



REQUEST FOR STATEMENT OF QUALIFICATIONS

NO. 907-5392

COUNTY OF FRESNO

ARCHITECTURAL SERVICES

DECEMBER 10, 2015

Submittals: Three (3) copies of the Request for Statement of Qualifications (RFSQ) must be received before 2:00 p.m., Friday, January 15, 2016.

Packages received after the time and date stated above will be returned unopened to the consultant.

Addressed to: Darren Howard, Purchasing Technician

Mailing Address: County of Fresno, Purchasing
4525 E. Hamilton Avenue, 2nd Floor
Fresno, CA 93702

Mark Envelope: Request for Qualifications 907-5392 - Architectural Services

INQUIRIES AND UPDATES: Requests for clarification regarding this RFSQ must be submitted in writing via email to Darren Howard, Purchasing Technician, at dhoward@co.fresno.ca.us, and received by the County no later than **2:00 p.m., Monday, December 28, 2015**.

CONSULTANT SELECTION POLICY: Copy of the Fresno County Board of Supervisors Resolution 90-028 (Ordinance Code Chapter 4.10) (**Exhibit 3**) which establishes procedures that implement the selection of Architects, Engineers, and other Professionals is attached.

It is the intent of the County to engage a consultant(s) to provide architectural services on a Consultant Master Agreement. The County will select 3 consultants based on the most qualified.

The County reserves the right, at its sole discretion, to terminate this RFSQ process or negotiations with a selected consultant(s) or begin a new RFSQ process. Nothing herein, or in the process, shall be construed as having obligated the County to pay for any expenses incurred by respondents to this RFSQ.

MODIFICATIONS: Any modifications to this RFSQ will be provided through an addendum.

OVERVIEW

Fresno County desires to retain by Consultant Services Agreements, qualified consultant firms to assist the Facilities Services Division in architectural services on various projects in the County. Typically, utilization of the consultant(s) will be on an "on-call" basis. As a need arises, a consultant or consultants under agreement will be contacted by the Facilities Division staff with a proposed scope of services to be performed. The consultants will submit a not-to-exceed fee proposal. Factors such as the consultant's specific knowledge and experience, ability to deliver the work in a timely manner, and costs will be considered. A written notice to proceed or letter of authorization will be issued to the selected consultant for each project or phase stating any conditions and a not-to-exceed amount. The consultant should not begin work on the project until a notice to proceed or letter of authorization is issued.

A representative sample of the types of tasks that may be required is attached as **Exhibit 1**.

There are no assurances of any work for consultants during the term of the agreement.

DRAFT AGREEMENT: The attached Draft Agreement (**Exhibit 2**) includes standard provisions from the most recent consultant services agreements.

Compensation under the agreement will be billed at hourly rates as identified in the agreement, with an agreed not-to-exceed amount for each project task.

It is recommended that the consultant review the Draft Agreement with legal and insurance counsel. The agreement requires the consultant carry a professional liability insurance policy in the amount of \$1,000,000 per claim, \$1,000,000 aggregate per year. All required insurance policies must be in place and certificates of insurance provided to the County prior to engagement of work on any project.

SUBMITTAL REQUIREMENTS

Proposers shall submit the appropriate number of copies of their RFSQ on or before the submittal due date and time stated on the front page of this RFSQ. Submit no more information than requested of this Request for Statement of Qualifications. The completeness of the response to the RFSQ will be evaluated by a screening committee.

You must answer the following questions in the same sequence as below.

1. Firm name, address, phone and fax numbers, e-mail address and website, if applicable.
2. Specify type of organization (individual, partnership or corporation).
3. Firm principals who will be responsible for the projects, their education, credentials and experience.
4. Key personnel who will be assigned to work on the projects, their education, credentials and experience.
5. Present staff - number and classification.
6. List current projects or commitments for consulting services in your office.
7. List at least five (5) additional references of present or past clients with their telephone numbers.
8. The Consultant shall submit, as a part of his or her initial submittal, the firm's current basic hourly rate schedule for all current employee classifications. Such hourly labor rates shall include costs for items such as office supplies, printing, postage, vehicle costs, and other incidentals.
9. Hourly rates are to include postage and courier services, photo and duplicating services, telephone and facsimile charges, computer storage media, drawing and plotting media, plotter time and cost, printing of "check print" plans, and documents required by Agreement.

CONSULTANT SELECTION PROCEDURE

EVALUATION CRITERIA: Respondents will be evaluated on the basis of their responses to all questions and requirements in this RFSQ. False, incomplete or unresponsive statements in connection with this RFSQ may be sufficient cause for its rejection.

The Committee will address the following criteria in its evaluation of proposals (not necessarily in order of importance):

- A. Experience with emphasis on projects for local governmental projects.
- B. Educational background of the consultant's key individuals who will be assigned to the projects.
- C. Quality of past performance for the County and other governmental agencies.
- D. Qualifications of individual within the Consultant's organization directly responsible for the work. The County reserves the right of approval of the Consultant's project manager.
- E. Adequacy of staff to perform the work.
- F. Demonstrated ability to work effectively with County staff and related parties.
- G. Demonstrated ability to keep costs contained and within project budgets.
- H. Knowledge of local conditions.
- I. Ability of the consultant to furnish effective and timely construction observation services.
- J. Completeness of RFSQ.
- K. The estimated fee RFSQ.
- L. Local (within Fresno County) consultants are preferred over non-local consultants.

FEE DETERMINATION: A not-to-exceed amount will be established for each project and/or phase by mutual agreement between the County and Consultant prior to commencement of services. The consultant will invoice monthly based on the agreement's hourly rate and job classification up to the not-to-exceed amount.

