful proposer must execute and return the form.

**4. DBE PARTICIPATION GENERAL INFORMATION**

It is the proposer's responsibility to be fully informed regarding the requirements of 49 CFR, Part 26, and the Department's DBE program developed pursuant to the regulations. Particular attention is directed to the following:

- A. A DBE must be a small business firm defined pursuant to 13 CFR 121 and be certified through the California Unified Certification Program (CUCP).
- B. A certified DBE may participate as a prime consultant, subconsultant, joint venture partner, as a vendor of material or supplies, or as a trucking company.
- C. A DBE proposer not proposing as a joint venture with a non-DBE, will be required to document one or a combination of the following:
  - 1. The proposer is a DBE and will meet the goal by performing work with its own forces.
  - 2. The proposer will meet the goal through work performed by DBE subconsultants, suppliers or trucking companies.
  - 3. The proposer, prior to proposing, made adequate good faith efforts to meet the goal.
- D. A DBE joint venture partner must be responsible for specific contract items of work or clearly defined portions thereof. Responsibility means actually performing, managing, and supervising the work with its own forces. The DBE joint venture partner must share in the capital contribution, control, management, risks and profits of the joint venture commensurate with its ownership interest.

- E. A DBE must perform a commercially useful function pursuant to 49 CFR 26.55, that is, a DBE firm must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing and supervising the work.
- F. The proposer shall list only one subconsultant for each portion of work as defined in their proposal and all DBE subconsultants should be listed in the bid/cost proposal list of subconsultants.
- G. A prime consultant who is a certified DBE is eligible to claim all of the work in the Contract toward the DBE participation except that portion of the work to be performed by non-DBE subconsultants.

## 5. RESOURCES

- A. The CUCP database includes the certified DBEs from all certifying agencies participating in the CUCP. If you believe a firm is certified that cannot be located on the database, please contact the Caltrans Office of Certification toll free number 1-866-810-6346 for assistance.
- B. Access the CUCP database from the Department of Transportation, Office of Business and Economic Opportunity Web site at: <http://www.dot.ca.gov/hq/bep/>.
  - 1. Click on the link titled *Disadvantaged Business Enterprise*;
  - 2. Click on Search for a DBE Firm link;
  - 3. Click on *Access to the DBE Query Form* located on the first line in the center of the page.

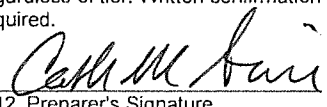
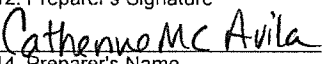
Searches can be performed by one or more criteria. Follow instructions on the screen.

## 6. MATERIALS OR SUPPLIES PURCHASED FROM DBES COUNT TOWARDS THE DBE GOAL UNDER THE FOLLOWING CONDITIONS:

- A. If the materials or supplies are obtained from a DBE manufacturer, count 100 percent of the cost of the materials or supplies. A DBE manufacturer is a firm that operates or maintains a factory, or establishment that produces on the premises the materials, supplies, articles, or equipment required under the Contract and of the general character described by the specifications.
- B. If the materials or supplies purchased from a DBE regular dealer, count 60 percent of the cost of the materials or supplies. A DBE regular dealer is a firm that owns, operates or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the Contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a DBE regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A person may be a DBE regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone or asphalt without owning, operating or maintaining a place of business provided in this section.
- C. If the person both owns and operates distribution equipment for the products, any supplementing of regular dealers' own distribution equipment shall be, by a long-term lease agreement and not an ad hoc or Agreement-by-Agreement basis. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not DBE regular dealers within the meaning of this section.
- D. Materials or supplies purchased from a DBE, which is neither a manufacturer nor a regular dealer, will be limited to the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on the job site, provided the fees are reasonable and not excessive as compared with fees charged for similar services.

