

DRAFT AGREEMENT

EXHIBIT A

AGREEMENT FOR SPECIALIZED PROFESSIONAL ENVIRONMENTAL CONSULTANT SERVICES

THIS AGREEMENT FOR SPECIALIZED PROFESSIONAL ENVIRONMENTAL CONSULTANT SERVICES (hereinafter called "AGREEMENT"), is made and entered into this _____ day of _____, 2007, by and between the County of Fresno, a political subdivision of the State of California, (hereinafter called "COUNTY"), and **NAME AND ADDRESS OF CONSULTANT** (hereinafter called "CONSULTANT").

WITNESSETH:

WHEREAS, COUNTY desires to retain CONSULTANT to provide specialized professional environmental consultant services necessary to assist COUNTY in complying with federal and state environmental laws, regulations and guidelines in effect at the time each required individual environmental technical study is prepared for transportation related and capital improvement projects (hereinafter referred to as "PROJECT(S)") proposed by COUNTY; and

WHEREAS, said CONSULTANT has been selected in accordance with COUNTY'S Ordinance Code Chapter 4.10 governing the selection of architects, engineers, and other professionals to provide the specialized professional environmental services necessary for PROJECTS; and

WHEREAS, said CONSULTANT represents that it is qualified and willing to perform the environmental services required by COUNTY for various PROJECTS.

NOW, THEREFORE, the parties hereby agree as follows:

I. CONTRACTING OF CONSULTANT:

A. COUNTY hereby contracts with CONSULTANT as an independent contractor to provide specialized professional environmental consultant services as required for various PROJECTS. Said services are described in Article II and enumerated in Article III herein.

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1 B. CONSULTANT may retain subconsultants for the purpose of conducting a
2 study which requires assistance in completing the work. All subconsultants used by
3 CONSULTANT shall be approved by the COUNTY'S Department of Public Works and
4 Planning Director or his designee before they are retained by CONSULTANT, which
5 approval shall not be unreasonably withheld. The subconsultants listed in Appendix A,
6 attached hereto and incorporated herein, shall be considered as approved by
7 COUNTY'S Department of Public Works and Planning Director or his designee. Should
8 CONSULTANT retain any subconsultants, the maximum amount of compensation to be
9 paid to CONSULTANT under Article V below shall not be increased, and any additional
10 compensation to be paid to CONSULTANT for such subconsultant(s)' work shall be
11 limited to a maximum of ten (10%) percent of the total costs incurred by CONSULTANT
12 as a result of the subconsultant(s)' involvement in any PROJECT. Additional fees other
13 than the 10% markup on subconsultant charges will not be reimbursed.

14 C. CONSULTANT'S staff for its PROJECT team shall be as listed in Appendix
15 B. Any substitutions of personnel shall be approved by COUNTY'S Department of Public
16 Works and Planning Director or his designee, which approval shall not be unreasonably
17 withheld. CONSULTANT shall notify COUNTY'S Department of Public Works and
18 Planning Director or his designee of the names and classifications of employees
19 assigned to each specific PROJECT, and shall not reassign such employees to other
20 projects of CONSULTANT without notification to and prior approval by COUNTY'S
21 Department of Public Works and Planning Director or his designee.

22 D. CONSULTANT'S services shall be performed as expeditiously as is
23 consistent with professional skill and the orderly progress of the work, based on
24 schedules for each specific PROJECT mutually agreed upon in advance by COUNTY'S
25 Department of Public Works and Planning Director or his designee and CONSULTANT,
26 and consistent with schedules established under Article XXII, Time of Completion.

27 E. CONSULTANT and affiliated subcontractors shall not submit bids, or
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1 subbids, for the construction phase of a PROJECT assigned to CONSULTANT.
2 CONSULTANT and its subconsultants, and all other service providers, shall not provide
3 any PROJECT-related services for, or receive any PROJECT-related compensation from
4 any contractor, subcontractor or service provider awarded a contract for all or any portion
5 of PROJECT assigned to CONSULTANT. CONSULTANT and its subconsultants, and
6 all other service providers, may provide services for, and receive compensation from a
7 contractor, subcontractor or service provider awarded a contract for all or any portion of
8 PROJECT, provided that any such services which are rendered, and any compensation
9 which is received therefor, relates to work outside the scope of AGREEMENT and does
10 not pose a conflict of interest.

11 F. Unless and until such time as COUNTY'S Department of Public Works and
12 Planning Director or his designee is notified in writing of any change, the Contact
13 person(s) for CONSULTANT for all matters relating to AGREEMENT shall be:

14 NAME

15 ADDRESS

16 PHONE and FAX

17 II. DESCRIPTION OF THE WORK COVERED BY AGREEMENT:

18 A. The work to be performed by CONSULTANT under AGREEMENT includes
19 all specialized professional services under Article III, as may be needed by COUNTY
20 from time to time, including preparing environmental technical studies for COUNTY as
21 required for transportation related and capital improvement projects undertaken by
22 COUNTY. Each such individual environmental technical study application assigned
23 hereunder for a specific PROJECT must comply with all applicable state and federal
24 environmental laws and regulations including, but not limited to, the National
25 Environmental Policy Act (NEPA), California Environmental Quality Act (CEQA), the
26 California Code of Regulations (including but not limited to the CEQA Guidelines set
27 forth therein), the United States Code of Federal Regulations (CFR), the Federal and
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1 State and Endangered Species Acts (ESA), National Historic Preservation Act (NHPA),
2 the Clean Water Act (CWA) and any applicable presidential and gubernatorial Executive
3 Orders. Each such environmental technical study must also comply with the latest
4 environmental provisions of the Local Assistance Procedures Manual and Local
5 Programs Manual Volume III, which are published by the California Department of
6 Transportation (Caltrans) – Office of Local Programs, District 06, to the full extent any
7 provisions thereof relate or have applicability to such Projects.

