

1 **SAMPLE AGREEMENT**

2

3 THIS AGREEMENT is made and entered into this \_\_\_\_ day of \_\_\_\_\_, by and  
 4 between the COUNTY OF FRESNO, a Political Subdivision of the State of California, hereinafter  
 5 referred to as "COUNTY", and [ ] whose address is [ ], hereinafter referred to as  
 6 "CONTRACTOR".

7 WITNESSETH:

8 WHEREAS, the COUNTY requires specialized consultant services to conduct the  
 9 State-required detection monitoring services for the American Avenue Landfill, Coalinga Disposal  
 10 Site, and Southeast Regional Solid Waste Landfill; and

11 WHEREAS, the CONTRACTOR is qualified and willing to provide the COUNTY the  
 12 professional services required for this project;

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

15 1. OBLIGATIONS OF THE CONTRACTOR

16 **A. Summary of Tasks:**

17 Task 1 Coordinate with COUNTY's contracted laboratory for electronic delivery of  
 18 laboratory analytical data;

19 Task 2 Preparation and submittal of semi-annual detection monitoring reports and  
 20 annual monitoring summary report for the American Avenue Landfill.

21 Address issues from regulatory agencies as defined in the paragraph below;

22 Task 3 Preparation and submittal of semi-annual detection monitoring reports and  
 23 annual monitoring summary report for the Coalinga Disposal Site. Address  
 24 issues from regulatory agencies as defined in the paragraph below;

25 Task 4 Preparation and submittal of semi-annual detection monitoring reports and  
 26 annual monitoring summary report for the Southeast Regional Solid Waste  
 27 Landfill. Address issues from regulatory agencies as defined in the  
 28 paragraph below.

1 CONTRACTOR is expected to provide recommendations for regulatory compliance  
2 and notifications based on site specific Waste Discharge Requirements (WDR) and sample  
3 analysis for each respective site. Additionally, CONTRACTOR is expected to respond to all  
4 comments from the Regional Water Quality Control Board (RWQCB) and all other reviewing  
5 agencies. Comments are considered to include changes to the report submitted based on errors  
6 or omissions, and/or preference in wording descriptions by the RWQCB and all other reviewing  
7 agencies. The regulatory compliance and notification recommendations and responses shall be at  
8 no additional cost to the COUNTY and shall be completed in the time frame specified by the  
9 RWQCB and/or all other reviewing agencies.

10 **B. Description of Tasks:**

11 Task 1 – Coordinate with COUNTY’s contracted laboratory for electronic delivery of  
12 laboratory analytical data

13 CONTRACTOR shall make arrangements with COUNTY’s contracted laboratory to  
14 have all laboratory analytical data delivered to CONTRACTOR. Preferred method of transfer and  
15 format are at the CONTRACTOR’s discretion, providing that the agreed upon format is compatible  
16 with COUNTY software and conforming to AB 2886 GeoTracker requirements in accordance with  
17 Title 23 of the California Code of Regulations (CCR), § 3893 and all other applicable laws and  
18 regulations. The contracted laboratory is obligated to the COUNTY through an Agreement, with  
19 deadlines to be met for submittal of necessary analytical data.

20 Task 2 – Detection Monitoring Reports for American Avenue Landfill

21 a) *Semi-Annual Monitoring Reports*

22 Each report is to be prepared in accordance with the Monitoring and Reporting  
23 Program No. R5-2005-0067 of WDR Order R5-2005-0067 (attached hereto as Exhibit “A”) and in  
24 full compliance with all applicable provisions of Title 27 of the CCR. Said report will be prepared in  
25 three (3) hard copies. Each copy of the report will include a compact disc (CD) with appropriate  
26 data in the format detailed in the RWQCB letter dated 8 November, 2000 (attached hereto as  
27 Exhibit “D”) as well as all tables included in the report in Excel format and one (1) copy of the  
28 report in its entirety in Portable Document File (PDF) format. A fourth copy of this CD shall also be

1 provided separately to the COUNTY. The spine of the hard copies will clearly display the title of  
2 the report and reporting period.

3 *b) Annual Monitoring Summary Report*

4 Each report is to be prepared in accordance with Exhibit "A". Said report will be  
5 prepared in three (3) hard copies. Each copy of the report will include a CD with appropriate data  
6 in the format detailed in the RWQCB letter dated 8 November, 2000 (attached hereto as Exhibit  
7 "D") as well as all tables included in the report in Excel format and one (1) copy of the report in its  
8 entirety in Portable Document File (PDF) format. A fourth copy of this CD shall also be provided  
9 separately to the COUNTY. The spine of the hard copies will clearly display the title of the report  
10 and reporting period. The second semi-annual period report and annual report for the respective  
11 year may be combined into a single report submittal.