EXHIBITS

- 1. SAMPLE PROJECTS**
- 2. DRAFT SERVICE AGREEMENT**
- 3. COUNTY OF FRESNO ORDINANCE CHAPTER 4.10**

EXHIBIT 1 – SAMPLE PROJECTS

Anticipated projects include but are not limited to:

- Remodeling of Buildings for compliance with the Americans With Disabilities Act (ADA)
- Retrofits/equipment replacements
- County office remodels
- Entrance ramps
- Parking lot resurfacing
- Adjust egress for new configuration
- Specify doors and hardware
- Roof replacement
- Electrical projects that increase load requirements
- Adding circuits for new equipment
- Panel replacement/ sub panel additions
- Minor modifications to buildings that require design work to obtain a permits

ARCHITECTURAL CONSULTANT SERVICES AGREEMENT

THIS AGREEMENT is made and entered into this ____ day of _____, 20____, between the County of Fresno, a political subdivision of the State of California, (hereinafter called "COUNTY"), and **XXX**, a California corporation, located at **[insert address]** (hereinafter called "CONSULTANT").

WITNESSETH:

WHEREAS, the COUNTY desires to retain a CONSULTANT Architect 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, consistent with COUNTY Ordinance Code Chapter 4.10 and the Board of Supervisors' adopted Policy governing the selection of architects, engineers, and other professionals, a selection committee selected said CONSULTANT to provide the COUNTY with Architectural 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 Architectural services of the CONSULTANT may be utilized by the Department of Public Works and Planning and other COUNTY Departments; and

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

WHEREAS, said CONSULTANT represents that it is qualified and willing to perform Architectural services.

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

I. CONTRACTING OF CONSULTANT: BASIC PARAMETERS

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

B. The CONSULTANT's services shall be performed as expeditiously as is

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consistent with professional skill and the orderly progress of the work, based on project schedules prepared by the COUNTY Capital Projects Division Manager or his/her designated Project Manager.

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

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

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

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

Name: XXX

Position XXX

Telephone: XXX

Fax: XXX

E-Mail: XXX

Web: XXX

II. DESCRIPTION OF THE WORK COVERED BY THIS AGREEMENT:

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

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enumerated under Article III for various projects on an as needed basis. The CONSULTANT agrees to provide the professional services that are necessary for each project when expressly authorized in writing by the Capital Projects Division Manager or his/her designated Project Manager. Such work by CONSULTANT shall not begin until CONSULTANT has received a written Notice to Proceed from COUNTY authorizing the necessary project services, the agreed upon not-to-exceed fee for the project in accordance with the approved hourly fee schedule (Exhibit A, attached) and scope of work. All submittals of documents associated with the project by the CONSULTANT will be made in both hard copy and electronic format.

B. Throughout the term of this Agreement, the CONSULTANT shall collaborate and partner with the COUNTY and other Project participants in the interest of maintaining the Project budget and schedule and minimizing claims. Partnering may be instituted during design and/or during construction phases. The scope of the project will determine the level of partnering to be implemented. Sessions shall be attended by all associated project and executive level staff requested by COUNTY, at no additional cost to COUNTY. All sessions are to be conducted at the Fresno County Plaza Building, 2220 Tulare Street, Fresno, California 93721, although the location of any session(s) is subject to change upon notice by COUNTY.

III. CONSULTANT'S SERVICES:

A. Phase 1, Programming and Schematic Design:

The CONSULTANT shall for each project:

1. Ascertain the requirements through a meeting with the Capital Projects Division Manager or his/her designated representative and a review of an existing schematic layout of each project if such layout is available.

2. Confirm existing building systems, including electrical, mechanical, plumbing, communications, telephones, and computers through visual observations, review of record documents, and discussions with the COUNTY General Services Department Building Maintenance Superintendent as appropriate for each specific project. CONSULTANT shall not be responsible for unknown conditions that could not be reasonably identified through the methods described herein. (COUNTY's floor plans provided to CONSULTANT may not show

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all of the exact wall locations and functions indicated on those plans.)

3. Meet with COUNTY staff every two (2) weeks or more often if necessary to review the progress of the project. CONSULTANT shall prepare brief minutes of meetings conducted. The minutes, including any direction provided by the COUNTY, shall be provided at least four (4) days in advance of the next progress meeting. Meet with the Board of State and Community Corrections (BSCC), California State Fire Marshal (CSFM), and/or local or other jurisdictional building officials as appropriate for the specific project, to review applicable building, seismic, and health codes and to confirm compliance with all code requirements applicable to the project.

4. Prepare a schematic design consisting of exterior elevations, site plans and floor plans with square footage and rough dimensions, and illustrate the function of the rooms.

5. Analyze and show on a floor plan room locations and interior circulation patterns. More than one proposed floor plan may be required.

6. Prepare a furniture and equipment layout for the user Department.

7. Prepare and submit an opinion of probable construction cost identifying significant area and system components of the project. The opinion of probable construction cost shall be submitted in the "Construction Specifications Institute/Uniform Construction Index" (CSI/UCI) format and shall identify design contingency and escalation amounts to the mid-point of the proposed construction period.

8. Monitor and keep COUNTY informed regarding the impact of design issues on the project budget. Upon the request of the COUNTY, CONSULTANT shall incorporate into the design such reasonable changes as the COUNTY deems appropriate, as a result of the COUNTY's review process and impact on the budget or opinion of probable construction cost. If CONSULTANT disagrees with the COUNTY's request, such disagreement must be registered in writing and the COUNTY will attempt to reconcile such disagreement. If it is impossible to make a reconciliation, the written disagreement will become a part of the project's record. However, CONSULTANT shall then comply with the COUNTY's request.

9. Submit and review with the COUNTY in a meeting ten (10) copies of the final

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schematic design. The ten (10) copies shall be submitted three (3) calendar days prior to the meeting. Schematic design plans submitted for review may be 11" x 17".

