

ATTACHMENT A
CONSULTANT SERVICES AGREEMENT

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

WITNESSETH:

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

WHEREAS, consistent with COUNTY Ordinance Code Chapter 4.10 and the Board of Supervisors' adopted Policy governing the selection of architects, engineers, and other professionals, a selection committee selected said CONSULTANT to provide the COUNTY with (professional discipline) services for said projects; and

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

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

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

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

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

I. CONTRACTING OF CONSULTANT: BASIC PARAMETERS

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

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

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

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

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

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

Name:

Position

Telephone:

E-Mail:

II. DESCRIPTION OF SERVICES COVERED BY THIS AGREEMENT:

A. The services covered by this Agreement is for all or a portion of the services allowed

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

B. Throughout the term of this Agreement, the CONSULTANT shall comply with County directions.

III. COUNTY'S OBLIGATIONS:

The COUNTY will, for each project:

A. Compensate the CONSULTANT as provided in this Agreement.

B. Provide a "COUNTY Representative" who will represent the COUNTY and who will coordinate with the CONSULTANT as appropriate to facilitate CONSULTANT'S performance of its obligations under this Agreement.

The County shall:

1. Provide basic design layouts and drawing layouts as may be required for each project unless otherwise agreed by the COUNTY and the CONSULTANT.

2. Prepare the title sheet for each project's plans unless otherwise agreed by the COUNTY and the CONSULTANT.

3. Loan or provide copies of any available building plans to the CONSULTANT.

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

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

C. Give reasonably prompt consideration to all matters submitted by the

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CONSULTANT for approval to the end that there will be no substantial delays in the CONSULTANT's program of work. Any approval, authorization or request to the CONSULTANT given by the COUNTY will be binding upon the COUNTY under the terms of this Agreement only if it is made in writing and signed on behalf of the COUNTY by the COUNTY Representative or his/her designee.

V. COMPENSATION:

A. Total Fee:

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

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

B. Basic Fee:

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

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

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by the provisions of Article III of this Agreement.

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

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

C. Payments:

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

William Kettler, Manager
Development Services and Capital Projects Division
Fresno County Public Works & Planning Department
2220 Tulare Street, Suite 610
Fresno, CA 93721-2104

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

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

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

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

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

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

VI. COMPENSATION RECORDS:

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

VII. RETENTION FROM EARNED COMPENSATION:

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

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VIII. AUDITS, ACCOUNTING AND INSPECTIONS ACCESS:

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

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

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

IX. ERRORS OR OMISSION CLAIMS AND DISPUTES:

A. Definitions:

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

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

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COUNTY. The responsibility to substantiate claims shall rest with the party making the claim. The term "Claim" also includes any allegation of a negligent error or omission by the CONSULTANT.

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

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

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

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

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

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

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

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

X. JOINDER OF PARTIES:

The CONSULTANT, the CONSULTANT's consultants of any tier, subcontractors of any tier, suppliers and construction lenders shall all be bound by the dispute resolution provisions of this Agreement, and immediately upon demand of COUNTY or CONSULTANT, shall participate in and shall become parties to the dispute resolution process, provided they have signed any document that incorporates or refers to the dispute resolution provisions of this Agreement. Failure of CONSULTANT, whether intended or inadvertent, to ensure that such nonparties have signed such a document shall inure only to CONSULTANT's detriment, if any there be. COUNTY shall not suffer a detriment by CONSULTANT's action or inaction in this regard. If such a party after due notice fails to appear at and participate in the dispute resolution proceedings, the panel established in accordance with the provisions of paragraph IX.B.3 shall make a decision based on evidence introduced by the party or parties who do participate.

XI. CONSULTANT'S OBLIGATIONS RELATING TO CONSTRUCTION CLAIMS:

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

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

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

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

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

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

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

5. Suggest a compromise.

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

XII. INDEPENDENT CONTRACTOR:

A. In performance of the work, duties, and obligations assumed by CONSULTANT under this Agreement, it is mutually understood and agreed that CONSULTANT, including any and all of 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 venture, partner or associate of the COUNTY. Furthermore, COUNTY shall have no right to control or supervise or direct the manner or method by which CONSULTANT shall perform its work and function. However, COUNTY

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shall retain the right to administer this Agreement so as to verify that CONSULTANT is performing its obligations in accordance with the terms and conditions thereof. CONSULTANT and COUNTY shall comply with all applicable provisions of law and the rules and regulations, if any, of governmental authorities having jurisdiction over matters the subject thereof.