12 *c) Compilation of Information in the Required Format for Electronic Submittal*  
13 *(GeoTracker)*

14 All reports are to follow the format outlined in the State Water Resources Control  
15 Board's (SWRCB) website:  
16 [http://www.waterboards.ca.gov/ust/cleanup/electronic\\_reporting/index.html](http://www.waterboards.ca.gov/ust/cleanup/electronic_reporting/index.html) (see link on website  
17 entitled "Electronic Reporting Roles and Responsibilities"), and as required by Title 23 of the CCR,  
18 Division 3, Chapter 30 (see particularly Article 2 of said Chapter 30, entitled "Electronic Submittal  
19 of Information"), and by Title 27 of the CCR, Division 3 (also entitled "Electronic Submittal of  
20 Information"). CONTRACTOR also shall consider the letter dated 12 January, 2005 from the  
21 RWQCB regarding electronic submittal of information, a copy of which is attached hereto as  
22 Exhibit "E".

23 *d) Submittal of Data and Reports*

24 Reports shall be submitted to the COUNTY for review and approval. Final data also  
25 shall be submitted to the COUNTY for approval, and then the approved data shall be uploaded by  
26 CONTRACTOR into the GeoTracker system, in accordance with the regulations promulgated  
27 pursuant to California Assembly Bill 2886 (Cal. Stats 2000, Chapter 727, referenced herein as "AB  
28 2886"), which regulations are set forth in Title 23 and in Title 27 of the CCR, as referenced above.

1                    Task 3 – Detection Monitoring Reports for Coalinga Disposal Site

2                    a) *Semi-Annual Monitoring Reports*

3                    Each report is to be prepared in accordance with the Monitoring and Reporting  
4 Program No. 5-00-233 of WDR Order 5-00-233 (attached hereto as Exhibit “B”) and in full  
5 compliance with Title 27 of the CCR. Said report will be prepared in three (3) hard copies. Each  
6 copy of the report will include a CD with appropriate data in the format detailed in Exhibit “D” as  
7 well as all tables included in the report in Excel format and one (1) copy of the report in its entirety  
8 in Portable Document File (PDF) format. A fourth copy of this CD shall also be provided  
9 separately to the COUNTY. The spine of the hard copies will clearly display the title of the report  
10 and reporting period.

11                    b) *Annual Monitoring Summary Report*

12                    Each report is to be prepared in accordance with Exhibit “B”. Said report will be  
13 prepared in three (3) hard copies. Each copy of the report will include a CD with appropriate data  
14 in the format detailed in Exhibit “D” as well as all tables included in the report in Excel format and  
15 one (1) copy of the report in its entirety in Portable Document File (PDF) format. A fourth copy of  
16 this CD shall also be provided separately to the COUNTY. The spine of the hard copies will  
17 clearly display the title of the report and reporting period. The second semi-annual period report  
18 and annual report for the respective year may be combined into a single report submittal.

19                    c) *Compilation of Information in the Required Format for Electronic Submittal*  
20                    *(GeoTracker)*

21                    All reports are to follow the format outlined in the SWRCB’s website and as required  
22 by Title 23 and Title 27 of the CCR, as referenced hereinabove.

23                    d) *Submittal of Data and Reports*

24                    Reports shall be submitted to the COUNTY for review and approval. Final data also  
25 shall be submitted to the COUNTY for approval, and then the approved data shall be uploaded by  
26 CONTRACTOR into the GeoTracker system, in accordance with AB 2886 and the implementing  
27 regulations set forth in Title 23 and Title 27 of the CCR, as referenced hereinabove.

28                    Task 4 – Detection Monitoring Reports for Southeast Regional Solid Waste Landfill

1           a) *Semi-Annual Monitoring Reports*

2           Each report is to be prepared in accordance with the Monitoring and Reporting  
3 Program No. 99-124 of WDR Order 99-124 (attached hereto as Exhibit "C") and in full compliance  
4 with all applicable provisions of Title 27 of the CCR. Said report will be prepared in three (3) hard  
5 copies. Each copy of the report will include a CD with appropriate data in the format detailed in  
6 Exhibit "D" as well as all tables included in the report in Excel format and one (1) copy of the report  
7 in its entirety in Portable Document File (PDF) format. A fourth copy of this CD shall also be  
8 provided separately to the COUNTY. The spine of the hard copies will clearly display the title of  
9 the report and reporting period.