## EXHIBIT 10-01 CONSULTANT PROPOSAL DBE COMMITMENT

1. Local Agency: County of Fresno 2. Contract DBE Goal: N/A  
 3. Project Description: 2017 On-Call Engineering Consultant Services  
 4. Project Location: Various  
 5. Consultant's Name: Avila & Associates, Inc. 6. Prime Certified DBE: ☒

7. Description of Work, Service, or Materials Supplied	8. DBE Certification Number	9. DBE Contact Information	10. DBE %
Hydrology and Hydraulic Engineering Services	32811	Avila & Associates Consulting Engineering, Inc. 712 Bancroft Road #333 Walnut Creek, CA 94598 P: 925-673-0549; F: 925-673-0509	100%
<b>Local Agency to Complete this Section</b>		<b>11. TOTAL CLAIMED DBE PARTICIPATION</b>	<b>100%</b>
17. Local Agency Contract Number: _____			
18. Federal-Aid Project Number: _____		<b>IMPORTANT:</b> Identify all DBE firms being claimed for credit, regardless of tier. Written confirmation of each listed DBE is required.  <u>7/10/17</u> 12. Preparer's Signature  <u>925-673-0549</u> 14. Preparer's Name <u>President</u> 16. Preparer's Title	
19. Proposed Contract Execution Date: _____			
Local Agency certifies that all DBE certifications are valid and information on this form is complete and accurate.			
20. Local Agency Representative's Signature _____	21. Date _____		
22. Local Agency Representative's Name _____	23. Phone _____		
24. Local Agency Representative's Title _____			

DISTRIBUTION: Original – Included with consultant's proposal to local agency.

## EXHIBIT 10-02 CONSULTANT CONTRACT DBE COMMITMENT

1. Local Agency: County of Fresno 2. Contract DBE Goal: N/A  
 3. Project Description: 2017 On-Call Engineering Consultant Services  
 4. Project Location: Various  
 5. Consultant's Name: Avila & Associates, Inc., 6. Prime Certified DBE: ☒ 7. Total Contract Award Amount: \$700,000  
 8. Total Dollar Amount for ALL Subconsultants: N/A 9. Total Number of ALL Subconsultants: N/A

10. Description of Work, Service, or Materials Supplied	11. DBE Certification Number	12. DBE Contact Information	13. DBE Dollar Amount		
Hydrology and Hydraulic Engineering Services	32811	Avila & Associates Consulting Engineering, Inc. 712 Bancroft Road #333 Walnut Creek, CA 94598 P: 925-673-0549; F: 925-673-0509	100%		
<b>Local Agency to Complete this Section</b>					
20. Local Agency Contract Number: _____		<b>14. TOTAL CLAIMED DBE PARTICIPATION</b>	\$700,000		
21. Federal-Aid Project Number: _____			100%		
22. Contract Execution Date: _____		<p>IMPORTANT: Identify all DBE firms being claimed for credit, regardless of tier. Written confirmation of each listed DBE is required.</p> <p><i>Cathy McAvila</i> 7/10/11            15. Preparer's Signature 16. Date  <i>Catherine McAvila</i> 925-673-0549            17. Preparer's Name 18. Phone  <i>President</i>            19. Preparer's Title</p>			
Local Agency certifies that all DBE certifications are valid and information on this form is complete and accurate.					
23. Local Agency Representative's Signature	24. Date				
25. Local Agency Representative's Name	26. Phone				
27. Local Agency Representative's Title					

DISTRIBUTION: 1. Original – Local Agency  
 2. Copy – Caltrans District Local Assistance Engineer (DLAE). Failure to submit to DLAE within 30 days of contract execution may result in de-obligation of federal funds on contract.

ADA Notice: For individuals with sensory disabilities, this document is available in alternate formats. For information call (916) 654-6410 or TDD (916) 654-3880 or write Records and Forms Management, 1120 N Street, MS-89, Sacramento, CA 95814.



## 2016 10H Rate Schedule

### Avila and Associates Consulting Engineers, Inc.

#### Hourly Charge Rate Schedule

##### Personnel Charges

Charges for personnel engaged in professional and/or technical work are based on the actual hours directly chargeable to the project.