8 The phrase “transportation related projects,” as used herein, includes, but is not
9 limited to, traffic signal, bridge rehabilitation, bridge replacement, bike paths and road
10 reconstruction projects. The phrase “capital improvement projects,” as used herein,
11 includes, but is not limited to, construction of new facilities, changes in the use of the
12 existing buildings, remodeling, alteration and additions to existing buildings and
13 demolition projects.

14 The phrase “environmental technical studies,” as used herein, includes
15 environmental technical studies including, but not limited to, those relating to one or
16 more of the following: biological resources, visual impacts (aesthetics), hazardous
17 material, wetlands, noise, floodplains, air quality, water quality, relocation impacts,
18 impacts to a publicly owned park, recreation area, wildlife or waterfowl refuge or land
19 from a historic site, socio-economic impacts or mitigation and monitoring. The extent to
20 which such evaluations are required for a PROJECT will be determined by COUNTY’S
21 preparation of Preliminary Environmental Study (“PES”) required under NEPA and/or an
22 initial study as required under CEQA.

23 B. CONSULTANT agrees to provide the professional services that are
24 necessary to complete the studies requested by COUNTY’S Department of Public Works
25 and Planning Director or his designee for each assigned PROJECT, as described in
26 Article III of AGREEMENT, together with Appendix C (the “Project Approach” section of
27 CONSULTANT’S Response to Request for Proposal) and Appendix D (the Fee
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1 Schedule), which appendices are attached hereto and incorporated by this reference.
2 Throughout the length of each assigned PROJECT, CONSULTANT shall consult,
3 communicate and upon request meet with COUNTY'S Department of Public Works and
4 Planning Director or his designee in order for CONSULTANT to verify, refine and
5 complete the assigned PROJECT requirements and review the progress of PROJECT.

6 C. CONSULTANT shall prepare minutes of the meetings attended and shall
7 provide a copy of all such minutes to COUNTY'S Department of Public Works and
8 Planning Director or his designee within seven (7) working days.

9 D. CONSULTANT represents that it is aware of all Regulatory Agencies that
10 will or may be involved in the various PROJECTS, encompassed by AGREEMENT
11 including, but not limited to, the California Regional Water Quality Control Board (Region
12 5), San Joaquin Valley Unified Air Pollution Control District, U.S. Army Corps of
13 Engineers, State Department of Fish and Game, U.S. Fish and Wildlife Service, U.S.
14 Department of Transportation Federal Highway Association, State Department Office of
15 Historic Preservation, and the U.S. Department of Agriculture - Forest Service.
16 CONSULTANT shall obtain any and all requisite approvals from such Regulatory
17 Agencies as are necessary for any specific aspects of each proposed PROJECT.
18 CONSULTANT must verify details where approval from Regulatory Agencies is required.

19 III. CONSULTANT'S SERVICES:

20 CONSULTANT shall consult and communicate with COUNTY'S Department of
21 Public Works and Planning Director or his designee to verify, and refine the scope of
22 each assigned PROJECT, and CONSULTANT thereafter shall provide a detailed fee
23 estimate and estimated time schedule for completion of each PROJECT.
24 CONSULTANT agrees that each professional or other individual performing work on any
25 such PROJECT shall be adequately trained to perform the work and shall possess the
26 proper license, certification or registration as required by law or by accepted standards of
27 the applicable profession. CONSULTANT agrees to provide the professional services

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1 that are necessary to complete the following tasks when expressly authorized in writing
2 by the COUNTY'S Department of Public Works and Planning Director or his designee.

3 A. Record Review:

4 1. CONSULTANT shall research as necessary the available files of the
5 federal, state, regional and local agencies appropriate to the site location for each
6 assigned PROJECT.

7 2. CONSULTANT shall contact federal, state and local agencies as
8 necessary and appropriate for each assigned PROJECT. CONSULTANT also shall
9 contact local experts and residents as necessary and appropriate for each Project.

10 B. Field Surveys:

11 CONSULTANT shall conduct a field survey for each assigned PROJECT that requires a
12 visual inspection of PROJECT area complying with all applicable federal and state
13 environmental laws, regulations and guidelines.

14 C. Technical Reports:

15 1. Technical reports shall be prepared and submitted to the Design
16 Division of the Department of Public Works and Planning for each assigned PROJECT.
17 Technical reports shall be prepared in accordance with the appropriate format required
18 by any state and federal environmental laws, regulations and guidelines.

19 2. When requested by COUNTY'S Department of Public Works and
20 Planning Director or his designee, CONSULTANT shall attend meetings with COUNTY,
21 federal, state and/or local representatives to discuss and review the technical report.
22 CONSULTANT shall prepare brief minutes of meetings attended and promptly submit
23 the minutes to COUNTY'S Department of Public Works and Planning Director or his
24 designee within seven (7) days.

25 3. CONSULTANT shall submit each technical report to COUNTY'S
26 Department of Public Works and Planning Director or his designee for transmittal to
27 Caltrans District 06 Local Assistance Engineer (DLAE) and/or other appropriate agencies
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1 for review and approval. CONSULTANT will revise and resubmit each technical report
2 as necessary until it is approved by all of the appropriate agencies. Standard submittal
3 shall be five (5) reproducible copies and one (1) electronic copy of each technical report.
4 CONSULTANT shall verify the required quantity with COUNTY'S Department of Public
5 Works and Planning Director or his designee prior to submittal.