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

XIII. PARTIES BOUND BY AGREEMENT:

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

XIV. REQUIRED APPROVALS:

It is understood that the CONSULTANT shall not assign, sublet, subcontract, or transfer any of CONSULTANT's rights, duties, or obligations under this Agreement, without the prior express, written consent of the COUNTY. Such consent and approval may be given only by the COUNTY Board of Supervisors.

XV. COMPLIANCE WITH LAWS:

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

B. CONSULTANT shall submit a current version of its Illness and Injury Prevention

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Plan (IIPP), applicable safety programs and contact information for the CONSULTANT's responsible person for these programs to the COUNTY Representative at the time this Agreement is signed by the CONSULTANT. Throughout the term of this Agreement, Consultant shall provide updates to the safety plans and programs to the COUNTY Representative as they are implemented.

XVI. GOVERNING LAW:

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

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

XVII. AMENDMENTS:

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

XVIII. CONSULTANT'S LEGAL AUTHORITY:

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

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

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

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

XIX. HOLD HARMLESS:

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

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

14 **XX. LIABILITY INSURANCE:**

15 A. Prior to commencing the duties under the Agreement with the COUNTY, the
16 CONSULTANT shall furnish the COUNTY, at no additional cost to the COUNTY, certificates
17 for the following insurance policies which shall be kept in force during the term of the
18 Agreement (i.e., until the Agreement is terminated or it expires), and for such additional time as
19 may be specified herein with respect to a particular type of policy.

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

24 2. Comprehensive Automobile Liability Insurance with limits for bodily injury of
25 not less than two hundred fifty thousand dollars (\$250,000) per person, five hundred thousand
26 dollars (\$500,000) per accident and for property damages of not less than fifty thousand dollars
27 (\$50,000), or such coverage with a combined single limit of five hundred thousand dollars
28 (\$500,000).

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

4. Professional Liability Insurance:

a. Professional Liability Insurance with limits of not less than two million dollars (\$2,000,000) per occurrence, two million dollars (\$2,000,000) annual aggregate, and with a deductible not to exceed fifty thousand dollars (\$50,000). A deductible greater than fifty thousand dollars (\$50,000) will be acceptable to the COUNTY receiving satisfactory, certified information of the CONSULTANT's ability to support such a deductible. The financial ability to support the difference between fifty thousand dollars (\$50,000) and the greater deductible amount requested by the CONSULTANT shall be guaranteed by any of the following:

1). Cash deposit with a trustee bank.

2). Irrevocable letter of credit issued by a bank for the same time period as specifically referenced in subparagraph XX.A.4.c herein.

3). Withholding payment under terms of the Agreement for the same time period as specifically referenced in subparagraph XX.A.4.c. herein.

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

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

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

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

B. CONSULTANT shall give COUNTY at least thirty (30) days written advance notice of any expiration, cancellation or reduction in the coverage of any of the aforesaid policies.

C. The COUNTY, its officers, agents and employees, individually and collectively, shall be named as an additional insured under the policy for Commercial General Liability Insurance or Comprehensive General Liability Insurance, but only insofar as the operations under this Agreement are concerned. Such coverage of COUNTY as additional insured shall apply as primary insurance and any other insurance, or self-insurance, maintained by the COUNTY, its officers, agents, and employees, shall be excess only and not contributing with insurance provided under the CONSULTANT's policies herein.