10           b) *Annual Monitoring Summary Report*

11           Each report is to be prepared in accordance with Exhibit "C". Said report will be  
12 prepared in three (3) hard copies. Each copy of the report will include a CD with appropriate data  
13 in the format detailed in Exhibit "D" as well as all tables included in the report in Excel format and  
14 one (1) copy of the report in its entirety in Portable Document File (PDF) format. A fourth copy of  
15 this CD shall also be provided separately to the COUNTY. The spine of the hard copies will  
16 clearly display the title of the report and reporting period. The second semi-annual period report  
17 and annual report for the respective year may be combined into a single report submittal.

18           c) *Compilation of Information in the Required Format for Electronic Submittal*  
19           *(GeoTracker)*

20           All reports are to follow the format outlined in the SWRCB's website and as required  
21 by Title 23 and Title 27 of the CCR, as referenced hereinabove.

22           d) *Submittal of Data and Reports*

23           Reports shall be submitted to the COUNTY for review and approval. Final data also  
24 shall be submitted to the COUNTY for approval, and then the approved data shall be uploaded by  
25 CONTRACTOR into the GeoTracker system, in accordance with AB 2886 and the implementing  
26 regulations set forth in Title 23 and Title 27 of the CCR, as referenced hereinabove.

27           All reports required under Tasks 2 through 4, inclusive, shall be submitted to the  
28 COUNTY within twenty-five (15) working days of CONTRACTOR's receipt of all appropriate data.

1 (In the event the COUNTY's contracted laboratory fails to send all of its analytical data according  
2 to schedule, the CONTRACTOR shall notify the COUNTY promptly of such failure.) Should the  
3 CONTRACTOR not submit a report within the deadline for its submission as specified herein, the  
4 CONTRACTOR will incur a penalty for each late report as follows: twenty-percent (20%) of the  
5 report cost for the first late report; forty-percent (40%) of the report cost for the second late report;  
6 and fifty-percent (50%) of the report cost for the third and each successive late report. The  
7 penalties are cumulative and shall be applicable as to all reports required during any contract year  
8 under Tasks 2 through 4, inclusive. The specified percentages will reset at the beginning of a new  
9 contract year.

10 CONTRACTOR understands and agrees that the COUNTY shall retain full ownership  
11 rights of the reports and the work-product of CONTRACTOR for the project, to the fullest extent  
12 permitted by law. All documents, including electronic data files, required in performing services  
13 under this Agreement shall be submitted to, and shall remain the property of the COUNTY.

14 CONTRACTOR is expected to provide recommendations to COUNTY for regulatory  
15 compliance and notifications based on site specific Waste Discharge Requirements (WDR) and  
16 sample analysis for each respective site. Additionally, CONTRACTOR is expected to respond to  
17 all comments from the Regional Water Quality Control Board (RWQCB) and all other reviewing  
18 agencies. The term "comments" in that context shall include requested changes to the report as  
19 initially submitted, whether based on perceived errors or omissions, and/or the commenting  
20 agency's preference in word choice or descriptions. These responses shall be provided by  
21 CONTRACTOR at no additional cost to the COUNTY and shall be completed in the time frame  
22 specified by the RWQCB and/or all other reviewing agencies.

23 If this project requires services that are not part of the Basic Services specified in this  
24 Article 1 of the Agreement, the CONTRACTOR may be requested by the COUNTY to provide  
25 Extra Services. These Extra Services must be pre-approved and authorized in writing by the  
26 COUNTY Representative before work can commence. Extra Services provisions are included in  
27 Article 5 "Compensation/Invoicing" of this Agreement.

28 **C. CONTRACTOR's Basic Fee Services:**

1 Throughout the length of the project, the CONTRACTOR shall consult, communicate  
2 and meet with COUNTY's project committee and staff as often as necessary in order to verify,  
3 refine, and complete the project requirements and review the progress of the project.  
4 CONTRACTOR shall prepare brief minutes of the meetings attended and shall provide a copy of  
5 all such minutes to the COUNTY. The list of bid conditions and requirements is included in Exhibit  
6 "F".