6 4. CONSULTANT shall prepare technical studies and estimates on
7 8 ½" by 11" pages, provide hard copy and electronic format as standard submittal and
8 prepare documents in Microsoft Word 2003 or Adobe 7.0. Such submittals shall be
9 furnished on compact disk (CD-ROM). CONSULTANT shall verify compatible format
10 and quantity prior to final file delivery.

11 5. CONSULTANT shall submit five (5) hard copies of each drawing
12 prepared with a CAD system and an electronic copy in the form of a .DXF or .DWG files.
13 Such submittals shall be furnished on compact disk (CD-ROM). CONSULTANT shall
14 verify compatible format and quantity prior to final file delivery.

15 D. Environmental Impact Report or Environmental Impact Statement:

16 CONSULTANT may prepare an Environmental Impact Report or an
17 Environmental Impact Statement, to the extent directed by COUNTY'S Department of
18 Public Works and Planning Director or his designee, if such documents are necessary
19 for any assigned PROJECT. CONSULTANT shall comply with all submittal
20 requirements of Section C of this Article (unless otherwise specified by COUNTY'S
21 Department of Public Works and Planning Director or his designee) and shall be
22 compensated for such work at the hourly rates set forth in AGREEMENT.

23 E. CEQA Phase:

24 CONSULTANT may be requested to prepare (in accordance with the
25 submittal requirements of Section C of this Article, unless otherwise specified by
26 COUNTY'S Department of Public Works and Planning Director or his designee) all
27 necessary and appropriate documents and studies to complete the environmental
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1 process in accordance with Section 15063 of the CEQA Guidelines.

2 The CEQA phase includes, but is not limited to, PROJECT initiation and
3 organization, preparation and completion of PROJECT description, data compilation and
4 review, impact assessment, development of mitigation measures, response to comments
5 received from the public and public agencies, PROJECT management and public
6 meeting attendance.

7 CONSULTANT will be required to manage all appropriate environmental
8 work in conjunction with COUNTY'S Department of Public Works and Planning Director
9 or his designee to determine the final proper environmental determination for PROJECT.

10 F. Project Management and Meetings:

11 CONSULTANT shall perform ongoing project management throughout the
12 duration of PROJECT, which shall include, but is not limited to, facilitation and
13 participation in meetings and communications between COUNTY'S Department of Public
14 Works and Planning Director or his designee and regulatory agencies, with the objective
15 of documenting project completion and agency requirements.

16 CONSULTANT shall perform the following tasks:

17 1. Meet as necessary with COUNTY'S Department of Public Works and
18 Planning Director or his designee or any regulating agency including, but not limited to,
19 the California Regional Water Quality Control Board (Region 5), San Joaquin Valley
20 Unified Air Pollution Control District, U.S. Army Corps of Engineers, State Department of
21 Fish and Game, U.S. Fish and Wildlife Service, U.S. Department of Transportation
22 Federal Highway Association, State Department Office of Historic Preservation and the
23 U.S. Department of Agriculture - Forest Service.

24 2. Ensure PROJECT will conform to requirements of the reviewing
25 agencies having jurisdiction over PROJECT.

26 3. Identify requirements, unforeseen criteria or issues for PROJECT that
27 may affect COUNTY and communicate these requirements, criteria or issues to the
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1 designated representative.

2 4. Assist COUNTY in determining all permits that may be required for
3 PROJECT and assist COUNTY with preparation of applications for any required permits.

4 IV. COUNTY'S OBLIGATIONS:

5 COUNTY will:

6 A. Compensate CONSULTANT as provided in AGREEMENT.

7 B. Provide a "COUNTY Representative" who will represent COUNTY'S
8 Department of Public Works and Planning Director or his designee and who will
9 coordinate with CONSULTANT, as appropriate to facilitate its performance under the
10 provisions of AGREEMENT. COUNTY Representative will be COUNTY Design Engineer
11 or her authorized designee. CONSULTANT shall communicate and coordinate with
12 COUNTY Representative who will provide the following services:

13 1. Provide a location map and detailed description for each PROJECT.

14 2. Obtain Permit of Entry from private property owners as needed.

15 3. Loan or provide copies of any relevant data on file to CONSULTANT
16 including any electronic data files if requested.

17 4. Provide a drawing showing areas to be affected by construction.

18 5. Examine documents submitted to COUNTY'S Department of Public
19 Works and Planning Director or his designee by CONSULTANT and render timely
20 decisions pertaining thereto.

21 C. Give reasonably prompt consideration to all matters submitted by
22 CONSULTANT for approval so that there will be no substantial delays in
23 CONSULTANT'S program of work. An approval, authorization or request to
24 CONSULTANT given by COUNTY'S Department of Public Works and Planning Director
25 or his designee will be binding upon COUNTY'S Department of Public Works and
26 Planning Director or his designee under the terms of AGREEMENT only if it is made in
27 writing and signed on behalf of COUNTY by COUNTY'S Department of Public Works

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1 and Planning Director or his designee.

2 V. COMPENSATION:

3 A. Total Fee:

4 1. Notwithstanding any other provisions in AGREEMENT, the Total
5 Fee (Basic Fee and Extra Services Allocation) for the services required under
6 AGREEMENT shall not exceed the total sum of **\$249,000.00** over the entire term of
7 AGREEMENT. The term of AGREEMENT is three years. Compensation for the
8 services rendered shall be computed at the hourly and cost rates shown in Appendix D,
9 attached and incorporated herein, subject to any adjustments that may be approved in
10 accordance with Article V, Section A, Paragraph 3.