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

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

XXI. OWNERSHIP OF DOCUMENTS:

A. CONSULTANT understands and agrees that COUNTY shall retain full ownership rights of the drawings and the work-product of CONSULTANT for each project, to the fullest extent permitted by law. In this regard, CONSULTANT acknowledges and agrees that CONSULTANT's services are on behalf of COUNTY and are "works made for hire," as that term is defined in copyright law, by COUNTY; that the drawings and work-product to be prepared by CONSULTANT are for the sole and exclusive use of COUNTY, and shall be the sole property of COUNTY and its assigns, and the COUNTY and its assigns shall be the sole owner of all patents, copyrights, trademarks, trade secrets and other contractual and intangible rights of any kind or nature in connection therewith; that all the contractual or intangible rights

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of any kind or nature, title, and interest in and to the drawings and work-product will be transferred to COUNTY by CONSULTANT, and CONSULTANT will assist COUNTY to obtain and enforce patents, copyrights, trademarks, trade secrets, and other contractual and intangible rights relating to said drawings and work-product; that COUNTY shall be and become the owner of such drawings and work product, free and clear of any claim by CONSULTANT or anyone claiming any right through CONSULTANT. CONSULTANT further acknowledges and agrees that COUNTY's ownership rights in such drawings and work product shall apply regardless of whether such drawings or work product, or any copies thereof, are in the possession of CONSULTANT, or any other person, firm, corporation, or entity. For the purpose of this Agreement the terms "drawings and work-product" shall mean all reports and study findings commissioned to develop the design of each project, drawings and schematic or preliminary design documents of each project, certified reproducibles of the original final construction contract drawings of each project, specifications of each project, the approved opinion of probable construction cost of each project, record drawings of each project, as-built plans of each project, and discoveries, developments, designs, improvements, inventions, formulas, processes, techniques, or specific know-how and data generated or conceived or reduced to practice or learning by CONSULTANT, either alone or jointly with others, that result from the tasks assigned to CONSULTANT by COUNTY under this Agreement. County acknowledges and agrees that details, concepts, ideas, devices, configurations, and designs previously developed or used by the CONSULTANT, or developed by the CONSULTANT without COUNTY compensation, shall remain the property of the CONSULTANT and use is granted to COUNTY only for the specific project undertaken under this Agreement.

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

C. If the project is terminated at the completion of the construction document phase of any project, a reproducible copy and electronic files of final construction contract drawings

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(both .dwg and .plt files), specifications, and approved opinion of probable construction cost shall be submitted by CONSULTANT to COUNTY.

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

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

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

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

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

XXII. TERM AND TIME OF COMPLETION:

A. Upon request of the Capital Projects Division Manager or his/her designated representative, the CONSULTANT shall submit for the Capital Projects Division Manager or his/her designated representative's approval, schedules for the performance of the CONSULTANT's services which may be adjusted by mutual agreement as the projects proceed, and shall include allowances for periods of time required for the COUNTY's review and approval of submissions by authorities having jurisdiction over the projects. Time limits established by these schedules approved by Capital Projects Division Manager or his/her

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designated representative shall not, except as provided in this Agreement, be exceeded by the CONSULTANT.

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

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

XXIII. TERMINATION OF AGREEMENT:

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

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

ATTACHMENT A
CONSULTANT SERVICES AGREEMENT

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

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

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

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

XXIV. CONFLICT OF INTEREST:

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

XXV. DISCLOSURE OF SELF-DEALING TRANSACTIONS

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

ATTACHMENT A
CONSULTANT SERVICES AGREEMENT

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

XXVI. ENTIRE AGREEMENT:

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

XXVII. SEVERABILITY:

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

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ATTACHMENT A
CONSULTANT SERVICES AGREEMENT

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

CONSULTANT

COUNTY OF FRESNO

BY: _____

BY: _____

TITLE: _____

NATHAN MAGSIG, CHAIRMAN
BOARD OF SUPERVISORS

REVIEWED AND RECOMMENDED
FOR APPROVAL

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

BY: _____
STEVEN E. WHITE, DIRECTOR
DEPARTMENT OF PUBLIC WORKS
AND PLANNING

BY: _____
DEPUTY COUNTY COUNSEL

APPROVED AS TO ACCOUNTING FORM
UPDATE
AUDITOR-CONTROLLER/
TREASURER-TAX COLLECTOR

BY: _____
DEPUTY

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