Current rates by classification are listed below:

##### Classification

Project Manager	\$ 162.18/hour
GIS Specialist	\$ 143.48/hour
Associate Engineer	\$ 124.67/hour
Assistant Engineer	\$ 103.65/hour
Technical Editor	\$ 120.06/hour
Administration	\$ 50.68/hour

##### Materials and Services

Subcontractors, mileage-federal rate, special equipment, and outside reproduction, data processing, computer services, etc., will be charged at cost.

**EXHIBIT 10-K CONSULTANT CERTIFICATION OF CONTRACT COSTS AND FINANCIAL MANAGEMENT SYSTEM**

*(Note: If requesting to utilize the Safe Harbor Indirect Cost Rate submit Attachment 1 of DLA-OB 13-07 - Safe Harbor Indirect Cost Rate for Consultant Contracts found at [http://www.dot.ca.gov/hq/LocalPrograms/DLA\\_OB/DLA\\_OB.htm](http://www.dot.ca.gov/hq/LocalPrograms/DLA_OB/DLA_OB.htm) in lieu of this form.)*

**Certification of Final Indirect Costs:**

Consultant Firm Name: Avila and Associates Consulting Engineers, Inc.

Indirect Cost Rate: 90.34% \* for fiscal period 1/1/2016-12/31/2016 (mm/dd/yyyy to mm/dd/yyyy)

\*Fiscal period covered for Indirect Cost Rate developed (not the contract period).

Local Government: County of Fresno

- Contract Number: \_\_\_\_\_ Project Number: TBD

I, the undersigned, certify that I have reviewed the proposal to establish final indirect cost rates for the fiscal period as specified above and to the best of my knowledge and belief:

1. All costs included in this proposal to establish final Indirect Cost Rates are allowable in accordance with the cost principles of the Federal Acquisition Regulations (FAR) of Title 48, Code of Federal Regulations (CFR), Part 31.
2. This proposal does not include any costs which are expressly unallowable under the cost principles of the FAR of 48 CFR, Part 31.

All known material transactions or events that have occurred affecting the firm's ownership, organization, and Indirect Cost Rates have been disclosed as of the date of proposal preparation noted above.

**Certification of Financial Management System:**

I, the undersigned, certify to the best of my knowledge and belief that our Financial Management System meets the standards for financial reporting, accounting records, internal and budget control as set forth in the FAR of Title 49, CFR, Part 18.20 to the extent applicable to Consultant.

**Certification of Dollar Amount for all A&E Contracts:**

I, the undersigned, certify that the approximate dollar amount of all A&E contracts awarded by Caltrans or a California local agency to this firm within the last three (3) calendar years for all State DOT and Local Agencies is \$ 200,000 and the number of states in which the firm does business is 1.

**Certification of Direct Costs:**

I, the undersigned, certify to the best of my knowledge and belief that all direct costs identified on the cost proposal(s) in this contract are reasonable, allowable and allocable to the contract in accordance with the cost principles of the FAR of Title 48, CFR, Part 31. Allowable direct costs to a Government contract shall be:

2. Compliant with the terms of the contract and is incurred specifically for the contract.
3. Not prohibited by 23 CFR, Chapter 1, Part 172 –Administration of Engineering and Design Related Service Contracts to the extent requirements are applicable to Consultant.

All costs must be applied consistently and fairly to all contracts. All documentation of compliance must be retained in the project files.