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

15 3. The hourly and cost rates paid for services performed by
16 CONSULTANT and by subconsultants of CONSULTANT will be in effect for two years.
17 CONSULTANT may request new labor rates from COUNTY for the third year, subject to
18 written approval of COUNTY'S Director of Public Works and Planning or his designee in
19 accordance with the provisions of this Article V, Section A, Paragraph 3. CONSULTANT
20 shall initiate the rate adjustment process by submitting to COUNTY'S Department of
21 Public Works and Planning Director or his designee a proposed adjusted fee schedule.
22 The proposed adjusted fee schedule shall include proposed hourly rates for all
23 categories of CONSULTANT and subconsultant wage classifications listed in Appendix
24 D. The proposed adjusted fee schedule shall not take effect unless approved in writing
25 by COUNTY'S Director of Public Works and Planning or his designee. CONSULTANT
26 hereby acknowledges its understanding that approval by COUNTY'S Department of
27 Public Works and Planning Director or his designee of any upward adjustment in the

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1 hourly and cost rates shall not provide a basis for any increase in the Total Fee of
2 \$249,000.00, as set forth in Article V, Section A, Paragraph 1.

3 3. Expenses incidental to CONSULTANT'S and subconsultant's
4 performance of services under Article III of AGREEMENT shall be charged at the rates
5 listed in Appendix D, subject to any adjustments that may be approved in accordance
6 with Article V, Section A, Paragraph 3. Unless incorporated in an adjusted fee schedule
7 approved by COUNTY'S Director of Public Works and Planning or his designee in
8 accordance with Article V, Section A, Paragraph 2, all expenses incidental to
9 CONSULTANT'S and subconsultant's performance of the services under Article III of
10 AGREEMENT that are not listed in Appendix D shall be borne by CONSULTANT.

11 4. Charge rates for expenses incidental to CONSULTANT'S and
12 subconsultant's performance of services under Article III of AGREEMENT may be
13 adjusted in accordance with the provisions of Article V, Section A, Paragraph 3.
14 CONSULTANT shall initiate the rate adjustment process by submitting to COUNTY'S
15 Department of Public Works and Planning Director or his designee a proposed adjusted
16 fee schedule for expenses incidental to CONSULTANT'S and subconsultant's
17 performance of services. The proposed adjusted fee schedule for incidental expenses
18 shall not take effect unless approved in writing by COUNTY'S Director of Public Works
19 and Planning or his designee. CONSULTANT hereby acknowledges its understanding
20 that approval by COUNTY'S Department of Public Works and Planning Director or his
21 designee of any upward adjustment in the fee schedule for incidental expenses shall not
22 provide a basis for any increase in the Total Fee of \$249,000.00, as set forth in Article V,
23 Section A, Paragraph 1.

24 B. Basic Fee:

25 1. There will be a maximum Basic Fee of **\$240,000.00** over the
26 entire term of AGREEMENT. The Basic Fee shall consist of a maximum Basic Fee for
27 each assigned PROJECT, agreed to by CONSULTANT and COUNTY Representative.

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1 The agreed upon maximum Basic Fee applicable to a specific PROJECT shall be
2 confirmed in writing by the COUNTY'S Director of Public Works and Planning or his
3 designee prior to CONSULTANT'S commencement of any work on that PROJECT.

4 2. When CONSULTANT'S performance of Article III services at
5 COUNTY'S request is not attributable to a specific PROJECT as defined in Articles II
6 and Article III hereof, such services shall be invoiced based on the hourly rates set forth
7 in Appendix D hereto.

8 C. Extra Services:

9 1. There will be a maximum allocation of **\$9,000.00** over the entire
10 term of AGREEMENT to pay for authorized Extra Services. Payment of Extra Services
11 in excess of said amount is unauthorized and can only be made pursuant to the advance
12 written authorization by COUNTY'S Director of Public Works and Planning or his
13 designee. CONSULTANT and COUNTY'S Director of Public Works and Planning or his
14 designee shall expressly confirm in writing the authorization and maximum cost for any
15 such services before CONSULTANT is compensated for any work thereon.

16 CONSULTANT shall not add mark up percentages or costs to subconsultant's costs
17 unless expressly authorized in writing by COUNTY'S Director of Public Works and
18 Planning or his designee.

19 2. The COUNTY'S Director of Public Works and Planning or his
20 designee shall have the discretion to adjust in writing the Basic Fee and Extra Services
21 limits as long as the Total Fee of **\$249,000.00** for the entire term of AGREEMENT is not
22 exceeded.

23 3. Payment for Extra Services will be at the hourly and cost rates
24 set forth in Appendix D, subject to any adjustments that may be approved in accordance
25 with Article V, Section A, Paragraph 3.

26 4. The following are CONSULTANT services, which are not
27 considered as included in Article III herein, but may be required as Extra Services:

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1 a. Changes to documents which are ordered by COUNTY'S
2 Director of Public Works and Planning or his designee subsequent to Federal Highway
3 Administration (FHWA), Caltrans District 06 LAE, COUNTY and other appropriate
4 agencies' approval thereof.

5 b. Changes to technical reports, permit applications or other
6 documents when PROJECT scope is changed on the basis of COUNTY-initiated
7 requests, and such changes are not a result of negligent errors and omissions by
8 CONSULTANT.

9 c. Providing unforeseen, extraordinary, or unique services or
10 items not covered nor normally included in the Basic Fee, but authorized by COUNTY'S
11 Director of Public Works and Planning or his designee.

