

Attachment 13 – Sample Agreement

AGREEMENT FOR (Insert Discipline)

THIS AGREEMENT is made and entered into this *4th* day of *December*, 2007, between the County of Fresno, a political subdivision of the State of California, (hereinafter called "COUNTY"), and _____, a California (other state), Corporation, Partnership or Proprietor DBA), [Address] (hereinafter called "CONSULTANT").

WITNESSETH:

WHEREAS, the COUNTY desires to retain a CONSULTANT *Insert Discipline Here* to assist the COUNTY Capital Projects Division Manager or his/her designated Project Manager in completing various projects and advanced planning for future projects in the COUNTY's Capital Improvement Programs and other COUNTY projects; and

WHEREAS, in accordance with COUNTY Ordinance Code Chapter 4.10 governing the selection of architects, engineers, and other professionals, a selection committee selected said CONSULTANT to provide the COUNTY with *Insert Discipline Here* services for said projects; and

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

WHEREAS, the professional *Insert Discipline Here* services of the CONSULTANT may be utilized by the Department of Public Works and Planning and other COUNTY Departments; and

WHEREAS, COUNTY has been designated as the sponsoring agency to administer and implement the program for the Federal Department of Housing and Urban Development (HUD) Community Development Block Grant (CDBG) activities of the COUNTY, excluding the City of Fresno, in accordance with the provisions of Title I of the Housing and Community Development Act of 1974, as amended, and the laws of the State of California; and

WHEREAS, HUD/CDBG funding has been made available to COUNTY for architectural and engineering activities; and

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

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1 WHEREAS, said CONSULTANT represents that it is qualified and willing to perform
2 *Insert Discipline Here* services.

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

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

5 A. The COUNTY hereby contracts with the CONSULTANT as an independent
6 contractor to provide Landscape Architectural services as described in Article II and
7 enumerated in Article III herein.

8 B. The CONSULTANT's services shall be performed as expeditiously as is consistent
9 with professional skill and the orderly progress of the work, based on project schedules prepared
10 by the COUNTY Capital Projects Division Manager or his/her designated Project Manager.

11 C. The CONSULTANT shall notify the COUNTY of the names and classifications of
12 employees assigned to a project, and shall not reassign such employees to other projects of the
13 CONSULTANT without prior notification to and approval by COUNTY.

14 D. If requested by the COUNTY, the CONSULTANT shall retain qualified
15 subconsultant(s) to assist in completing the work. All subconsultants used by the
16 CONSULTANT shall be approved by the COUNTY before they are retained by the
17 CONSULTANT, which approval shall not be unreasonably withheld. Should CONSULTANT
18 retain subconsultants, compensation to be paid to CONSULTANT under Article V below, shall
19 not be increased.

20 E. The CONSULTANT shall not submit bids, or sub-bids, for the contract construction
21 phase of any project for which CONSULTANT provides services hereunder. The
22 CONSULTANT, and all other service providers, shall not provide any project-related services
23 for, or receive any project-related compensation from any construction contractor; subcontractor
24 or service provider awarded a construction contract for all or any portion of any project for
25 which CONSULTANT provides services hereunder. The CONSULTANT, and all other service
26 providers, may provide services for, and receive compensation from a construction contractor,
27 subcontractor or service provider who has been awarded a construction contract for all or any
28 portion of such a project, provided that such services are provided for, and compensation

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1 received for, work outside the scope of this Agreement.

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

3 G. Name, _____, Position, _____

4 Telephone: () _____, Fax: () _____, E-Mail

5 Address: _____, Web: _____

6 **II. DESCRIPTION OF THE WORK COVERED BY THIS AGREEMENT:**

7 The work covered by this Agreement is for all or a portion of the services enumerated
8 under Article III for various projects on an as needed basis. The CONSULTANT agrees to
9 provide the professional services that are necessary for each project when expressly authorized
10 in writing by the Capital Projects Division Manager or his/her designated Project Manager.
11 Such work by CONSULTANT shall not begin until CONSULTANT has received a written
12 Notice to Proceed from COUNTY authorizing the necessary services, agreed upon not-to-
13 exceed fee and scope of work. All submittals of documentation associated with the project by
14 the CONSULTANT will be in a hard copy and electronic format.

