

1 **DRAFT AGREEMENT**

2
3 THIS AGREEMENT is made and entered into this ____ day of
4 [click here to enter month] , [click here to enter year] , by and between the COUNTY OF FRESNO,
5 a Political Subdivision of the State of California, hereinafter referred to as "COUNTY", and
6 [click here to enter Contractor] whose address is [click here to enter Contractor's address] ,
7 hereinafter referred to as "CONTRACTOR".

8 W I T N E S S E T H:

9 1. OBLIGATIONS OF THE CONTRACTOR

- 10 A.
11 B. (etc.)

12 2. OBLIGATIONS OF THE COUNTY

- 13 A.
14 B. (etc.)

15 3. TERM

16 This Agreement shall become effective on the [click here to enter begin day]
17 day of [click here to enter month] , [click here to enter year] and shall terminate on the
18 [click here to enter end day] day of [click here to enter month] , [click here to enter year] .

19 4. TERMINATION

20 A. Non-Allocation of Funds - The terms of this Agreement, and the services to
21 be provided thereunder, are contingent on the approval of funds by the appropriating government
22 agency. Should sufficient funds not be allocated, the services provided may be modified, or this
23 Agreement terminated, at any time by giving the CONTRACTOR thirty (30) days advance written
24 notice.

25 B. Breach of Contract - The COUNTY may immediately suspend or terminate
26 this Agreement in whole or in part, where in the determination of the COUNTY there is:

- 27 1) An illegal or improper use of funds;
28 2) A failure to comply with any term of this Agreement;

1 3) A substantially incorrect or incomplete report submitted to the
2 COUNTY;

3 4) Improperly performed service.

4 In no event shall any payment by the COUNTY constitute a waiver by the COUNTY
5 of any breach of this Agreement or any default which may then exist on the part of the
6 CONTRACTOR. Neither shall such payment impair or prejudice any remedy available to the
7 COUNTY with respect to the breach or default. The COUNTY shall have the right to demand of
8 the CONTRACTOR the repayment to the COUNTY of any funds disbursed to the CONTRACTOR
9 under this Agreement, which in the judgment of the COUNTY were not expended in accordance
10 with the terms of this Agreement. The CONTRACTOR shall promptly refund any such funds upon
11 demand.

12 C. Without Cause - Under circumstances other than those set forth above,
13 this Agreement may be terminated by COUNTY upon the giving of thirty (30) days advance written
14 notice of an intention to terminate to CONTRACTOR.

15 5. COMPENSATION/INVOICING: **(Note to County staff: If sales tax is**
16 **applicable and to be paid to an out-of-state vendor, it must be separated from the total**
17 **compensation and the vendor must have a California Sales Tax Permit Number.)** COUNTY
18 agrees to pay CONTRACTOR and CONTRACTOR agrees to receive compensation as follows:
19 **[click here to enter compensation]**. CONTRACTOR shall submit monthly invoices in triplicate to
20 the County of Fresno **[click here to enter Department Name]**.

21 In no event shall services performed under this Agreement be in excess of
22 **[click here to enter maximum contract amount]** during the term of this Agreement. It is
23 understood that all expenses incidental to CONTRACTOR'S performance of services under this
24 Agreement shall be borne by CONTRACTOR. **(Note to County staff: If the number of days within**
25 **which payment must be made is specified, this paragraph must provide for payment after a**
26 **minimum of forty-five (45) days from date of receipt of invoice by the COUNTY.)**

27 6. INDEPENDENT CONTRACTOR: In performance of the work, duties and
28 obligations assumed by CONTRACTOR under this Agreement, it is mutually understood and

1 agreed that CONTRACTOR, including any and all of the CONTRACTOR'S officers, agents, and
2 employees will at all times be acting and performing as an independent contractor, and shall act in
3 an independent capacity and not as an officer, agent, servant, employee, joint venturer, partner, or
4 associate of the COUNTY. Furthermore, COUNTY shall have no right to control or supervise or
5 direct the manner or method by which CONTRACTOR shall perform its work and function.
6 However, COUNTY shall retain the right to administer this Agreement so as to verify that
7 CONTRACTOR is performing its obligations in accordance with the terms and conditions thereof.

8 CONTRACTOR and COUNTY shall comply with all applicable provisions of
9 law and the rules and regulations, if any, of governmental authorities having jurisdiction over
10 matters the subject thereof.

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

20 7. MODIFICATION: Any matters of this Agreement may be modified from time
21 to time by the written consent of all the parties without, in any way, affecting the remainder.

22 8. NON-ASSIGNMENT: Neither party shall assign, transfer or sub-contract this
23 Agreement nor their rights or duties under this Agreement without the prior written consent of the
24 other party.

25 9. HOLD HARMLESS: CONTRACTOR agrees to indemnify, save, hold
26 harmless, and at COUNTY'S request, defend the COUNTY, its officers, agents, and employees
27 from any and all costs and expenses, damages, liabilities, claims, and losses occurring or
28 resulting to COUNTY in connection with the performance, or failure to perform, by

1 CONTRACTOR, its officers, agents, or employees under this Agreement, and from any and all
2 costs and expenses, damages, liabilities, claims, and losses occurring or resulting to any person,
3 firm, or corporation who may be injured or damaged by the performance, or failure to perform,
4 of CONTRACTOR, its officers, agents, or employees under this Agreement.