12 5. If CONSULTANT becomes aware of potential unforeseen
13 expenses that would not be covered by the Basic Fee of AGREEMENT or for Extra
14 Services as delineated in Article V.C. Section 4, CONSULTANT shall inform COUNTY'S
15 Director of Public Works and Planning or his designee of the extent and nature of such
16 expenses or services. Upon mutual agreement of CONSULTANT and COUNTY'S
17 Director of Public Works and Planning or his designee, AGREEMENT may be amended
18 in writing to cover such unforeseen expense or cost of extra service.

19 6. In the event COUNTY Representative expressly authorizes
20 Extra Services, CONSULTANT shall keep complete records showing the hours and
21 description of activities worked by each person pursuant to such authorization, and all
22 costs and charges applicable to authorized Extra Services work. Should there be a
23 claim for Extra Services, CONSULTANT shall identify the activity, performer of the
24 activity, reason for the activity, and COUNTY official requesting the activity or the claim
25 will be denied. CONSULTANT shall be responsible for all subconsultants keeping
26 similar records. CONSULTANT shall not discontinue or suspend its performance on any
27 work hereunder, whether related or unrelated to the Extra Services request or claim,
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1 unless it can be shown that such work cannot proceed while a claim or request for Extra
2 Services is being evaluated.

3 D. Payments:

4 1. Progress payments will be made by COUNTY upon receipt of
5 CONSULTANT'S invoices and approval by COUNTY thereof based on COUNTY'S
6 Director of Public Works and Planning or his designee evaluation of the completion of
7 the respective components of the assigned PROJECT. Invoices shall clearly identify the
8 portion of the work and the Phase and Task of the work, and shall be submitted with the
9 documentation identified in Article V.D.5. CONSULTANT shall submit separate invoices
10 for Extra Services, accompanied with copies of subconsultants' invoices and costs for
11 approved incidentals. Invoices shall be forwarded to:

12 Mohammad Alimi, P.E., Senior Engineer
13 Department of Public Works and Planning
14 Design Division
15 2220 Tulare Street, Sixth Floor
16 Fresno, CA 93721-2106

17 2. Upon receipt of a proper invoice, COUNTY will take a maximum
18 of ten (10) working days to review, approve and submit it to COUNTY
19 Auditor-Controller/Treasurer-Tax Collector. Unsatisfactory or inaccurate invoices will be
20 returned to CONSULTANT for correction and resubmittal. Payment, less retention, will
21 be issued to CONSULTANT within forty (40) calendar days of the date the
22 Auditor-Controller/Treasurer-Tax Collector receives the approved invoice.

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

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

2 5. Concurrently with the invoices, CONSULTANT shall certify
3 (through copies of issued checks, receipts or other COUNTY pre-approved
4 documentation) that complete payment, less a ten percent (10%) retention, has been
5 made to all subconsultants as provided herein for all previous invoices paid by COUNTY.
6 However, the parties do not intend that the foregoing create in any subconsultant or sub-
7 contractor a third party beneficiary status or any third party beneficiary rights, and
8 expressly disclaim any such status or rights.

9 6. Final invoices and separate invoices for retentions shall be
10 submitted to COUNTY no later than thirty (30) days after the phase is completed.
11 Payment for retentions shall not be made until all services for the phase are completed.

12 7. In the event COUNTY'S Director of Public Works and Planning
13 or his designee reduces the scope of CONSULTANT'S work under AGREEMENT for a
14 specific PROJECT (or discontinues a specific PROJECT), whether due to a deficiency in
15 the appropriation of anticipated funding or otherwise, CONSULTANT will be
16 compensated on a pro rata basis for actual work completed and accepted by COUNTY'S
17 Director of Public Works and Planning or his designee in accordance with the terms of
18 AGREEMENT.

19 VI. COMPENSATION RECORDS:

20 CONSULTANT shall keep complete records showing the hours and
21 description of activities performed by each person who works on each PROJECT
22 assigned hereunder, and all associated costs or charges applicable to work covered by
23 the Basic Fee and approved Extra Services. CONSULTANT will be responsible for all
24 subconsultants keeping similar records.

25 VII. RETENTION FROM EARNED COMPENSATION:

26 A. In addition to any amounts withheld under Article III, COUNTY is
27 entitled to withhold a ten percent (10%) retention from the earned compensation of

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1 CONSULTANT and except as otherwise provided herein, such retention shall be applied
2 to all CONSULTANT services performed under AGREEMENT, including Extra Services.
3 Provided, however, that COUNTY'S Director of Public Works and Planning or his
4 designee has the option to dispense with the requirement to withhold retentions as to
5 any CONSULTANT service(s) specifically designated by the COUNTY'S Director of
6 Public Works and Planning or his designee, in his sole and absolute discretion, as
7 exempt from such requirement for the purposes of this AGREEMENT.

8 B. At the request and expense of CONSULTANT, securities equivalent
9 to the amount withheld shall be deposited with COUNTY or with a state or federally
10 chartered bank in California as the escrow agent, in accordance with Section 22300 of
11 the California Public Contract Code, attached hereto as Appendix F and incorporated
12 herein, which provides for the substitution of securities for any moneys withheld by a
13 public agency to ensure performance under a contract.

14 C. Unless released earlier in accordance with the provisions in Article
15 VII, Section A, when the project contract has been satisfactorily executed to the eighty
16 percent (80%) point of completion without major pending claims, disputes or other
17 matters in question between the parties, COUNTY'S Director of Public Works and
18 Planning or his designee may, at its discretion, reduce the retention from ten percent
19 (10%) to five percent (5%), and the resulting surplus funds, less any current phase or
20 Extra Service retention, will be paid by COUNTY to CONSULTANT at that time. The
21 final retention of five percent (5%) will be paid in accordance with the payment provisions
22 of AGREEMENT and upon receipt of proper invoice, forty-five (45) days after completion
23 of all of CONSULTANT'S obligations under AGREEMENT, including the resolution of all
24 claims and disputes between COUNTY and CONSULTANT.