10. Modify or delete portions of the proposed construction work, or reduce program space at the request of the COUNTY if the schematic opinion of probable construction cost indicates increases in costs above the project budget. CONSULTANT shall adhere to any such modifications in the preparation and completion of the schematic plans, opinion of probable construction cost and specifications in work performed under Phase 1.

11. Continue to incorporate into the design in the design development phase of CONSULTANT's work, the changes required from project approval of the schematic design only if COUNTY expressly authorizes CONSULTANT in writing to proceed to the next phase.

B. Phase 2, Design Development (Preliminary Design):

The CONSULTANT shall:

1. Prepare, in this or subsequent work, plans of the site or plot plans suitable for the Site Plan Review process.

2. Prepare, in this or subsequent work, floor plans, site plans, interior elevations and details suitable to submit to the Division of State Architect for Accessible Compliance review only.

3. Provide, in this or subsequent phase of his work, all data necessary to comply with all City and County permits and land use requirements.

4. Review the progress and content of the drawings and cost estimate every two (2) weeks in meetings with the COUNTY, and prepare brief minutes thereof. CONSULTANT must monitor and keep COUNTY informed regarding the impact of design issues on the project budget. Upon the request of the COUNTY, CONSULTANT shall incorporate into the design such reasonable design and operations changes as the COUNTY deems appropriate as a result of the COUNTY's review processes and impact on the project budget or opinion of probable construction cost. If CONSULTANT disagrees with the COUNTY's request, such disagreement must be registered in writing and the COUNTY will attempt to reconcile such disagreement. If it is impossible to make a reconciliation, the written disagreement will become

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part of the project's record. However, CONSULTANT shall then comply with the COUNTY's request.

5. Prepare the design development drawings on 24" by 36" or larger sheets and opinion of probable construction cost and preliminary specifications on 8-1/2" by 11" pages. The preliminary design shall consist of floor plans, exterior elevations, cross sections and interior elevations, landscaping plan, site and plot plans and other drawings drawn to scale and showing the locations of walls, doors, windows, equipment fixtures, and other necessary items together with the requirements for the electrical, heating, plumbing, air conditioning, and other work necessary to complete the project. Construction structural framing and finish materials shall be clearly identified on design development drawings.

6. Prepare a detailed design development opinion of probable construction cost, which shall identify the construction components, building systems, and requirements of the project.

a. The opinion of probable construction cost shall be projected to the midpoint of the probable construction period and include material and labor unit costs, overhead, profit, insurance, taxes, general requirements, supervision, and difficulty factors and be organized in the CSI Unifformat or Masterformat.

b. The opinion of probable construction cost shall identify escalation and design contingency amounts, which must be approved by the COUNTY.

7. Submit originals to COUNTY for reproduction in quantities necessary for project review of the completed design development plans, specifications, and opinion of probable construction cost. This design development submittal shall also include the fixture cuts for all pieces of equipment included in the design. CONSULTANT shall meet as necessary with the COUNTY to identify and explain in detail all elements included in the Design Development document requirements as outlined herein or meet as necessary to fully explain his design scope and obtain COUNTY's approval thereof.

8. Review and confirm with COUNTY staff the construction budget.

9. Delete portions of the proposed construction work or change materials and

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equipment at the request of the COUNTY if the preliminary opinion of probable construction cost exceeds the construction budget. The CONSULTANT shall adhere to any such modifications in the preparation and completion of preliminary plans, opinion of probable construction cost, and specifications in this Phase.

10. Continue to incorporate into the design in the succeeding phases of the CONSULTANT's work the changes identified from project approval of the design development (preliminary design) and proceed with the next phase only if expressly authorized in writing by COUNTY.

11. At the completion of the Design Development Phase, submit drawings to Fresno County Development Services for Site Plan Review and if required, submit accessible compliance drawings to the Division of State Architect.

C. Phase 3, Construction Documents

The CONSULTANT shall:

1. Prepare the final working drawings from the design development drawings (preliminary design), as modified by the COUNTY, on 24" by 36" sheets or larger and technical specifications on 8-1/2" by 11" pages setting forth in detail the work to be done, the materials, workmanship, finishes, and equipment required for the architectural, structural, mechanical, electrical, communications, and other components of construction necessary to provide the COUNTY a complete and functional project for its intended purpose within the requirements of this Agreement.

2. Monitor and keep COUNTY informed regarding the impact of design issues on the project budget. Upon the request of the COUNTY, CONSULTANT shall incorporate into the design such reasonable changes, as the COUNTY deems appropriate as a result of the COUNTY's review processes and impact on the project budget or opinion of probable construction cost.

3. Review, comment, and/or make recommendations on the form and content of the COUNTY's General Conditions, Special Conditions, and Bid Form as they apply towards this project.

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4. In addition to the technical specifications, prepare special or supplemental conditions for the construction contract documents. The COUNTY will package the CONSULTANT's documents with the COUNTY's approved General Conditions, Notice to Contractors calling for bids, the Bid Form, and related documents to complete the construction contract and bid specifications. Specifications for asbestos abatement, if required for a specific project, will be incorporated by the COUNTY into the bid package.

5. Include alternate bid items (preferably additive), not as separate design drawings but incorporated into the original construction drawings, to allow construction element choices or cost options by the COUNTY. The basis of award may be on the base bid only, or base bid plus additive alternatives. Additive bid items may be necessary so that the COUNTY will be able to award a construction contract not exceeding available construction funds.

6. Submit to the COUNTY the projected and final construction opinion of probable construction cost organized in the CSI Masterformat for the base bid work and alternate bid items. The opinion of probable construction cost shall be projected to the midpoint of the scheduled construction period to be scheduled by the COUNTY. Differences between the design development (preliminary) and final opinion of probable construction cost shall be explained in writing.