**Subconsultants (if applicable)**

Proposed Contract Amount (or amount not to exceed if on-call contract): \$ tbd

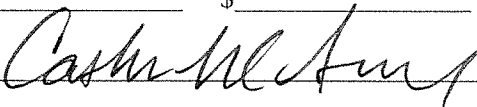
**Prime Consultants (if applicable)**

Proposed **Total** Contract Amount (or amount not to exceed if on-call contract): \$ \_\_\_\_\_

Prime, list all subconsultants and proposed subcontract dollar amounts (attach additional page if necessary):

_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____

\* Consultant Certification Signature: \_\_\_\_\_



Consultant Certifying (Print Name and Title):

Name: Catherine M.C. Avila

Title: President

Consultant Contact Information:

Email: cavila@avilaassociates.com

Phone number: (925) 673-0549

Date of Certification (mm/dd/yyyy): July 10, 2017

\*An individual executive or financial officer of the consultant's organization at a level no lower than a Vice President or Chief Financial Officer, or equivalent, who has authority to represent the financial information utilized to establish the indirect cost rate proposal submitted in conjunction with the contract.

Note: Per 23 U.S.C. 112(b)(2)(B), Subconsultants must comply with the FAR Cost Principles contained in 48 CFR, Part 31.

23 CFR Part 172.3 Definitions state: Consultant means the individual or firm providing engineering and design related services as a party to the contract. Therefore, subconsultants as parties of a contract must complete a certification and send originals to A&I and keep copies in Local Agency Project Files.

**Distribution:** 1) Original to Caltrans Audits and Investigations  
2) Retained in Local Agency Project Files

**Fiscal Year 2017/2018 California Department of Transportation  
Debarment and Suspension Certification**

*As required by U.S. DOT regulations on governmentwide Debarment and Suspension*

*(Nonprocurement), 49 CFR 29.100:*

- 1) The Applicant certifies, to the best of its knowledge and belief, that it and its contractors, subcontractors and subrecipients:
  - a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
  - b) Have not, within the three (3) year period preceding this certification, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) transaction or contract under a public transaction, violation of Federal or state antitrust statutes, or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
  - c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, state, or local) with commission of any of the offenses listed in subparagraph (1)(b) of this certification; and
  - d) Have not, within the three (3) year period preceding this certification, had one or more public transactions (Federal, state, and local) terminated for cause or default.
- 2) The Applicant also certifies that, if Applicant later becomes aware of any information contradicting the statements of paragraph (1) above, it will promptly provide that information to the State.
- 3) If the Applicant is unable to certify to all statements in paragraphs (1) and (2) of this certification, through those means available to Applicant, including the General Services Administration's *Excluded Parties List System (EPLS)*, Applicant shall indicate so in its applications, or in the transmittal letter or message accompanying its annual certifications and assurances, and will provide a written explanation to the State.

**DEPARTMENT OF TRANSPORTATION  
DEBARMENT AND SUSPENSION CERTIFICATION  
FISCAL YEAR 2017/2018  
SIGNATURE PAGE**

In signing this document, I declare under penalties of perjury that the foregoing certifications and assurances, and any other statements made by me on behalf of the Applicant are true and correct.

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

Printed Name \_\_\_\_\_

As the undersigned Attorney for the above named Applicant, I hereby affirm to the Applicant that it has the authority under state and local law to make and comply with the certifications and assurances as indicated on the foregoing pages. I further affirm that, in my opinion, these certifications and assurances have been legally made and constitute legal and binding obligations of the Applicant.

I further affirm to the Applicant that, to the best of my knowledge, there is no legislation or litigation pending or imminent that might adversely affect the validity of these certifications and assurances or of the performance of the described project.

**AFFIRMATION OF APPLICANT'S ATTORNEY**

For \_\_\_\_\_ (Name of Applicant)

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

Printed Name of Applicant's Attorney \_\_\_\_\_

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

In the matter of ) No.  
Amendment of Standard Conflict of )  
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.