7 Services required of the CONTRACTOR for each of the four (4) disposal sites shall  
8 include, but are not necessarily limited to the following items (as more thoroughly described in the  
9 immediately preceding Section 1.B.) related to the preparation of necessary reports and/or the  
10 Electronic Submittal of Information (ESI) to the State's GeoTracker system:

11 1. General Reporting Tasks:

- 12 a) Obtain data electronically from the Lab;
- 13 b) Compile analytical results into tables;
- 14 c) Analyze data noting any significant results, such as detections, changes from  
15 historical results, etc.;
- 16 d) Notify the COUNTY representative if such results trigger regulatory required  
17 action by the COUNTY;
- 18 e) Perform statistical analysis of applicable groundwater quality data as required  
19 by the regulations, using the computer software program SANITAS by NIC  
20 (formerly IDT, Inc) – No software substitutions will be allowed. SANITAS is a  
21 state-of-the art statistical analysis software program designed to evaluate and  
22 analyze specific data. SANITAS provides state-specific statistical procedures  
23 to ensure that a facility's ground water quality statistical analysis procedures  
24 meet all relevant regulations. NIC has built SANITAS to provide rapid and cost-  
25 effective ground water quality statistical analyses;
- 26 f) Prepare the quarterly, semi-annual, and/or annual detection monitoring reports  
27 to comply with all regulations, orders, programs, etc., applicable for each  
28 respective disposal site;

- 1 g) Provide recommendations to the COUNTY regarding COUNTY's efforts to  
2 comply with the Detection Monitoring Program at each disposal site, if deemed  
3 appropriate by the CONTRACTOR.

4 2. Electronic Submittal of Information (ESI):

- 5 a) Check electronic data received from the Lab to make sure it agrees with the  
6 hard copy of Lab reports (this includes a QA/QC check of the EDF file from the  
7 Lab);
- 8 b) Analyze data and if anomalous results are found, confirm the results in  
9 question with the Lab;
- 10 c) Ensure that the data is in the correct format for electronic submittal and that it  
11 will be accepted by the GeoTracker system. The data format is to be checked  
12 by using the Electronic Deliverable Consistency Check (EDCC) program,  
13 which is designed to check the consistency of file formats of reports produced  
14 in the Electronic Deliverable Format (EDF) as Electronic Data Deliverables  
15 (EDDs);
- 16 d) Obtain access and submit final data into the GeoTracker system (after it is  
17 approved by the COUNTY), in accordance with the regulations promulgated  
18 pursuant to California Assembly Bill 2886 (Cal. Stats 2000, Chapter 727,  
19 referenced herein as "AB 2886"), which regulations are set forth in Title 23 and  
20 in Title 27 of the CCR, as referenced above. The CONTRACTOR's basic  
21 steps for ESI are outlined below:
- 22 i. Upload groundwater monitoring data received from the Lab (EDF data);  
23 ii. Upload groundwater depth information (Geo\_Well data) for each well;  
24 iii. Upload each Detection Monitoring Report in its entirety (Geo\_Report data),  
25 in PDF format

26 **D. Related Services performed by the COUNTY:**

- 27 a) COUNTY will perform monitoring and sampling of applicable mediums.  
28 Samples will be submitted by COUNTY to a certified laboratory for analysis;

1 samples for each site will be submitted individually to the laboratory and at  
2 different times. Therefore, the samples for the different sites will be staggered,  
3 with samples for all sites usually being submitted to the laboratory within a  
4 period of four to five weeks. However, overlapping is possible due to some  
5 sites having more wells to be sampled than others.

- 6 b) COUNTY will provide field monitoring data to CONTRACTOR;  
7 c) COUNTY will review and approve all reports and data prior to CONTRACTOR  
8 submitting into the GeoTracker system. The reviewing process for each report  
9 could take the COUNTY up to three (3) weeks to complete.

10 **2. OBLIGATIONS OF THE COUNTY**

11 The COUNTY will:

- 12 A. Compensate the CONTRACTOR as provided in this Agreement.  
13 B. Provide a "COUNTY Representative" who will represent the COUNTY and who  
14 will cooperate with the CONTRACTOR as necessary or appropriate to facilitate  
15 the CONTRACTOR's performance under the provisions of this Agreement. The  
16 COUNTY Representative will be the Director of the Department of Public Works  
17 and Planning or his/her designee. The CONTRACTOR shall communicate and  
18 coordinate with the COUNTY Representative who will provide the following  
19 services:  
20 i. Examine documents submitted to the COUNTY by the CONTRACTOR and  
21 timely render decisions pertaining thereto.  
22 ii. Provide communication between the CONTRACTOR and COUNTY  
23 officials and commissions (including user Department).  
24 iii. Provide right of entry on designated property, if required.  
25 C. Give reasonably prompt consideration to all matters submitted by the  
26 CONTRACTOR for approval to the end that there will be no substantial delays in  
27 the CONTRACTOR's program of work. An approval, authorization or request to  
28 the CONTRACTOR given by the COUNTY will only be binding upon the

1 COUNTY under the terms of this Agreement if in writing and signed on behalf of  
2 the COUNTY by the COUNTY Representative or a designee.