7. Verify the reasonableness of the estimated construction period for construction contract bidding purposes as provided by the COUNTY and identify long delivery items of materials and equipment which will impact the length of the construction contract.

8. If required for the construction of a specific project, propose and submit a recommended testing and inspection list for materials identifying type, quantity, frequency, schedule, and cost estimate of tests to be performed by an independent testing firm during construction.

9. Submit progress originals and final originals of the plans, specifications, calculations and opinion of probable construction cost for reproduction by the COUNTY. Submit four (4) copies of structural calculations.

10. If required, submit additional copies of the completed plans, calculations, and

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specifications to the COUNTY for transmittal to California State Fire Marshal (CSFM), Board of State and Community Corrections (BSCC) and applicable plan check agencies for building, seismic, and health code compliance, accessibility and approval as applicable for each project.

11. For projects requiring building permits to be issued by the County of Fresno Development Services Division, submit three (3) sets of the completed plans and calculations for plan check. The CONSULTANT shall be responsible for supplying all supporting documentation required to obtain all permits as directed by Fresno County Development Services. It is the intent that the CONSULTANT shall be responsible to provide and process all drawings and data required to issue permits and approvals by Federal, State, County, City and/or any other Government or Utility Company approvals. Review and/or permit fees shall be reimbursed to the CONSULTANT on a dollar for dollar basis with no mark-up. Fresno County Development Services fees, Division of State Architect fees and Pacific Gas and Electric fees shall be paid for directly by the COUNTY.

12. If required by approval agencies, such as the CSFM, for the construction of each project, submit to the COUNTY using the appropriate agency forms, project background information and recommended testing and inspection list for materials to be used for each project, identifying type, quantity, frequency, and schedule.

12. Modify plans as required to obtain plan check approval.

D. Phase 4, Bidding and Award:

The CONSULTANT shall:

1. Deliver to the COUNTY, two (2) weeks prior to the bid advertising date (which will be determined by COUNTY), the final completed original drawings and specifications for COUNTY printing and distribution of bid sets to interested contractors. The original drawings and specification index sheet shall be stamped by a seal with CONSULTANT and subconsultant license numbers and/or signed in accordance with the California Business and Professions Code.

2. Submit a list of general and specialty contractors who may be interested in bidding on this project.

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3. Attend the pre-bid conference scheduled by the COUNTY.

4. Submit to the COUNTY for review and approval any addenda deemed necessary. Addenda, if any, shall be submitted no later than seven (7) working days prior to the scheduled bid opening.

5. Assist the COUNTY in evaluating the base bids and alternate bid items received.

6. Delete or otherwise change portions of the proposed construction work at the request of the County if the lowest bid proposal for the construction contract exceeds the COUNTY approved opinion of probable construction cost (which will include the CONSULTANT's design contingency amount approved by the COUNTY) by 10% or more, and if the COUNTY rejects all bids. The CONSULTANT shall revise the plans and specifications to comply with such modifications and shall assist the COUNTY in obtaining new proposals from contractors at no additional cost to the COUNTY. Modifications shall be completed on a time schedule commensurate with the scope of the change and as set forth by the COUNTY.

E. Phase 5, Construction Observation:

The CONSULTANT shall:

1. Attend the preconstruction conference scheduled by the COUNTY.

2. Provide construction observation including but not limited to:

a. Making recommendations to the COUNTY on all claims of the COUNTY or construction contractor (hereinafter called "CONTRACTOR") and all other matters relating to the execution and progress of work, including interpretation of the CONSULTANT's contract documents.

b. Except for color boards, within seven (7) working days of COUNTY's request, reviewing and making recommendations for samples, schedules, shop drawings, and other submissions for general conformance with the design concept of the project and for general compliance with the plans and specifications and information provided by the CONSULTANT's contract documents.

c. Within two (2) working days of COUNTY's request for information (RFI),

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responding to the COUNTY Construction Engineer or CONTRACTOR, through the COUNTY Construction Engineer with information and/or drawings needed from CONSULTANT in order to clarify the intent of the construction contract plans and specifications of the project. CONSULTANT shall review CONTRACTOR's cost proposals for all change orders associated with any additional work as may be necessary by the RFI clarification.

d. Recommending and assisting in the preparation of necessary change orders, with supporting documentation, calculations and opinion of probable construction cost, for review and issuance of change orders by the COUNTY Construction Engineer to obtain appropriate agency acceptance and approval.

(1) Drawings and work necessary to delineate the COUNTY's changes to the construction contract or to make modifications as directed by the Board of Supervisors, which shall be made as directed by the Construction Engineer.

(2) Notwithstanding the foregoing, where the change order arises as a result of an error or omission of the CONSULTANT, the CONSULTANT shall not be compensated for time spent or cost incurred in efforts connected with the correction thereof. In such event, the costs incurred by COUNTY for rework of installed work shall be assessed upon the CONSULTANT's contract payments.

(3) Assist COUNTY, at COUNTY's express, written authorization, with any claim resolution process involving CONTRACTOR and COUNTY as specified hereunder, including serving as a witness in connection with any public hearings or legal proceeding, including dispute resolutions required by law. The parties recognize that this clause is provided as a means of expediting resolution of claims among the CONTRACTOR, COUNTY and CONSULTANT. However, it is understood the CONTRACTOR is not an intended third party beneficiary of this clause. Compensation for these services under this subparagraph III.E.2.d.(3), shall be provided under Article V.C of this Agreement, subject to the following:

(a) COUNTY may believe that CONSULTANT's work under this Agreement is connected with errors, or omissions, or problems related to a claim. As a result and upon notice of same by COUNTY, CONSULTANT's payment request for such services

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shall be held in suspense by COUNTY until final determination in accordance with Article IX, “Errors or Omission Claims and Disputes” of this Agreement, or by a court of law of the proportion that CONSULTANT’s fault bears to the fault of all parties concerned.