## APPENDIX G

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:

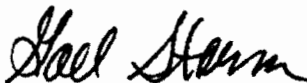
Ayes: Supervisors Larson, Perea, Anderson, Case and Waterston

Noes: None

Absent: None

  
Chairman, Board of Supervisors

Attest:

  
Clerk

## APPENDIX G

### 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  
Gael Storm, Deputy Clerk



## APPENDIX G

### EXHIBIT "A"

#### PUBLIC WORKS AND PLANNING

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

## APPENDIX G

<u>Classification</u>	<u>Category</u>
Senior Staff Analyst	1
Senior Systems and Procedures Analyst	2
Staff Analyst I / II / III	1
Supervising Accountant	2, 3
Supervising Building Inspector	1
Supervising Engineer	1
Supervising Water/Wastewater Specialist	2, 3
Systems and Procedures Analyst I / II / III	2
Systems and Procedures Manager	2
Traffic Maintenance Supervisor	2

- \* 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.

## APPENDIX G

### 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.

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**EXHIBIT 10-P NONLOBBYING CERTIFICATION FOR FEDERAL-AID CONTRACTS**

The prospective participant certifies by signing and submitting this proposal/bid to the best of his or her knowledge and belief that:

- (1) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.

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

The prospective participant also agrees by submitting his/her proposal/bid that he/she shall require that the language of this certification be included in all lower-tier subcontracts which exceed \$100,000 and that all such sub-recipients shall certify and disclose accordingly.

## EXHIBIT 10-Q DISCLOSURE OF LOBBYING ACTIVITIES

COMPLETE THIS FORM TO DISCLOSE LOBBYING ACTIVITIES PURSUANT TO 31 U.S.C. 1352

<b>1. Type of Federal Action:</b> <input type="checkbox"/> a. contract <input type="checkbox"/> b. grant <input type="checkbox"/> c. cooperative agreement <input type="checkbox"/> d. loan <input type="checkbox"/> e. loan guarantee <input type="checkbox"/> f. loan insurance	<b>2. Status of Federal Action:</b> <input type="checkbox"/> a. bid/offer/application <input type="checkbox"/> b. initial award <input type="checkbox"/> c. post-award	<b>3. Report Type:</b> <input type="checkbox"/> a. initial <input type="checkbox"/> b. material change  <b>For Material Change Only:</b> year _____ quarter _____ date of last report _____
<b>4. Name and Address of Reporting Entity</b> <input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier _____, if known  Congressional District, if known _____	<b>5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:</b>  Congressional District, if known _____	
<b>6. Federal Department/Agency:</b> _____	<b>7. Federal Program Name/Description:</b> _____ CFDA Number, if applicable _____	
<b>8. Federal Action Number, if known:</b> _____	<b>9. Award Amount, if known:</b> _____	
<b>10. Name and Address of Lobby Entity</b> (If individual, last name, first name, MI) _____	<b>11. Individuals Performing Services</b> (including address if different from No. 10a) (last name, first name, MI) _____	
(attach Continuation Sheet(s) if necessary)		
<b>12. Amount of Payment (check all that apply)</b> \$ _____ <input type="checkbox"/> actual <input type="checkbox"/> planned	<b>14. Type of Payment (check all that apply)</b> <input type="checkbox"/> a. retainer <input type="checkbox"/> b. one-time fee <input type="checkbox"/> c. commission <input type="checkbox"/> d. contingent fee <input type="checkbox"/> e. deferred <input type="checkbox"/> f. other, specify _____	
<b>13. Form of Payment (check all that apply):</b> <input type="checkbox"/> a. cash <input type="checkbox"/> b. in-kind; specify: nature _____ Value _____		
<b>15. Brief Description of Services Performed or to be performed and Date(s) of Service, including officer(s), employee(s), or member(s) contacted, for Payment Indicated in Item 11:</b>  (attach Continuation Sheet(s) if necessary)		
<b>16. Continuation Sheet(s) attached:</b> Yes <input type="checkbox"/> No <input type="checkbox"/>		
<b>17. Information requested through this form is authorized by Title 31 U.S.C. Section 1352. This disclosure of lobbying reliance was placed by the tier above when his transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to Congress semiannually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.</b>		
Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____		
Authorized for Local Reproduction Standard Form - LLL		