25 VIII. AUDITS, ACCOUNTING AND INSPECTIONS ACCESS:

26 A. CONSULTANT shall at any time during regular business hours, and
27 as often as COUNTY may deem necessary, make available for examination by State
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1 authorities or COUNTY Auditor-Controller/Treasurer-Tax Collector, or their authorized
2 representatives, all of its records and data with respect to matters covered by
3 AGREEMENT. CONSULTANT shall permit COUNTY to audit and inspect all invoices,
4 materials, payment to subcontractor(s), payrolls, records of personnel, conditions of
5 employment, and other data relating to matters covered by AGREEMENT.

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

9 IX. INDEPENDENT CONTRACTOR:

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

22 B. Because of its status as an independent contractor, CONSULTANT
23 shall have absolutely no right to employment rights and benefits available to COUNTY
24 employees. CONSULTANT shall be solely liable and responsible for providing to, or on
25 behalf of its employees all legally-required employee benefits. In addition,
26 CONSULTANT shall be solely responsible and save COUNTY harmless from all matters
27 relating to payment of CONSULTANT'S employees, including compliance with Social

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1 Security, withholding, and all other regulations governing such matters. It is
2 acknowledged that during the term of AGREEMENT CONSULTANT may be providing
3 services to others unrelated to COUNTY or to AGREEMENT.

4 X. PARTIES BOUND BY AGREEMENT:

5 AGREEMENT shall be binding upon COUNTY, CONSULTANT, and their
6 successors in interest, legal representatives, executors, administrators, and assigns with
7 respect to all covenants as set forth herein.

8 XI. REQUIRED APPROVALS:

9 It is understood that CONSULTANT shall not assign, sublet, subcontract,
10 or transfer CONSULTANT'S rights or obligations in AGREEMENT without the prior
11 express, written consent of COUNTY. Such approval shall only be given by COUNTY
12 Board of Supervisors, except as may be provided in Article I.B. of AGREEMENT.

13 XII. COMPLIANCE WITH LAWS:

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

18 XIII. GOVERNING LAW:

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

23 B. The rights and obligations of the parties and all interpretations and
24 performance of AGREEMENT shall be governed in all respects by the laws of the State
25 of California.

26 XIV. AMENDMENTS:

27 Any changes to AGREEMENT requested either by COUNTY or
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1 CONSULTANT may be affected only if mutually agreed upon in writing by duly
2 authorized representatives of the parties hereto. AGREEMENT shall not be modified or
3 amended, nor shall any rights of a party hereto be waived, except by such a writing.

4 XV. CONSULTANT'S LEGAL AUTHORITY:

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

12 XVI. HOLD HARMLESS:

13 CONSULTANT agrees to indemnify, save, hold harmless, and at
14 COUNTY'S request, defend COUNTY, its officers, agents, and employees from any and
15 all costs and expenses, damages, liabilities, claims, and losses occurring or resulting to
16 COUNTY in connection with the performance, or failure to perform, by CONSULTANT,
17 its officers, agents or employees under AGREEMENT, and from any and all costs and
18 expenses, damages, liabilities, claims, and losses occurring or resulting to any person,
19 firm, or corporation who may be injured or damaged by the performance, or failure to
20 perform, of CONSULTANT, its officers, agents, or employees under AGREEMENT.

21 XVII. LIABILITY INSURANCE:

22 A. Without limiting COUNTY'S right to obtain indemnification from
23 CONSULTANT or any third parties, CONSULTANT, at its sole expense, shall maintain in
24 full force and effect, the following insurance policies throughout the term of
25 AGREEMENT:

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

5 2. Comprehensive Automobile Liability Insurance with limits for
6 bodily injury of not less than Two Hundred Fifty Thousand Dollars (**\$250,000.00**) per
7 person, Five Hundred Thousand Dollars (**\$500,000.00**) per accident and for property
8 damages of not less than Fifty Thousand Dollars (**\$50,000.00**), or such coverage with a
9 combined single limit of Five Hundred Thousand Dollars (**\$500,000.00**). Coverage
10 should include owned and non-owned vehicles used in connection with AGREEMENT.

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

13 4. Professional Liability Insurance:

14 a. If CONSULTANT employs licensed professional staff in
15 providing services, Professional Liability Insurance with limits of not less than One Million
16 Dollars (**\$1,000,000.00**) per occurrence, Three Million Dollars (**\$3,000,000.00**) annual
17 aggregate.

18 b. The Professional Liability Insurance shall be kept in full
19 force and effect for a period of three years from the termination date of AGREEMENT.

20 CONSULTANT shall obtain endorsements to the Commercial General
21 Liability insurance naming the County of Fresno, its officers, agents, and employees,
22 individually and collectively, as additional insured, but only insofar as the operations
23 under AGREEMENT are concerned. Such coverage for additional insured shall apply as
24 primary insurance and any other insurance, or self-insurance, maintained by COUNTY,
25 its officers, agents and employees shall be excess only and not contributing with
26 insurance provided under CONSULTANT'S policies herein. CONSULTANT shall give
27 COUNTY at least thirty (30) days advance written notice of any cancellation, expiration,

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1 reduction or other material change in coverage with respect to any of the aforesaid
2 policies.