3 D. Perform all groundwater sampling at each landfill.

4 E. Transport samples to laboratory for analysis.

5 F. Provide CONTRACTOR a hard copy of field parameter notes for each sampling  
6 event at each disposal site.

7 **3. TERM**

8 This Agreement shall become effective on the date of execution and shall  
9 remain in effect for a term of one (1) year. This Agreement shall automatically renew for four (4)  
10 additional (1) year terms unless COUNTY notifies CONTRACTOR in writing of its intent not to  
11 renew this Agreement, such notice to be given at least thirty (30) days prior to the end of the then  
12 current one year term.

13 **4. TERMINATION**

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

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

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

26 In no event shall any payment by the COUNTY constitute a waiver by the COUNTY  
27 of any breach of this Agreement or any default which may then exist on the part of the  
28 CONTRACTOR. Neither shall such payment impair or prejudice any remedy available to the

1 COUNTY with respect to the breach or default. The COUNTY shall have the right to demand of  
2 the CONTRACTOR the repayment to the COUNTY of any funds disbursed to the CONTRACTOR  
3 under this Agreement, which in the judgment of the COUNTY were not expended in accordance  
4 with the terms of this Agreement. The CONTRACTOR shall promptly refund any such funds upon  
5 demand.

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

9 **5. COMPENSATION/INVOICING**: COUNTY agrees to pay CONTRACTOR and  
10 CONTRACTOR agrees to receive compensation as follows:

11 **A. Basic Fee**:

12 Notwithstanding any other provision in this Agreement, the Basic Fee for  
13 the Basic Services required of the CONTRACTOR as specified in Article 1 hereinabove, shall  
14 be paid at the rates shown in Exhibit "G" and shall not exceed an annual maximum of [\$] for  
15 each contract year. These rates as listed in Exhibit "G" are to remain in effect for the entire  
16 duration of this Agreement.

17 1) Upon written agreement and authorization by both COUNTY and  
18 CONTRACTOR, the task amounts listed in Exhibit "G" may be modified within the maximum limits  
19 of the Total Basic Fee for any contract year.

20 **B. Extra Services**:

21 1) A maximum annual allocation of [\$] to pay for authorized Extra  
22 Services is provided herein by this Agreement. Payment of Extra Services in excess of [\$] is  
23 prohibited except upon a written Amendment to this Agreement pursuant to the provisions  
24 specified herein.

25 2) The CONTRACTOR shall submit a request for authorization to  
26 perform Extra Services and an appropriate fee schedule for said Extra Services. The  
27 CONTRACTOR shall not undertake any Extra Services without the advance written authorization  
28 of the COUNTY Representative. The CONTRACTOR and the COUNTY shall expressly confirm

1 in writing the authorization and maximum cost for any such Extra Services before the  
2 CONTRACTOR is compensated for any work thereon.

3           3) Payment for Extra Services will be at the identical hourly and cost  
4 rates set forth in Exhibit "H" of this contract.

5           4) The following are CONTRACTOR services which are considered as  
6 not included herein, but may be required and thus considered Extra Services.

7           a) Providing unforeseen, extraordinary, or unique services or items not  
8 covered nor normally included in the Basic Fee, but authorized by  
9 the COUNTY Representative.

10           b) Making changes to documents, which are ordered by the COUNTY  
11 subsequent to COUNTY approval thereof (excludes changes to  
12 documents resulting from comments by regulatory agencies).

13           5) In the event COUNTY Representative expressly authorizes Extra  
14 Services, CONTRACTOR shall keep complete records showing the hours and description of  
15 activities worked by each person who works on the project and all costs and charges applicable to  
16 the Extra Services work authorized. Should there be a claim for Extra Services, the  
17 CONTRACTOR agrees that he shall identify the activity, performer of the activity, reason for the  
18 activity, and COUNTY official requesting the activity or the claim will be denied. CONTRACTOR  
19 shall be responsible for all subCONTRACTORS keeping similar records. The CONTRACTOR  
20 shall not stop the work, including the work in other areas unrelated to the Extra Services request  
21 or claim, unless it can be shown the project work cannot proceed while a claim or request for Extra  
22 Services is being evaluated.