15 **III. CONSULTANT'S SERVICES: (Insert scope of work from appropriate attachment**
16 **to RFP)**

17 **IV. COUNTY'S OBLIGATIONS:**

18 The COUNTY will, for each project:

19 H. Compensate the CONSULTANT as provided in this Agreement.

20 I. Provide a "COUNTY Representative" who will represent the COUNTY and who
21 will work with the CONSULTANT in carrying out the provisions of this Agreement. The
22 COUNTY Representative will be the Capital Projects Division Manager or his/her designated
23 representative through award of the construction contract and the COUNTY Construction
24 Engineer after award of the construction contract to completion of the project by the
25 CONTRACTOR. The CONSULTANT shall communicate and coordinate with the COUNTY
26 Representative who will provide the following services:

27 1. Provide basic design layouts and drawing layouts as may be required for each
28 project.

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

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

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

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

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

14 **V. COMPENSATION:**

15 K. Total Fee:

16 Notwithstanding any other provisions in this Agreement, the Total Fee (Basic Fee
17 and Extra Services Allocation) for the services required under this Agreement shall not exceed a
18 total amount of \$450,000 over the entire term of this, which shall be computed at the hourly and
19 cost rates shown in Exhibit A, attached hereto and incorporated herein.

20 The rates listed herein are to remain in effect for the duration of this Agreement.
21 Rates may be renegotiated annually after the first anniversary from the date of execution of this
22 Agreement at CONSULTANT's request. CONSULTANT's request for annual rate adjustments
23 shall correspond with the Engineering News Record's Construction Cost Index or the Consumer
24 Price Index.

25 B. Basic Fee:

26 Within the Total Fee amount of \$450,000 over the entire term of this Agreement.

27 For Article III services on a project which do not constitute an entire phase under
28 Article III hereof, said services shall be billed monthly based on hourly costs not to exceed

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1 written maximum cost limits, as mutually agreed to in writing between CONSULTANT and
2 Capital Projects Division Manager or his/her designated representative.

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

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

11 C. Extra Services:

12 1. There will be an additional maximum allocation of \$15,000 over the entire term
13 of this Agreement not to exceed \$5,000 per year from the date of execution of this Agreement to
14 pay for authorized Extra Services. Payment of Extra Services in excess of \$15,000 over the
15 entire term of this Agreement, or in excess of \$5,000 per year, is unauthorized and can only be
16 made pursuant to a prior written amendment to this Agreement only if the total of the Basic Fee
17 and Extra Services allocation would thereby be exceeded. The COUNTY Representative shall
18 have the discretion to adjust in writing the Basic Fee and Extra Services limits as long as the
19 Total Fee of \$300,000 for the entire term of this Agreement and the \$100,000 per year allotment
20 are not exceeded.

21 2. The CONSULTANT shall not undertake any Extra Services without the advance
22 written authorization of the COUNTY Representative. The CONSULTANT and the COUNTY
23 shall expressly confirm in writing the authorization and maximum cost for any such services
24 before the CONSULTANT is compensated for any work thereon. CONSULTANT shall not
25 add markup percentages or costs to sub-consultant's costs or incidental costs unless expressly
26 authorized in writing by the COUNTY.

27 3. Payment for Extra Services will be at the hourly and cost rates set forth in
28 Exhibit A.

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1 4. The following are consultant services which are considered as not included in
2 Article III herein, but may be required as Extra Services.

3 Conveying or transmitting documents for other agency approval when the
4 CONSULTANT is granted prior authorization by the COUNTY.

5 Making changes to documents that are ordered by the COUNTY subsequent to
6 COUNTY approval thereof.

7 If necessary, advising and assisting the COUNTY with respect to any settlement
8 or litigation arising out of any failure of the CONTRACTOR to fully perform the construction
9 contract in accordance with the contract documents.

10 Providing unforeseen, extraordinary, or unique services or items not covered nor
11 normally included in the basic fee, by authorized by the COUNTY Representative.

12 If requested by COUNTY, as provided for in
13 Section IV.B.8., to retain, when required for a particular project, an independent
14 utility locating service.

15 5. If the CONSULTANT becomes aware of potential unforeseen expenses that
16 would not be covered by the Basic Fee provisions of this Agreement or by the Extra Services
17 provisions set forth in this Article V. Section C., CONSULTANT shall inform the COUNTY in
18 writing of the extent and nature of such expenses or services. Upon mutual agreement of the
19 CONSULTANT and the COUNTY, this Agreement may be amended in writing to cover such
20 unforeseen expense or cost of Extra Services.