5 10. INSURANCE

6 A. Without limiting the COUNTY's right to obtain indemnification from
7 CONTRACTOR or any third parties, CONTRACTOR, at its sole expense, shall maintain in full
8 force and effect, the following insurance policies throughout the term of the Agreement:

9 B. Commercial General Liability

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

16 C. Automobile Liability

17 Comprehensive Automobile Liability Insurance with limits for bodily injury of
18 Five Hundred Thousand Dollars (\$500,000.00) per person, One Million Dollars (\$1,000,000.00)
19 per accident and for property damages of Fifty Thousand Dollars (\$50,000.00), or such coverage
20 with a combined single limit of One Million Dollars (\$1,000,000.00). Coverage should include
21 owned and non-owned vehicles used in connection with this Agreement.

22 D. Professional Liability

23 If CONTRACTOR employs licensed professional staff, (e.g., Ph.D., R.N.,
24 L.C.S.W., M.F.C.C.) in providing services, Professional Liability Insurance with limits of not less
25 than One Million Dollars (\$1,000,000.00) per occurrence, Three Million Dollars (\$3,000,000.00)
26 annual aggregate.

27 E. Worker's Compensation

28 A policy of Worker's Compensation insurance as may be required by the

1 California Labor Code.

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

10 Within Thirty (30) days from the date CONTRACTOR executes this
11 Agreement, CONTRACTOR shall provide certificates of insurance and endorsement as stated
12 above for all of the foregoing policies, as required herein, to the County of Fresno, (Name and
13 Address of the official who will administer this contract), stating that such insurance coverage have
14 been obtained and are in full force; that the County of Fresno, its officers, agents and employees
15 will not be responsible for any premiums on the policies; that such Commercial General Liability
16 insurance names the County of Fresno, its officers, agents and employees, individually and
17 collectively, as additional insured, but only insofar as the operations under this Agreement are
18 concerned; that such coverage for additional insured shall apply as primary insurance and any
19 other insurance, or self-insurance, maintained by COUNTY, its officers, agents and employees,
20 shall be excess only and not contributing with insurance provided under CONTRACTOR's policies
21 herein; and that this insurance shall not be cancelled or changed without a minimum of thirty (30)
22 days advance, written notice given to COUNTY.

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

26 CONTRACTOR shall furnish a faithful performance bond or other security
27 acceptable to the COUNTY in the amount of sixty days cost to the COUNTY for its benefit to
28 secure CONTRACTOR'S performance of the terms and conditions of the Agreement. All policies

1 shall be with admitted insurers licensed to do business in the State of California. Insurance
2 purchased shall be purchased from companies possessing a current A.M. Best, Inc. rating of A
3 FSC VII or better.

4 11. AUDITS AND INSPECTIONS: The CONTRACTOR shall at any time during
5 business hours, and as often as the COUNTY may deem necessary, make available to the
6 COUNTY for examination all of its records and data with respect to the matters covered by this
7 Agreement. The CONTRACTOR shall, upon request by the COUNTY, permit the COUNTY to
8 audit and inspect all of such records and data necessary to ensure CONTRACTOR'S compliance
9 with the terms of this Agreement.

10 If this Agreement exceeds ten thousand dollars (\$10,000.00), CONTRACTOR
11 shall be subject to the examination and audit of the Auditor General for a period of three (3) years
12 after final payment under contract (Government Code Section 8546.7).

13 12. NOTICES: The persons and their addresses having authority to give and
14 receive notices under this Agreement include the following:

<u>COUNTY</u>	<u>CONTRACTOR</u>
COUNTY OF FRESNO	[click here to enter Contractor]
[click here to enter County Address]	[click here to enter Contractor Address]
[click here to enter County Address]	[click here to enter Contractor Address]
[click here to enter County City/State]	[click here to enter Contractor City/State]

18 Any and all notices between the COUNTY and the CONTRACTOR provided
19 for or permitted under this Agreement or by law shall be in writing and shall be deemed duly
20 served when personally delivered to one of the parties, or in lieu of such personal services, when
21 deposited in the United States Mail, postage prepaid, addressed to such party.

22 13. GOVERNING LAW: Venue for any action arising out of or related to this
23 Agreement shall only be in Fresno County, California.

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

26 14. ENTIRE AGREEMENT: This Agreement constitutes the entire agreement
27 between the CONTRACTOR and COUNTY with respect to the subject matter hereof and
28 supersedes all previous Agreement negotiations, proposals, commitments, writings,

1 advertisements, publications, and understanding of any nature whatsoever unless expressly
2 included in this Agreement. **[If applicable, add the following:** *In the event of any inconsistency in*
3 *interpreting the documents which constitute this Agreement, the inconsistency shall be resolved*
4 *by giving precedence in the following order of priority: (1) the text of this Agreement (excluding*
5 *Attachment "A", the COUNTY'S Request for Quotation No. [click here to enter RFQ No.] and the*
6 *CONTRACTOR'S Quote in response thereto); (2) Attachment "A"; (3) the COUNTY'S Request for*
7 *Quotation No. [click here to enter RFQ No.]; and (4) the CONTRACTOR'S quotation made in*
8 *response to COUNTY'S Request for Quotation No. [click here to enter RFQ No.].]*

9 IN WITNESS WHEREOF, the parties hereto have executed this Agreement
10 as of the day and year first hereinabove written.

11 **CONTRACTOR**

COUNTY OF FRESNO

12 _____
(Authorized Signature)

_____ Chairman, Board of Supervisors

13 _____
14 Print Name & Title

15 _____
16 Mailing Address

17 _____
18 DATE:

_____ DATE:

19 REVIEWED & RECOMMENDED FOR APPROVAL

20 _____
Department Head's Signature

21 _____
22 APPROVED AS TO LEGAL FORM

APPROVED AS TO ACCOUNTING FORM

23 _____
24 County Counsel

_____ Auditor-Controller/Treasurer-Tax Collector

25 FOR ACCOUNTING USE ONLY:

26 ORG No.: [click to type type org]

27 Account No.: [click to type type account]

28 Requisition No.: [click to type requisition number]