23           6) CONTRACTOR shall submit separate invoices for Extra Services,  
24 accompanied by copies of any subCONTRACTORS' invoices and costs for approved incidentals.

25           In no event shall services performed under this Agreement exceed the maximum  
26 annual amount of [\$.]. Although the total maximum amount payable to CONTRACTOR during the  
27 term of this Agreement may exceed that amount if this Agreement is renewed (either for one or  
28 the maximum four additional years in accordance with Article 3), the maximum amount payable for

1 any one contract year shall not exceed [\$]. It is understood that all expenses incidental to  
2 CONTRACTOR's performance of services under this Agreement shall be borne by  
3 CONTRACTOR.

4 **C. Payments:**

5 1) Progress payments will be made by the COUNTY upon receipt and  
6 approval of the CONTRACTOR's semi-annual invoices based on the COUNTY's evaluation of the  
7 completion of the respective components of the projects(s). Invoices shall clearly identify this  
8 Agreement number, the site and task to which the work pertains, clearly identify charges for tasks  
9 authorized as Extra Services, and shall be submitted with the documentation identified in Article  
10 5.C.4. CONTRACTOR shall submit semi-annual invoices to:

11 Resources Division  
12 Attn: Curtis Larkin, Senior Engineer  
13 COUNTY of Fresno  
14 Department of Public Works and Planning  
2220 Tulare Street, Sixth Floor  
Fresno, CA 93721-2106

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

21 3) An unresolved dispute over a possible error or omission may cause  
22 payment of CONTRACTOR fees in the disputed amount to be withheld by the COUNTY.

23 4) Concurrently with the invoices, the CONTRACTOR shall provide its  
24 certification acceptable to the COUNTY, and shall provide, on COUNTY request, copies of issued  
25 checks, receipts, or other COUNTY pre-approved documentation, that complete payment, less a  
26 ten percent (10%) retention, has been made to all subCONTRACTORs as provided herein for all  
27 previous invoices paid by the COUNTY.

28 5) Final invoice, and separate invoice for retentions, shall be submitted

1 to COUNTY no later than thirty (30) days after project is completed. Payment for retentions shall  
2 not be made until all post-project services are completed, including but not limited to furnishing of  
3 required reports.

4                   6) In the event the COUNTY reduces the scope of the project, the  
5 CONTRACTOR will be compensated on a pro rata basis for actual work completed and accepted  
6 by the COUNTY in accordance with the terms of this Agreement.

7                   **D. Compensation Records:** The CONTRACTOR shall keep complete  
8 records showing the hours and description of activities performed by each person who works on  
9 the project and all associated costs or charges applicable to work covered by the Basic Fee and  
10 approved Extra Services. The CONTRACTOR will be responsible for all subCONTRACTORS  
11 keeping similar records.

12                   **6. INDEPENDENT CONTRACTOR:** In performance of the work, duties and  
13 obligations assumed by CONTRACTOR under this Agreement, it is mutually understood and  
14 agreed that CONTRACTOR, including any and all of the CONTRACTOR's officers, agents, and  
15 employees will at all times be acting and performing as an independent CONTRACTOR, and shall  
16 act in an independent capacity and not as an officer, agent, servant, employee, joint venturer,  
17 partner, or associate of the COUNTY. Furthermore, COUNTY shall have no right to control or  
18 supervise or direct the manner or method by which CONTRACTOR shall perform its work and  
19 function. However, COUNTY shall retain the right to administer this Agreement so as to verify that  
20 CONTRACTOR is performing its obligations in accordance with the terms and conditions thereof.

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

24                   Because of its status as an independent CONTRACTOR, CONTRACTOR shall  
25 have absolutely no right to employment rights and benefits available to COUNTY employees.  
26 CONTRACTOR shall be solely liable and responsible for providing to, or on behalf of, its  
27 employees all legally-required employee benefits. In addition, CONTRACTOR shall be solely  
28 responsible and save COUNTY harmless from all matters relating to payment of CONTRACTOR's

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

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

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

10          9.     HOLD HARMLESS: CONTRACTOR agrees to indemnify, save, hold  
11 harmless, and at COUNTY's request, defend the COUNTY, its officers, agents, and employees  
12 from any and all costs and expenses, damages, liabilities, claims, and losses occurring or  
13 resulting to COUNTY in connection with the performance, or failure to perform, by  
14 CONTRACTOR, its officers, agents, or employees under this Agreement, and from any and all  
15 costs and expenses, damages, liabilities, claims, and losses occurring or resulting to any person,  
16 firm, or corporation who may be injured or damaged by the performance, or failure to perform,  
17 of CONTRACTOR, its officers, agents, or employees under this Agreement.