(b) Such amounts held in suspense, pending the final determination as to the CONSULTANT’s proportional fault, shall not be paid to CONSULTANT. However, the appropriate percentage of such amount held in suspense shall be paid to CONSULTANT when, once a final determination has been made, whether pursuant to Article IX, (“Errors or Omission Claims and Disputes”) of this Agreement, or by a court of law, CONSULTANT thereafter submits a proper invoice to the Department of Public Works, which then shall evaluate and approve the invoice in accordance with Article V.C of this agreement..

3. At intervals appropriate to the stage of construction, or as otherwise deemed necessary by CONSULTANT, visit the site of the project as necessary to become familiar generally with the progress and quality of the work and to determine that the work is proceeding in general accordance with the contract documents. CONSULTANT shall not be required to make exhaustive or continuous on-site inspections but shall give direction to the Construction Inspector as hereinafter more specifically provided.

4. CONSULTANT shall not be responsible for the CONTRACTOR’s failure to carry out the construction work in accordance with the contract documents, however, CONSULTANT shall immediately advise the COUNTY Representative of any known or observed deviation from the contract documents. CONSULTANT shall not have control over or charge of, and shall not be responsible for construction means, methods, techniques, sequence, or procedure, or for the safety precautions, programs, or equipment in use of connection with the work, since these are solely the CONTRACTOR’s responsibility under the contract for construction.

5. Based on CONSULTANT’s visits to the site, CONSULTANT shall keep the COUNTY informed through written reports as to the progress of the work, shall advise the COUNTY of defects and deficiencies of the work of contractors, and may recommend that the COUNTY reject work as failing to conform to the contract documents.

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6. Conduct site visits which shall include, but not be limited to, on-site inspections to determine the dates of substantial completion and final completion and to recommend to the COUNTY its acceptance of the work, for the filing of the notice of completion and issuance of final certificate for payment.

7. Conduct a “project shakedown” and staff orientation for the completed project.

F. Phase 6, Building Systems Testing and Staff Orientation:

1. At a minimum, twenty (20) working days prior to the completion of the Project the CONSULTANT and his/her subconsultants shall begin conduction testing of all the building’s mechanical, plumbing, electrical and other systems included within the design contract.

2. The CONSULTANT and his/her subconsultants shall develop a punch-list of items needing completion, repair or replacement to be delivered to the COUNTY’s Project Manager. A minimum of three (3) separate punch-list visits shall be included.

3. The CONSULTANT and his/her subconsultants shall conduct a building maintenance staff orientation and training when the building systems are deemed complete and in working order by the Project Manager.

G. Phase 7, Post-Construction Services:

The CONSULTANT shall:

1. Review and forward to the COUNTY two (2) copies of Operations and Maintenance Manuals to be furnished by the CONTRACTOR.

2. Inform the COUNTY of all written guarantees required of the CONTRACTOR by the CONSULTANT’s technical specifications or special conditions.

3. Return to COUNTY all plans borrowed from COUNTY by CONSULTANT.

4. Require through the construction contract specifications that record drawings be prepared by the CONTRACTOR and submitted to the COUNTY for acceptance by the Construction Inspector and CONSULTANT. However, upon completion of the project, CONSULTANT shall transfer the CONTRACTOR’s record drawing changes onto the CONSULTANT’s original drawings. The complete record drawing set shall remain at all times

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the property of the COUNTY. Changes shall be identified by cloud markings and shall identify date of change and its source, such as from addenda, change order, or clarification. CONSULTANT shall have no responsibility for the accuracy of information provided, either by the CONTRACTOR or by the Construction Inspector, for transfer to record drawings.

5. If construction plans have been prepared with a CAD system, record drawings in the form of .dxf or .dwg files shall be furnished and delivered to Department of Public Works and Planning in addition to reproducibles. Such .dxf or .dwg files shall be furnished on compact disk (CD-ROM).

6. Participate fully, aligned with and not adverse to the interests of the COUNTY, upon request, in the early settlement discussions of construction claims resolution issues. In the event such participation is requested of CONSULTANT, CONSULTANT shall be paid for such services as provided under the provisions of Article V of this Agreement for the time spent in such participation. All provisions of subparagraph III.E.2.d (3). of this Agreement shall apply to CONSULTANT's participation in any early settlement discussions required by this Section III.F. CONSULTANT'S participation in this process does not preclude the COUNTY's right to make an error and omissions claim against the CONSULTANT.

7. No final payment to the CONSULTANT will be issued until the services of this phase have been performed and errors and omissions attributed to the CONSULTANT have been resolved.

IV. COUNTY'S OBLIGATIONS:

The COUNTY will, for each project:

A. Compensate the CONSULTANT as provided in this Agreement.

B. Provide a "COUNTY Representative" who will represent the COUNTY and who will coordinate with the CONSULTANT as appropriate to facilitate CONSULTANT'S performance of its obligations under this Agreement. The COUNTY Representative will be the Capital Projects Division Manager or his/her designated representative through award of the construction contract and the COUNTY Construction Engineer after award of the construction contract to completion of the project by the CONTRACTOR. The CONSULTANT shall

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communicate and coordinate with the COUNTY Representative who will provide the following services as appropriate for each project:

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

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

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

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

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

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

V. COMPENSATION:

A. Total Fee:

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

2. The rates listed herein are to remain in effect for the duration of this Agreement. Rates may be renegotiated annually after the first anniversary from the date of execution of this Agreement at CONSULTANT's request. CONSULTANT's request for annual rate adjustments may not exceed the Engineering News Record's Construction Cost Index or the California

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Consumer Price Index as published by the California Department of Industrial Relations for the year, whichever is lower.