21 6. In the event the COUNTY Representative expressly authorizes Extra Services,
22 CONSULTANT shall keep complete records showing the hours and description of activities
23 worked by each person who works on the project and all costs and charges applicable to the
24 Extra Services work so authorized. Should there be a claim for Extra Services, the
25 CONSULTANT understands and agrees that he shall identify the activity, performer of the
26 activity, reason for the activity, and COUNTY official requesting the activity, or the claim will
27 be denied. CONSULTANT shall be responsible for all subconsultants keeping similar records.
28 The CONSULTANT shall not stop the work, including the design in other areas unrelated to the

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1 Extra Services request or claim, unless it can be shown the project design cannot proceed while
2 a claim or request for Extra Services is being evaluated.

3 D. Payments:

4 1. Progress payments will be made by the COUNTY upon receipt of the
5 CONSULTANT's monthly invoices and approval by COUNTY thereof based on the
6 COUNTY's evaluation of the completion of the respective components of the project(s).
7 Invoices shall clearly identify the specific project, the phase of the project, the percent of the
8 work completed, agreed maximum fee, and description of the work performed, and shall be
9 submitted with the documentation identified in paragraph V.D.5. below. CONSULTANT shall
10 submit separate invoices for Extra Services, accompanied with copies of any sub-consultant's
11 invoices and costs for approved incidentals. Invoices shall be forwarded to:

12 Stuart G. Seiden, Division Manager
13 Capital Projects Division
14 Fresno County Public Works
15 2220 Tulare Street, Suite 610
16 Fresno, CA 93721-2104

17 2. Upon receipt of a proper invoice, the COUNTY Department of Public Works
18 will take a maximum of five (5) working days to review, approve, and submit it to the
19 COUNTY Auditor-Controller / Treasurer-Tax Collector. Unsatisfactory or inaccurate invoices
20 will be returned to the CONSULTANT for correction and resubmittal. Payment, less retention,
21 will be issued to CONSULTANT within twenty-five (25) calendar days of the date the Auditor-
22 Controller/Treasurer-Tax Collector receives the approved invoice.

23 3. COUNTY is entitled to and shall withhold a ten percent (10%) retention from the
24 earned compensation in accordance with the provisions of Article VII of this Agreement.

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

27 5. Concurrently with the invoices, the CONSULTANT shall provide on COUNTY
28 request, pre-approved documentation, that complete payment, less a ten percent (10%)

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1 retention, has been made by CONSULTANT to all subconsultants as provided herein for all
2 previous invoices paid by the COUNTY. However, the parties do not intend that the foregoing
3 creates in any sub-consultant or subcontractor a third party beneficiary status or third party
4 beneficiary rights, and expressly disclaim any such status or rights.

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

9 7. In the event the COUNTY reduces the scope of a specific project, the
10 CONSULTANT will be compensated on a pro- rata basis for actual work completed and
11 accepted by the COUNTY in accordance with the terms of this Agreement.

12 **VI. COMPENSATION RECORDS:**

13 The CONSULTANT shall keep complete records for a period in accordance with the
14 provisions of Article VIII.C. showing the hours and description of activities performed by each
15 person who works on the project and all associated costs or charges applicable to work covered
16 by the basic fee and approved Extra Services. The CONSULTANT will be responsible for all
17 sub consultants keeping similar records.

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

19 The COUNTY is entitled to and shall withhold a ten percent (10%) retention from the
20 earned compensation of the CONSULTANT. Such retention from earned compensation may, at
21 the COUNTY'S option, be applied to all phases of the consultant services to be provided under
22 this Agreement, including those phases completed and Extra Services.

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

24 A. The CONSULTANT shall establish accounting and bookkeeping practices
25 including, but not limited to, employee time cards, payrolls, and other records of transactions to
26 be paid from State Grant and Federal Grant (HUD/CDBG) funds.

27 B. The CONSULTANT shall at any time during regular business hours, and as often
28 as the COUNTY may deem necessary, make available for examination by Federal or State

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1 authorities or the COUNTY Auditor-Controller / Treasurer-Tax Collector, or their authorized
2 representatives, all of CONSULTANT'S records and data with respect to matters covered by
3 this Agreement. The CONSULTANT shall permit Federal, State, or COUNTY authorities to
4 audit and inspect all invoices, materials, payrolls, records of personnel, conditions of
5 employment, and other data relating to matters covered by this Agreement.