18          10.    INSURANCE

19                Without limiting the COUNTY's right to obtain indemnification from Contractor or any  
20 third parties, CONTRACTOR, at its sole expense, shall maintain in full force and effect the  
21 following insurance policies throughout the term of this Agreement:

22                    A.   Commercial General Liability

23                        Commercial General Liability Insurance with limits of not less than One  
24 Million Dollars (\$1,000,000) per occurrence and an annual aggregate of Two Million Dollars  
25 (\$2,000,000). This policy shall be issued on a per occurrence basis. The COUNTY may require  
26 specific coverages including completed operations, products liability, contractual liability,  
27 Explosion-Collapse-Underground, fire legal liability or any other liability insurance deemed  
28 necessary because of the nature of this contract.

1                   **B. Automobile Liability**

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

8                   **C. Professional Liability**

9                   If CONTRACTOR employs licensed professional staff, (e.g., Ph.D., R.N.,  
10 L.C.S.W., M.F.C.C.) in providing services, Professional Liability Insurance with limits of not less  
11 than One Million Dollars (\$1,000,000.00) per claim, Three Million Dollars (\$3,000,000.00) annual  
12 aggregate. This coverage shall be issued on a per claim basis. CONTRACTOR agrees that it  
13 shall maintain, at its sole expense, in full force and effect for a period of three (3) years following  
14 the termination of this Agreement, one or more policies of professional liability insurance with limits  
15 of coverage as specified herein.

16                   **D. Worker's Compensation**

17                   A policy of Worker's Compensation insurance as may be required by the  
18 California Labor Code.

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

27                   Within thirty (30) days from the date CONTRACTOR executes this Agreement,  
28 CONTRACTOR shall provide certificates of insurance and endorsements as stated above for all of

1 the foregoing policies, as required herein, to the COUNTY of Fresno:

2 Curtis Larkin, Senior Engineer  
3 Department of Public Works and Planning  
4 2220 Tulare Street, 6th Floor  
5 Fresno, CA 93720

6 The certificates of insurance and endorsements shall state that such insurance coverage has  
7 been obtained and is in full force; that the COUNTY of Fresno, its officers, agents and employees  
8 will not be responsible for any premiums on the policies; that such Commercial General Liability  
9 insurance names the COUNTY of Fresno, its officers, agents and employees, individually and  
10 collectively, as additional insured, but only insofar as the operations under this Agreement are  
11 concerned; that such coverage for additional insured shall apply as primary insurance and any  
12 other insurance, or self-insurance, maintained by COUNTY, its officers, agents and employees,  
13 shall be excess only and not contributing with insurance provided under CONTRACTOR's policies  
14 herein; and that this insurance shall not be cancelled or changed without a minimum of thirty (30)  
15 days advance, written notice given to COUNTY.

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

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

22 **11. AUDITS AND INSPECTIONS:** The CONTRACTOR shall at any time during  
23 business hours, and as often as the COUNTY may deem necessary, make available to the  
24 COUNTY for examination all of its records and data with respect to the matters covered by this  
25 Agreement. The CONTRACTOR shall, upon request by the COUNTY, permit the COUNTY to  
26 audit and inspect all of such records and data necessary to ensure CONTRACTOR's compliance  
27 with the terms of this Agreement.

28 If this Agreement exceeds ten thousand dollars (\$10,000.00), CONTRACTOR shall  
be subject to the examination and audit of the Auditor General for a period of three (3) years after

1 final payment under contract (Government Code Section 8546.7).

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

4 COUNTY

CONTRACTOR

5 Department of Public Works and Planning  
6 John R Thompson, Resources Manager  
7 2220 Tulare Street, 6<sup>th</sup> Floor

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

12 **13. ERRORS OR OMISSION CLAIMS AND DISPUTES:**

13 **A. Definitions:**

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

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

26 **B.** In the spirit of cooperation between the COUNTY and CONTRACTOR, the  
27 following procedures are established in the event of any claim or dispute alleging an error,  
28 omission, or negligent act of the CONTRACTOR.

1) Claims, disputes or other matters in question between the parties,

1 arising out of or relating to this Agreement, shall not be subject to arbitration, but shall be subject  
2 to the following procedures.