3 Within thirty (30) days from the date CONSULTANT executes
4 AGREEMENT, CONSULTANT shall provide to the County of Fresno certificates of
5 insurance and endorsements for all of the required policies as specified above, stating
6 that such insurance coverage have been obtained and are in full force; that the County of
7 Fresno, its officers, agents and employees will not be responsible for any premiums on
8 the policies; that such Commercial General Liability insurance names the County of
9 Fresno, its officers, agents and employees, individually and collectively, as additional
10 insured, but only insofar as the operations under AGREEMENT are concerned; that such
11 coverage for additional insured shall apply as primary insurance and any other
12 insurance, or self-insurance, maintained by COUNTY, its officers, agents and
13 employees, shall be excess only and not contributing with insurance provided under
14 CONSULTANT'S policies herein; and that this insurance shall not be cancelled or
15 changed without a minimum of thirty (30) days advance, written notice given to
16 COUNTY. The certificates shall be sent to the attention of:

17 Mohammad Alimi, P.E., Senior Engineer
18 Department of Public Works and Planning
19 Design Division
20 2220 Tulare Street, Sixth Floor

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

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

27 XIII. OWNERSHIP OF DOCUMENTS:

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1 A. All documents, including preliminary documents, electronic forms,
2 calculations, and survey data, required in performing services under AGREEMENT shall
3 be submitted to, and shall remain at all times the property of COUNTY regardless of
4 whether they are in the possession of CONSULTANT or any other person, firm,
5 corporation or agency.

6 B. CONSULTANT understands and agrees that COUNTY shall retain full
7 ownership rights of the drawings and the work-product of CONSULTANT for each
8 project, to the fullest extent permitted by law. In this regard, CONSULTANT
9 acknowledges and agrees that CONSULTANT'S services are on behalf of COUNTY and
10 are "works made for hire," as that term is defined in copyright law, by COUNTY; that the
11 drawings and work-product to be prepared by CONSULTANT are for the sole and
12 exclusive use of COUNTY, and shall be the sole owner of all patents, copyrights,
13 trademarks, trade secrets and other rights and contractual interests in connection
14 therewith which are developed and compensated solely under AGREEMENT; that all the
15 rights, title, and interest in and to the drawings and work-product will be transferred to
16 COUNTY by CONSULTANT to the extent CONSULTANT has an interest in and
17 authority to convey such rights; and CONSULTANT will assist COUNTY to obtain and
18 enforce patents, copyrights, trademarks, trade secrets, and other rights and contractual
19 interests relating to said drawings and work-product; that COUNTY shall be and become
20 the owner of such drawings and work product, free and clear of any claim by
21 CONSULTANT or anyone claiming any right through CONSULTANT. CONSULTANT
22 further acknowledges and agrees that COUNTY'S ownership rights in such drawings and
23 work product shall apply regardless of whether such drawings or work product, or any
24 copies thereof, are in the possession of CONSULTANT, or any other person, firm,
25 corporation, or entity. For the purpose of AGREEMENT the terms "drawings and work-
26 product" shall mean all reports, studies and findings required hereunder, and,
27 developments, improvements, or specific data generated or conceived or reduced to

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1 practice or learning by CONSULTANT, either alone or jointly with others, that result from
2 the tasks assigned to CONSULTANT by COUNTY under AGREEMENT.

3 C. If the scope of CONSULTANT'S work under AGREEMENT is reduced
4 for a specific PROJECT (or COUNTY discontinues a specific PROJECT), a copy of the
5 report(s), technical studies or documents (including preliminary documents) required
6 hereunder shall be submitted by CONSULTANT to COUNTY, which may use them to
7 complete PROJECT at a future time.

8 D. Reports, studies and other documents prepared by CONSULTANT
9 pursuant to AGREEMENT are intended to be relied upon and capable of reuse by
10 COUNTY or others as suitable in connection with extensions of the services provided for
11 PROJECT. Any use of completed documents for other projects and/or any use of
12 uncompleted documents will be at COUNTY'S sole risk and without liability or legal
13 exposure to CONSULTANT.

14 E. COUNTY has requested that certain machine-readable information
15 ("CAD") and data be provided by CONSULTANT under AGREEMENT. Such CAD data
16 is more specifically described in Article III. CONSULTANT shall not be liable for claims,
17 liabilities or losses arising out of, or connected with (1) the modification or misuse by
18 COUNTY or anyone authorized by COUNTY, of such CAD data, or (2) decline of
19 accuracy or readability of CAD data due to inappropriate storage conditions or duration;
20 or (3) any use by COUNTY, or anyone authorized by COUNTY, of such CAD data for
21 additions to this PROJECT or for the completion of this project by others, or for other
22 projects. Any use of CAD data for PROJECT other than PROJECT covered by
23 AGREEMENT and/or any use of uncompleted CAD data will be at COUNTY'S sole risk
24 and without liability or legal exposure to CONSULTANT. COUNTY and CONSULTANT
25 agree that any CAD files prepared by either party shall conform to the specifications
26 required by COUNTY. The electronic files submitted by CONSULTANT to COUNTY are
27 submitted for an acceptance period lasting until the expiration of AGREEMENT. Any

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1 defects COUNTY discovers during this period will be reported to CONSULTANT and will
2 be corrected as part of CONSULTANT'S "Basic Scope of Services".

3 XIX. TIME OF COMPLETION:

4 A. The term of AGREEMENT shall commence on the date of execution
5 hereof, and shall expire by its terms on **EXPIRATION DATE**, unless extended in writing
6 by COUNTY'S Director of Public Works and Planning or his designee. The term of
7 AGREEMENT is three years. CONSULTANT shall complete all PROJECTS in progress
8 at the time AGREEMENT expires. The terms and hourly rates of AGREEMENT shall be
9 in effect until completion and approval of all PROJECTS in progress at the time
10 AGREEMENT expires.