B. Basic Fee:

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

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

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

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

C. Payments:

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

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submit separate invoices for each phase of each project for work being performed under this contract. Invoices shall be forwarded to:

Stuart G. Seiden, Division Manager
Capital Projects Division
Fresno County Public Works & Planning Department
2220 Tulare Street, Suite 610
Fresno, CA 93721-2104

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

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

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

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

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

7. In the event the COUNTY reduces the scope of a specific project, the

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

VI. COMPENSATION RECORDS:

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

VII. RETENTION FROM EARNED COMPENSATION:

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

VIII. AUDITS, ACCOUNTING AND INSPECTIONS ACCESS:

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

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

C. The CONSULTANT shall be subject to the examination and audit of the Auditor

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General for a period of three (3) years after final payment under this Agreement (Government Code Section 8546.7).

D. The CONSULTANT shall certify accounts when required by the COUNTY.

IX. ERRORS OR OMISSION CLAIMS AND DISPUTES:

A. Definitions:

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

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

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

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

2. The Capital Projects Division Manager or his/her designated representative of and CONSULTANT shall meet and confer and attempt to reach agreement on any dispute, including what damages have occurred, the measure of damages and what proportion of

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damages, if any, shall be paid by either party. The parties agree to consult and consider the use of mediation or other form of dispute resolution prior to resorting to litigation.

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

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

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

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

E. When a claim by either party has been made alleging the CONSULTANT's negligent error, act, or omission, the COUNTY Capital Projects Division Manager or his/her

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designated representative and the CONSULTANT shall meet and confer within twenty-one (21) days after the written notice of the claim has been provided.

X. JOINDER OF PARTIES:

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

XI. CONSULTANT'S OBLIGATIONS RELATING TO CONSTRUCTION CLAIMS:

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

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

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

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

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

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

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

5. Suggest a compromise.

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

XII. INDEPENDENT CONTRACTOR:

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

B. Because of its status as an independent contractor, CONSULTANT shall have absolutely no right to employment rights and benefits available to COUNTY employees. CONSULTANT shall be solely liable and responsible for providing to, or on behalf of its employees all legally required employee benefits. In addition, CONSULTANT shall be solely responsible and save COUNTY harmless from all matters relating to payment of

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CONSULTANT's employees, including compliance with Social Security, withholding, and all other regulations governing such matters. It is acknowledged that during the term of this Agreement CONSULTANT may be providing services to others unrelated to the COUNTY or to this Agreement.

XIII. PARTIES BOUND BY AGREEMENT:

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

XIV. REQUIRED APPROVALS:

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

XV. COMPLIANCE WITH LAWS:

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

B. CONSULTANT shall submit a current version of its Illness and Injury Prevention Plan (IIPP), applicable safety programs and contact information for the CONSULTANT's responsible person for these programs to the COUNTY Representative at the time this AGREEMENT is signed by the CONSULTANT. Throughout the term of this AGREEMENT, Consultant shall provide updates to the safety plans and programs to the COUNTY Representative as they are implemented.

XVI. GOVERNING LAW:

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

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Fresno County.

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

XVII. AMENDMENTS:

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

XVIII. CONSULTANT'S LEGAL AUTHORITY:

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

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

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

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

XIX. HOLD HARMLESS:

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

B. COUNTY and CONSULTANT hereby declare their mutual intent to cooperate in the defense of any claim, suit, or other action alleging liability, arising from the performance or

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failure to perform of any COUNTY construction contractor or subcontractor in connection with any project for which CONSULTANT has been retained under Article III above. Such cooperation may include an agreement to prepare and present a cooperative defense after consultation with CONSULTANT's professional liability insurance carrier.

XX. LIABILITY INSURANCE:

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

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

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

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

4. Professional Liability Insurance:

a. Professional Liability Insurance with limits of not less than one million dollars (\$1,000,000) per occurrence, three million dollars (\$3,000,000) annual aggregate, and with a deductible not to exceed fifty thousand dollars (\$50,000). A deductible greater than fifty thousand dollars (\$50,000) will be acceptable to the COUNTY receiving satisfactory, certified information of the CONSULTANT's ability to support such a deductible. The financial ability

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to support the difference between fifty thousand dollars (\$50,000) and the greater deductible amount requested by the CONSULTANT shall be guaranteed by any of the following:

1). Cash deposit with a trustee bank.

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

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

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

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

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

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

C. The COUNTY, its officers, agents and employees, individually and collectively, shall be named as an additional insured under the policy for Commercial General Liability

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

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

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

XXI. OWNERSHIP OF DOCUMENTS:

A. CONSULTANT understands and agrees that COUNTY shall retain full ownership rights of the drawings and the work-product of CONSULTANT for each project, to the fullest extent permitted by law. In this regard, CONSULTANT acknowledges and agrees that CONSULTANT's services are on behalf of COUNTY and are "works made for hire," as that term is defined in copyright law, by COUNTY; that the drawings and work-product to be prepared by CONSULTANT are for the sole and exclusive use of COUNTY, and shall be the sole property of COUNTY and its assigns, and the COUNTY and its assigns shall be the sole owner of all patents, copyrights, trademarks, trade secrets and other contractual and intangible rights of any kind or nature in connection therewith; that all the contractual or intangible rights of any kind or nature, title, and interest in and to the drawings and work-product will be transferred to COUNTY by CONSULTANT, and CONSULTANT will assist COUNTY to obtain and enforce patents, copyrights, trademarks, trade secrets, and other contractual and intangible rights relating to said drawings and work-product; that COUNTY shall be and become the owner of such drawings and work product, free and clear of any claim by CONSULTANT or anyone claiming any right through CONSULTANT. CONSULTANT further acknowledges and agrees that COUNTY's ownership rights in such drawings and work product shall apply regardless of whether such drawings or work product, or any copies thereof,