3           2) The project manager of COUNTY and CONTRACTOR shall meet  
4 and confer and attempt to reach agreement on any dispute, including what damages have  
5 occurred, the measure of damages and what proportion of damages, if any, shall be paid by either  
6 party. The parties agree to consult and consider the use of mediation or other form of dispute  
7 resolution prior to resorting to litigation.

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

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

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

28           **D.** The CONTRACTOR shall continue to perform its obligations under this

1 Agreement pending resolution of any dispute, and the COUNTY shall continue to make payments  
2 of all undisputed amounts due under this Agreement.

3 **E.** When a claim by either party has been made alleging the  
4 CONTRACTOR's error, omission or negligent act, the COUNTY Project Manager and the  
5 CONTRACTOR shall meet and confer within twenty-one (21) days after the written notice of the  
6 claim has been provided.

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

19 **15. CONTRACTOR'S OBLIGATIONS AS TO REGULATORY REQUIREMENTS**  
20 The CONTRACTOR shall analyze and comply fully with requirements of all relevant regulatory  
21 codes including, but not limited to, applicable provisions of California Code of Regulations (CCR)  
22 Titles 14, 22, 23 and 27. The CONTRACTOR's attention is also directed to comply with all  
23 applicable Monitoring and Reporting Programs, Waste Discharge Requirements (WDRs) for each  
24 disposal site, Standard Provisions and Reporting Requirements.

25 **16. PARTIES BOUND BY AGREEMENT:** This Agreement shall be binding upon  
26 the COUNTY, the CONTRACTOR, and their successors in interest, legal representatives,  
27 executors, administrators, and assigns with respect to all covenants as set forth herein.

28 **17. COMPLIANCE WITH LAWS:** CONTRACTOR shall comply with Federal,

1 State, and local laws, ordinances, regulations, and Fresno COUNTY Charter Provisions applicable  
2 and in effect when professional services are performed.

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

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

15 **20. OWNERSHIP OF DOCUMENTS:**

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

1 of such drawings or figures and work product, free and clear of any claim by CONTRACTOR or  
2 anyone claiming any right through CONTRACTOR. CONTRACTOR further acknowledges and  
3 agrees that COUNTY's ownership rights in such drawings or figures and work product shall apply  
4 regardless of whether such drawings or figures or work product, or any copies thereof, are in the  
5 possession of CONTRACTOR, or any other person, firm, corporation, or entity. For the purpose  
6 of this Agreement the terms "drawings or figures and work-product" shall mean all reports and  
7 study findings, discoveries, developments, designs, improvements, inventions, formulas,  
8 processes, techniques, or specific know-how and data generated or conceived or reduced to  
9 practice or learning by CONTRACTOR, either alone or jointly with others, that result from the  
10 tasks assigned to CONTRACTOR by COUNTY under this Agreement.

11 **B.** All documents, including calculations and electronic data files, required in  
12 performing services under this Agreement shall be submitted to, and shall remain the property of  
13 the COUNTY.

14 **21. GOVERNING LAW:** Venue for any action arising out of or related to this  
15 Agreement shall only be in Fresno COUNTY, California.

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

18 **22. CONFLICT OF INTEREST:** The CONTRACTOR shall comply with the  
19 provisions of the COUNTY's Conflict of Interest Code, attached hereto as Exhibit "J" and  
20 incorporated herein. Such compliance shall include the filing of annual statements pursuant to the  
21 regulations of the State Fair Political Practices Commission as promulgated in Title 2 of the CCR.

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

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

1 advertisements, publications, and understandings of any nature whatsoever unless expressly  
2 included in this Agreement.

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

**CONTRACTOR**

**COUNTY OF FRESNO**

(Authorized Signature)

Phil Larson, Chairman  
Board of Supervisors

Print Name & Title

Mailing Address

DATE:

DATE:

REVIEWED & RECOMMENDED FOR APPROVAL

Alan Weaver, Director  
Department of Public Works & Planning

APPROVED AS TO LEGAL FORM

APPROVED AS TO ACCOUNTING FORM

Kevin Briggs, COUNTY Counsel

Vicki Crow, C.P.A.,  
Auditor-Controller/Treasurer-Tax Collector

FOR ACCOUNTING USE ONLY:

Site Name:	<u>American Avenue</u>	<u>Coalinga</u>	<u>Southeast Regional</u>
ORG No.:	9026	9028	9020
Account No.:	7295	7295	7295
Fund:	0700	0710	0720
Subclass:	15000	15000	15000
Requisition No.:			