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

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

10 A. Definitions:

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

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

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

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

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1 following procedures.

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

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

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

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

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

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1 undisputed amounts due under this Agreement.

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

6 X. JOINDER OF PARTIES:

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

18 CONSULTANT'S OBLIGATIONS RELATING TO CONSTRUCTION CLAIMS:

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

22 B. Within a reasonable time after receipt of a claim, the CONSULTANT shall
23 provide a written analysis of the claim to the COUNTY, signed by the CONSULTANT and any
24 affected sub consultants. The written analysis shall include the CONSULTANT's professional
25 opinion of the responsibility for payment of the claim, with supporting facts and documentation.
26 A copy of the written analysis shall be provided to the respective insurance adjusters for
27 CONSULTANT and any affected sub-consultant.

28 C. Upon receipt of a claim, the CONSULTANT may also take one (1) or more of the

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1 following actions, within ten (10) days of receipt of a claim:

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

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

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

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

10 5. Suggest a compromise.

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

14 XII. INDEPENDENT CONTRACTOR:

15 A. In performance of the work, duties, and obligations assumed by CONSULTANT
16 under this Agreement, it is mutually understood and agreed that CONSULTANT, including any
17 and all of CONSULTANT's officers, agents and employees, will at all times be acting and
18 performing as an independent contractor, and shall act in an independent capacity and not as an
19 officer, agent, servant, employee, joint venturer, partner or associate of the COUNTY.
20 Furthermore, COUNTY shall have no right to control or supervise or direct the manner or
21 method by which CONSULTANT shall perform its work and function. However, COUNTY
22 shall retain the right to administer this Agreement so as to verify that CONSULTANT is
23 performing its obligations in accordance with the terms and conditions thereof.
24 CONSULTANT and COUNTY shall comply with all applicable provisions of law and the rules
25 and regulations, if any, of governmental authorities having jurisdiction over matters the subject
26 thereof.

27 B. Because of its status as an independent contractor, CONSULTANT shall have
28 absolutely no right to employment rights and benefits available to COUNTY employees.

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1 CONSULTANT shall be solely liable and responsible for providing to, or on behalf of its
2 employees all legally-required employee benefits. In addition, CONSULTANT shall be solely
3 responsible and save COUNTY harmless from all matters relating to payment of
4 CONSULTANT's employees, including compliance with Social Security, withholding, and all
5 other regulations governing such matters. It is acknowledged that during the term of this
6 Agreement CONSULTANT may be providing services to others unrelated to the COUNTY or
7 to this Agreement.

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

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

12 **XIV. REQUIRED APPROVALS:**

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

17 **XV. COMPLIANCE WITH LAWS:**

18 A. federal, state, and local laws, ordinances, regulations, and Fresno County Charter
19 Provisions in effect at the time of CONSULTANT's performance of the professional services to
20 be provided hereunder.

21 B. CONSULTANT shall also comply with all current rules and regulations established
22 pursuant to the Federal Housing and Development Act of 1974 and its amendments such as, but
23 not necessarily limited to, those requirements listed in Exhibit B, attached hereto and
24 incorporated herein.

25 **XVI. GOVERNING LAW:**

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

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1 Fresno County.

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

4 **XVII. AMENDMENTS:**

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

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

10 Each individual executing this Agreement on behalf of CONSULTANT hereby
11 covenants, warrants, and represents: (i) that he or she is duly authorized to execute and deliver
12 this Agreement on behalf of such corporation in accordance with a duly adopted resolution of
13 the corporation's board of directors and in accordance with such corporation's articles of
14 incorporation or charter and bylaws; (ii) that this Agreement is binding upon such corporation;
15 and (iii) that CONSULTANT is a duly organized and legally existing corporation in good
16 standing in the State of California.

17 **XIX. HOLD HARMLESS:**

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

25 B. COUNTY and CONSULTANT hereby declare their mutual intent to cooperate
26 in the defense of any claim, suit, or other action alleging liability, arising from the negligent
27 performance or failure to perform of any COUNTY contractor or subcontractor in connection
28 with the project. Such cooperation may include an agreement to prepare and present a

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1 cooperative defense after consultation with CONSULTANT's professional liability insurance
2 carrier.

3 **XX. LIABILITY INSURANCE:**

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

9 1. Commercial General Liability Insurance or Comprehensive General Liability
10 Insurance, naming the COUNTY as an additional insured, with limits of not less than
11 \$1,000,000 per occurrence, with an annual aggregate of not less than \$2,000,000.