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are in the possession of CONSULTANT, or any other person, firm, corporation, or entity. For the purpose of this Agreement the terms "drawings and work-product" shall mean all reports and study findings commissioned to develop the design of each project, drawings and schematic or preliminary design documents of each project, certified reproducibles of the original final construction contract drawings of each project, specifications of each project, the approved opinion of probable construction cost of each project, record drawings of each project, as-built plans of each project, and discoveries, developments, designs, improvements, inventions, formulas, processes, techniques, or specific know-how and data generated or conceived or reduced to practice or learning by CONSULTANT, either alone or jointly with others, that result from the tasks assigned to CONSULTANT by COUNTY under this Agreement. County acknowledges and agrees that details, concepts, ideas, devices, configurations, and designs previously developed or used by the CONSULTANT, or developed by the CONSULTANT without COUNTY compensation, shall remain the property of the CONSULTANT and use is granted to COUNTY only for the specific project undertaken under this agreement.

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

C. If the project is terminated at the completion of the construction document phase of any project, a reproducible copy and electronic files of final construction contract drawings (both .dwg and .plt files), specifications, and approved opinion of probable construction cost shall be submitted by CONSULTANT to COUNTY.

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

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

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

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

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

13 **XXII. TERM AND TIME OF COMPLETION:**

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

23 B. CONSULTANT shall diligently proceed with the agreed scope of services and shall
24 provide such services in a timely manner. Failure of the CONSULTANT to meet any deadline
25 listed in the above-referenced schedules once such failure continues more than seven (7)
26 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 Section XXIII.C.

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

XXIII. TERMINATION OF AGREEMENT:

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

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

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

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

D. In no event shall any payment by the COUNTY constitute a waiver by the COUNTY of any breach of this Agreement or any default which may then exist on the part of the

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CONSULTANT, nor shall such payment impair or prejudice any remedy available to the COUNTY with respect to the breach or default. The COUNTY shall have the right to demand of the CONSULTANT the repayment to the COUNTY of any funds disbursed to the CONSULTANT under this Agreement, which, in the judgment of the COUNTY and as determined in accordance with the procedures of Article IX ("Errors or Omissions Claims and Disputes"), were not expended in accordance with the terms of this Agreement. The CONSULTANT shall promptly refund any such funds upon demand.

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

XXIV. CONFLICT OF INTEREST:

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

XXV. DISCLOSURE OF SELF-DEALING TRANSACTIONS

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

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

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transaction or immediately thereafter.

XXVI. ENTIRE AGREEMENT:

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

XXVII. SEVERABILITY:

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

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ARCHITECTURAL CONSULTANT SERVICES AGREEMENT

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

///

///

CONSULTANT

COUNTY OF FRESNO

BY: _____

BY: _____

TITLE: _____

DEBORAH A. POOCHIGIAN, CHAIRMAN
BOARD OF SUPERVISORS

_____, CA _____

REVIEWED AND RECOMMENDED
FOR APPROVAL

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

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

BY: _____
DEPUTY COUNTY COUNSEL

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

Budgets: Various

BY: _____
DEPUTY

County of Fresno Ordinance**Chapter 4.10****SELECTION of ARCHITECTS, ENGINEERS and OTHER PROFESSIONALS****Sections:****4.10.010 Purpose****4.10.020 Definitions****4.10.030 Procedures implementing selections of consultants****4.10.010 Purpose.**

- A. Section 4526 of the California Government Code provides that the selection of private firms providing professional architectural, engineering, environmental, land surveying, or construction project management services shall be on the basis of demonstrated competence and professional qualifications necessary for the satisfactory performance of the services required. Section 4526 further provides that in order to implement this method of selection, local agencies contracting for such services may adopt by ordinance procedures that assure the engagement of such services on the basis of demonstrated competence and qualifications for the types of services to be performed and at fair and reasonable prices to the local agency. Such procedures shall assure maximum participation of small business firms, and specifically prohibit practices which might result in specified unlawful activities.
- B. It is the purpose of this chapter to adopt procedures which implement the selection method of Government Code Section 4526, and for the selection of consultants previously established by board policy.
- C. It is the finding of the board of supervisors of Fresno County that the procedures herein implement the method for selection of professional services identified in Government Code Section 4526, and that such procedures assure the engagement of such services on the basis of demonstrated competence and qualifications necessary for the satisfactory performance of the type of services to be performed, and at a fair and reasonable price to Fresno County.

(Ord. 90-028 § 1(part).)

4.10.020 Definitions.

The following words when used in this chapter shall have meaning ascribed to them, and all other words and phrases shall be given their ordinary meaning:

- A. “Board” means the board of supervisors of Fresno County.
- B. “Consultant” means an architect, professional engineer, environmental firm, land surveying firm, or construction project management firm, as used in Government Code Section 4526.
- C. “County” means the county of Fresno or its authorized representative.
- D. “Department” means the Fresno County Public Works and Development Services Department.
- E. “Policy” refers to that certain policy adopted by the Board of Supervisors, entitled “Policy for Selection and Compensation of Architectural/Engineering Consultants,” last revised on April 25, 1990, as amended from time to time.

(Ord. 90-028 § 1 (part).)