Standard Form LLL Rev. 04-28-06

Distribution: Orig- Local Agency Project Files

**INSTRUCTIONS FOR COMPLETING EXHIBIT 10-Q DISCLOSURE OF LOBBYING ACTIVITIES**

This disclosure form shall be completed by the reporting entity, whether subawardee or prime federal recipient at the initiation or receipt of covered federal action or a material change to previous filing pursuant to title 31 U.S.C. Section 1352. The filing of a form is required for such payment or agreement to make payment to lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress an officer or employee of Congress or an employee of a Member of Congress in connection with a covered federal action. Attach a continuation sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered federal action for which lobbying activity is or has been secured to influence, the outcome of a covered federal action.
2. Identify the status of the covered federal action.
3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last, previously submitted report by this reporting entity for this covered federal action.
4. Enter the full name, address, city, state, and zip code of the reporting entity. Include Congressional District if known. Check the appropriate classification of the reporting entity that designates if it is or expects to be a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the first tier. Subawards include but are not limited to: subcontracts, subgrants, and contract awards under grants.
5. If the organization filing the report in Item 4 checks "Subawardee" then enter the full name, address, city, state, and zip code of the prime federal recipient. Include Congressional District, if known.
6. Enter the name of the federal agency making the award or loan commitment. Include at least one organization level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the federal program name or description for the covered federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans and loan commitments.
8. Enter the most appropriate federal identifying number available for the federal action identification in item 1 (e.g., Request for Proposal (RFP) number, Invitation for Bid (IFB) number, grant announcement number, the contract grant, or loan award number, the application/proposal control number assigned by the federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered federal action where there has been an award or loan commitment by the Federal agency, enter the federal amount of the award/loan commitments for the prime entity identified in item 4 or 5.
10. Enter the full name, address, city, state, and zip code of the lobbying entity engaged by the reporting entity identified in Item 4 to influence the covered federal action.
11. Enter the full names of the individual(s) performing services and include full address if different from 10 (a). Enter Last Name, First Name and Middle Initial (MI).
12. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (Item 4) to the lobbying entity (Item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
13. Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
14. Check all boxes that apply. If other, specify nature.
15. Provide a specific and detailed description of the services that the lobbyist has performed or will be expected to perform and the date(s) of any services rendered. Include all preparatory and related activity not just time spent in actual contact with federal officials. Identify the federal officer(s) or employee(s) contacted or the officer(s) employee(s) or Member(s) of Congress that were contacted.
16. Check whether or not a continuation sheet(s) is attached.
17. The certifying official shall sign and date the form, and print his/her name title and telephone number.

Public reporting burden for this collection of information is estimated to average 30-minutes per response, including time for reviewing instruction, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503. SF-LLL-Instructions Rev. 06-04

**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)

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

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

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

(5) Authorized Signature

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

**SELF-DEALING TRANSACTION DISCLOSURE FORM INSTRUCTIONS**

In order to conduct business with the County of Fresno (hereinafter referred to as "County"), members of a contractor's board of directors (hereinafter referred to as "County Contractor"), must disclose any self-dealing transactions that they are a party to while providing goods, performing services, or both for the County. A self-dealing transaction is defined below:

*"A self-dealing transaction means a transaction to which the corporation is a party and which one or more of its directors has a material financial interest"*

The definition above will be utilized for purposes of completing the disclosure form.

- (1) Enter board member's name, job title (if applicable), and date this disclosure is being made.
- (2) Enter the board member's company/agency name and address.
- (3) Describe in detail the nature of the self-dealing transaction that is being disclosed to the County. At a minimum, include a description of the following:
  - a. The name of the agency/company with which the corporation has the transaction; and
  - b. The nature of the material financial interest in the Corporation's transaction that the board member has.
- (4) Describe in detail why the self-dealing transaction is appropriate based on applicable provisions of the Corporations Codes.
- (5) Form must be signed by the board member that is involved in the self-dealing transaction described in Sections (3) and (4).