12 2. Comprehensive Automobile Liability Insurance with limits for bodily injury of
13 not less than \$250,000 per person, \$500,000 per accident and for property damages of not less
14 than \$50,000, or such coverage with a combined single limit of \$500,000.

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

17 4. Professional Liability Insurance:

18 a. If CONSULTANT employs licensed professional staff, (e.g., Ph.D., R.N.,
19 L.C.S.W., M.F.C.C.) in providing services, Professional Liability Insurance with limits of not
20 less than One Million Dollars (\$1,000,000.00) per occurrence, One Million Dollars
21 (\$1,000,000.00) annual aggregate. (Note: The immediately preceding sentence shall not apply
22 to this Agreement.)

23 1. Cash deposit with a trustee bank.

24 2. Irrevocable letter of credit issued by a bank for a period sufficient for the
25 COUNTY to determine if there is a claim to be made against the CONSULTANT, e.g. six
26 months after termination of Agreement.

27 3. Withholding payment under terms of the Agreement for the same period
28 as under Article VII. herein.

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

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

12 d. Professional Liability Insurance shall extend for a minimum of two (2) years
13 past the date of final payment to CONSULTANT, including the resolution of all claims,
14 disputes, and matters in question regarding the project.

15 e. In the event that CONSULTANT voluntarily changes or involuntarily
16 changes, due to circumstances beyond its control, its Professional Liability Insurance policy
17 carrier during the period such coverage is required to be in force (as specified in the
18 immediately preceding subparagraph Article XX, Section A, Paragraph 4.d), such new policy
19 shall include prior acts coverage retroactive, at least, to the date of execution of this Agreement.
20 CONSULTANT may, at its option and expense, purchase supplemental or "tail" coverage from
21 the former policy carrier, negotiate a retroactive reporting date with the new policy carrier for
22 claims incurred but not reported as of the date of change in policy carrier, and shall in any event
23 maintain Professional Liability Insurance in a manner that provides continuous coverage to the
24 COUNTY throughout the term of this Agreement, and for a period of two (2) years past the
25 issuance of final payment to the CONSULTANT.

26 B. All policies shall be with admitted insurers licensed to do business in the State of
27 California. CONSULTANT shall give COUNTY at least thirty (30) days written advance
28 notice of any expiration, cancellation or reduction in the coverage of any of the aforesaid

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1 policies.

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

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

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

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

18 **XXI. OWNERSHIP OF DOCUMENTS:**

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

Attachment 13 – Sample Agreement

1 transferred to COUNTY by CONSULTANT, and CONSULTANT will assist COUNTY to
2 obtain and enforce patents, copyrights, trademarks, trade secrets, and other contractual and
3 intangible rights relating to said drawings and work-product; that COUNTY shall be and
4 become the owner of such drawings and work product, free and clear of any claim by
5 CONSULTANT or anyone claiming any right through CONSULTANT. CONSULTANT
6 further acknowledges and agrees that COUNTY's ownership rights in such drawings and work
7 product shall apply regardless of whether such drawings or work product, or any copies thereof,
8 are in the possession of CONSULTANT, or any other person, firm, corporation, or entity. For
9 the purpose of this Agreement the terms "drawings and work-product" shall mean all reports
10 and study findings commissioned to develop the design of each project, drawings and schematic
11 or preliminary design documents of each project, certified reproducibles of the original final
12 construction contract drawings of each project, specifications of each project, the approved
13 opinion of probable construction cost of each project, record drawings of each project, as-built
14 plans of each project, and discoveries, developments, designs, improvements, inventions,
15 formulas, processes, techniques, or specific know-how and data generated or conceived or
16 reduced to practice or learning by CONSULTANT, either alone or jointly with others, that
17 result from the tasks assigned to CONSULTANT by COUNTY under this Agreement.

18 B. If the Agreement is terminated during or at the completion of the preliminary design
19 phase of any project under Article III, a reproducible copy of the preliminary design documents
20 shall be submitted by CONSULTANT to the COUNTY, which may use them to complete each
21 project in future phases.

22 C. If each project is terminated at the completion of the construction document phase of
23 any project, certified reproducibles on .003" mylars of the original final construction contract
24 drawings, specifications, and approved opinion of probable construction cost shall be submitted
25 by CONSULTANT to COUNTY.