County of Fresno Ordinance**4.10.030 Procedures implementing selection of consultants.**

A. 1. General. The procedures herein implement the selection of consultants on the basis of demonstrated competence and professional qualifications necessary for the satisfactory performance of the services required, by assuring engagement of services on the basis of demonstrated competence and professional qualification for the type of services to be performed and at a fair and reasonable price to the county. The general framework for each such procedure is:

- a. County shall have obtained pertinent information from consultants to be used to determine those consultants who have the demonstrated competence and professional qualifications necessary for satisfactory performance of the types of services to be performed. Such consultants are placed in the “qualified pool.”
- b. County shall then use pertinent information obtained from the consultants in the qualified pool for evaluation in accordance with the evaluation criteria set forth in the policy. Consultants passing evaluation are placed in the “candidate pool.”
- c. County shall obtain estimated fees from consultants who are placed in the “candidate pool.”
- d. County shall determine, based upon the estimated fees, those consultants from the “candidate pool” who can perform services at a price which is a fair and reasonable price to the county. Such consultants are placed in the “consultant pool” and are referred to as “finalists.”
- e. County shall engage a consultant from among the finalists, based upon the terms and conditions most advantageous to the county, to perform the services.

There shall be three procedures for the engagement of consultants: (1) Request for proposal (“RFP”); (2) informal proposals; or (3) contract extension. The applicability of a procedure to a public works project depends upon the construction costs or the estimated consultant fees involved for that project. Refer to the policy for the monetary parameters that apply to each procedure.

2. Requests for proposals. RFP’s are distributed to those consultants who previously expressed an interest in similar projects and are listed by the department for that purpose. Additional consultants may be added to that list at any time by written request.

Under this procedure, for projects identified as “large” projects in the policy, consultants are required to submit formal proposals setting forth their qualifications as well as detailed information on provision of project-related services. Consultants are provided a design program or description of the proposed project and needed services. Consultants are required to answer questions developed by the department. Responses will be utilized to determine those consultants with the demonstrated competence and professional qualifications necessary for the satisfactory performance of the types of services.

Responsive proposals shall be submitted to the department. The department will refer all responsible proposals to an evaluation committee for screening.

The evaluation committee shall then determine those consultants who have the demonstrated competence and professional qualifications necessary for the satisfactory performance of the types of services to be performed. Such consultants are placed in the qualified pool. The evaluation committee will next evaluate all qualified

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consultants according to the evaluation criteria set forth in the policy. Such consultants are placed in the candidate pool. Consultants placed in the candidate pool shall be required to provide an estimated fee for the services to be performed, for a determination of those consultants who will perform services at a price which is a fair and reasonable price to the county. The evaluation committee shall then determine, based upon the estimated fee provided, those consultants within the candidate pool who shall perform the services at a price which is a fair and reasonable price to the county. Such consultants are placed in the consultant pool and are referred to as “finalists.”

After the finalists have been identified, the evaluation committee will recommend to the board for selection the consultant(s) among the finalists who shall provide the services upon terms and conditions most advantageous to the county. Upon direction by the board, the department will enter into negotiation with the selected consultant over the final terms and conditions for the engagement of such services.

3. Informal Proposals. Under this procedure, a consultant is selected from a list of qualified candidates. Interested consultants may be placed on the list by submitting a statement of qualifications and performance data on a county supplied form. The purpose of this statement is to obtain all pertinent information required of consultants for placement in a pool of consultant candidates with demonstrated competence and professional qualifications necessary for the types of services to be performed (the “qualified pool”). The department may, however, from time to time request additional information as deemed necessary or desirable. Statements are solicited by the department on an annual basis, but may be updated by participating firms at any time. Additional interested firms may be added to the list at any time by submitting the completed county supplied form.

Committee Selection. For projects identified as “intermediate” projects in the policy, an evaluation committee shall determine a candidate from the qualified pool based upon the evaluation criteria set forth in the evaluation committee shall then solicit an estimated fee from this candidate consultant. The department will then determine if this consultant shall perform services at a fair and reasonable price.

The evaluation committee will then select the consultant who shall provide the services upon terms and conditions most advantageous to the county. The department will enter into negotiations with the selected consultant over the final terms and conditions. The agreement will then be submitted to either the board of supervisors or the purchasing agent for approval, depending upon the amount of the fee.

Department selection. For projects identified as “small” projects in the policy, the department shall determine a candidate from the qualified pool based upon the evaluation criteria set forth in the policy. The department shall then solicit an estimated fee from this candidate consultant. The department will then determine if this consultant shall perform services at a fair and reasonable price.

The department will then select the consultant who shall provide the services upon the terms and conditions most advantageous to the county. The department will enter into negotiations with the selected consultant over the final terms and conditions. The agreement will then be submitted to the purchasing agent for approval.

4. Extension of Existing Contract or Multiphase Contracts. It may be more efficient or economical in certain cases to extend an existing contract or to enter into a multiphase

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or multiyear contract. Extension of an existing contract is limited to cases where services are logically connected to an ongoing contract and should be constructed as a single project. A multiphase contract is negotiated under the RFP procedure but may not include feasibility studies, master plans or programming services. Negotiation for such services may be required at the end of each phase and prior to proceeding to the next phase. A multiyear contract is negotiated at the time of the original agreement to permit the county the option to extend the contract into future years.

Agreements for these services are to be negotiated by the department when appropriate and to be submitted to the board of supervisors or the purchasing agent for approval.

- B. Prohibited Practices. County employees shall not engage in practices which might result in unlawful activity including, but not limited to, rebates, kickbacks or unlawful consideration.

In addition, county employees shall not participate in the selection process when those employees have a relationship with a person or business entity seeking a contract under this chapter which would subject those employees to the prohibition of Section 87100 of the Government Code.

- C. Small Business Participation. The county departments involved in issuing the RFP or in seeking to engage professionals to provide consulting services herein shall evaluate whether small business firms, as defined by the State Director of General Services pursuant to Section 14837 of the Government Code, could be especially qualified for the proposed project. If the departments so conclude, they shall endeavor to provide a copy of each announcement for such projects to such small business firms that have indicated an interest in receiving any such information. A failure of a department or departments to provide a copy of an announcement to any firm or firms shall not operate to invalidate any contract herein.

(Ord. 90-028 § 1 (part).)

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