11 B. Upon request of COUNTY'S Representative, CONSULTANT shall
12 submit for COUNTY Representative's approval, time schedules for the performance of
13 CONSULTANT'S services which may be adjusted as the PROJECTS proceed, and shall
14 include allowances for periods of time required for COUNTY'S review and approval of
15 submissions by authorities having jurisdiction over PROJECTS. Time limits established
16 by these schedules approved by COUNTY Representative shall not, except as provided
17 in AGREEMENT, be exceeded by CONSULTANT.

18 C. Time is of the essence in the completion of the services covered by
19 AGREEMENT. CONSULTANT shall diligently proceed with the agreed scope of
20 services and shall provide such services in a timely manner. Failure of CONSULTANT
21 to meet any specific date in the schedule, once such failure continues more than
22 fourteen (14) calendar days, past the specified completion date (unless the delay is
23 attributable to COUNTY or others not under the control of CONSULTANT), is sufficient
24 cause for immediate termination of AGREEMENT, at the option of COUNTY, in
25 accordance with Article XX.C.

26 XX. TERMINATION OF AGREEMENT:

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

7 B. If CONSULTANT terminates AGREEMENT for reasons other than
8 material breach by COUNTY, CONSULTANT shall reimburse COUNTY, up to a
9 maximum of \$10,000 for the actual expense of issuing a new Request For Proposal,
10 engaging a new CONSULTANT, and the new CONSULTANT'S cost in becoming familiar
11 with the previous CONSULTANT'S environmental documentation.

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

- 14 1. An illegal or improper use of funds;
- 15 2. A failure to comply with any term of AGREEMENT;
- 16 3. A substantially incorrect or incomplete report submitted to
17 COUNTY;
- 18 4. Improperly performed service.

19 D. In no event shall any payment by COUNTY constitute a waiver by
20 COUNTY of any breach of AGREEMENT or any default which may then exist on the part
21 of CONSULTANT. Neither shall such payment impair or prejudice any remedy available
22 to COUNTY with respect to the breach or default. COUNTY shall have the right to
23 demand of CONSULTANT the repayment to COUNTY of any funds disbursed to
24 CONSULTANT under AGREEMENT, which, in the judgment of COUNTY were not
25 expended in accordance with the terms of AGREEMENT. CONSULTANT shall promptly
26 refund any such funds upon demand.

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

5 XXI. COVENANT AGAINST CONTINGENT FEES:

6 A. CONSULTANT warrants that he/she has not employed or retained
7 any company or person, other than a bona fide employee working for CONSULTANT, to
8 solicit or secure AGREEMENT, and that he/she has not paid or agreed to pay any
9 company or person, other than a bona fide employee, any fee, commission, percentage,
10 brokerage fee, gift, or any other consideration, contingent upon or resulting from the
11 award or formation of AGREEMENT. For breach or violation of this warranty, COUNTY
12 shall have the right to annul AGREEMENT without liability, or at its discretion to deduct
13 from AGREEMENT price or consideration, or otherwise recover, the full amount of such
14 fee, commission, percentage, brokerage fee, gift, or contingent fee.

15 B. CONSULTANT shall sign the CERTIFICATION OF CONSULTANT
16 included with AGREEMENT at the time of AGREEMENT execution.

17 XXII. PATENT RIGHTS AND COPYRIGHTS:

18 A. CONSULTANT shall observe any patent rights regarding rights to
19 inventions as required in 41 Code of Federal Regulations 1-9.1.

20 B. COUNTY may permit CONSULTANT to copyright any reports or other
21 products required to be produced by AGREEMENT. Should CONSULTANT wish to
22 obtain copyrights for any such reports or products, COUNTY shall have the royalty-free
23 non-exclusive and irrevocable right to reproduce, publish, or otherwise use, and to
24 authorize others to use, the work for government purposes.

25 XXIII. CONFLICT OF INTEREST:

26 CONSULTANT shall comply with the provisions of the Fresno County
27 Department of Public Works and Planning Conflict of Interest Code, attached hereto as

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1 Appendix H and incorporated herein. Such compliance shall include the filing of annual
2 statements pursuant to the regulations of the State Fair Political Practices Commission
3 including, but not limited to, portions of Form 700.

4 XXIV. MISCELLANEOUS:

5 A. COUNTY agrees that in accordance with generally accepted
6 practices, CONTRACTOR will be required to assume sole and complete responsibility
7 for job site conditions during the course of PROJECT, including safety of all persons and
8 property, and that this requirement shall be made to apply continuously during
9 PROJECT and not be limited to normal working hours. CONSULTANT shall not have
10 control over or charge of, and shall not be responsible for, PROJECT means, methods,
11 techniques, sequences or procedures, as these are solely the responsibility of the
12 CONTRACTOR. CONSULTANT shall not have the authority to stop or reject the work of
13 the CONTRACTOR.

14 XXV. ENTIRE AGREEMENT:

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

20 XXVI. SEVERABILITY:

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

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

CONSULTANT

COUNTY OF FRESNO

BY: _____

BY: _____
CHAIRMAN, BOARD OF SUPERVISORS

TITLE: _____

ADDRESS: _____

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: _____
DEPUTY

APPROVED AS TO ACCOUNTING FORM

Fund / Subclass / Org / Account / Memo
0010 / 11000 / 4510 / 7295 / 0125

BY: _____
VICKI CROW, C.P.A.
AUDITOR-CONTROLLER/
TREASURER-TAX COLLECTOR

7/3/07