26 D. Documents, including drawings and specifications, prepared by CONSULTANT for
27 any project pursuant to this Agreement are not intended or represented to be suitable for reuse
28 by COUNTY or others on extensions of the services provided for that project or any other

Attachment 13 – Sample Agreement

1 project. Any use of completed documents for other projects and/or any use of uncompleted
2 documents will be at COUNTY's sole risk and without liability or legal exposure to
3 CONSULTANT.

4 E. COUNTY has requested that certain machine-readable information and CAD data on
5 construction documents be provided by CONSULTANT for each project under this Agreement.
6 Such machine-readable information and CAD data are more specifically described in Article III.
7 CONSULTANT shall not be liable for claims, liabilities or losses arising out of, or connected
8 with (1) the modification or misuse by COUNTY, or anyone authorized by COUNTY, of such
9 machine-readable information and CAD data; or (2) decline of accuracy or readability of
10 machine-readable information and CAD data due to inappropriate storage conditions or
11 duration; or (3) any use by COUNTY, or anyone authorized by COUNTY, of such machine-
12 readable information and CAD data for additions to any such project or for the completion of
13 any such project by others, or for other projects.

14 **XXII. TIME OF COMPLETION:**

15 L. A. Upon request of the Capital Projects Division Manager or his designated
16 representative, the CONSULTANT shall submit for the Capital Projects Division Manager or
17 his designated representative's approval, schedules for the performance of the CONSULTANT's
18 services which may be adjusted as the projects proceed, and shall include allowances for periods
19 of time required for the COUNTY's review and approval of submissions by authorities having
20 jurisdiction over the projects. Time limits established by these schedules approved by Capital
21 Projects Division Manager or his/her designated representative shall not, except as provided
22 herein in this Agreement, be exceeded by the CONSULTANT.

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

Attachment 13 – Sample Agreement

1 C. CONSULTANT shall complete all services required under this Agreement and
2 this Agreement shall expire on December 31, 2004, unless it is extended in writing by the
3 Director of Department of Public Works or his/her designee, or it is terminated earlier in
4 accordance with the provisions of Article XXIII.C.

5 **XXIII. TERMINATION OF AGREEMENT:**

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

13 B. If the CONSULTANT purports to terminate the Agreement, or otherwise refuses to
14 perform pursuant to the Agreement, for reasons other than material breach by the COUNTY, the
15 CONSULTANT shall reimburse the COUNTY, up to a maximum of \$2,500 for the actual
16 expense of issuing a Request For Proposal (RFP), engaging a new CONSULTANT, and the
17 new CONSULTANT's cost in becoming familiar with the previous CONSULTANT's design.

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

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

24 D. In no event shall any payment by the COUNTY constitute a waiver by the
25 COUNTY of any breach of this Agreement or any default which may then exist on the part of
26 the CONSULTANT. Neither shall such payment impair or prejudice any remedy available to
27 the COUNTY with respect to the breach or default. The COUNTY shall have the right to
28 demand of the CONSULTANT the repayment to the COUNTY of any funds disbursed to the

Attachment 13 – Sample Agreement

1 CONSULTANT under this Agreement, which, in the judgment of the COUNTY and as
2 determined in accordance with the procedures of Article IX

3 ("Errors or Omissions Claims and Disputes"), were not expended in accordance with the
4 terms of this Agreement. The CONSULTANT shall promptly refund any such funds upon
5 demand.

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

10 **XXIV. CONFLICT OF INTEREST:**

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

15 **XXV. ENTIRE AGREEMENT:**

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

20 **XXVI. SEVERABILITY:**

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

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

27 //

28 //

Attachment 13 – Sample Agreement

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CONSULTANT

COUNTY OF FRESNO

BY: _____

BY: _____

TITLE: _____

BOB WATERSTON
CHAIRMAN, BOARD OF SUPERVISORS

Street Address
City, State Zip Code

REVIEWED AND RECOMMENDED
FOR APPROVAL

APPROVED AS TO LEGAL FORM:
DENNIS MARSHALL, COUNTY
COUNSEL

BY: _____
ALAN WEAVER, DIRECTOR
DEPARTMENT OF PUBLIC WORKS
AND PLANNING

BY: _____

Fund / Budget / Division / Acct / Memo

APPROVED AS TO ACCOUNTING
FORM
BY: _____
VICKI CROW, C.P.A., AUDITOR-
CONTROLLER / TREASURER - TAX
COLLECTOR

Conflict of Interest Form

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