

# **SAMPLE AGREEMENT**

**AGREEMENT FOR ENGINEERING CONSULTANT SERVICES**

THIS AGREEMENT made and entered into this 26<sup>th</sup> day of April, 2005 between the County of Fresno, a political subdivision of the State of California (hereinafter called "COUNTY"), and STEARNS, CONRAD & SCHMIDT, CONSULTING ENGINEERS, INC. dba SCS FIELD SERVICES, located at 4707 Greenleaf Circle, Suite F, Modesto, California 95356 (hereinafter called "CONSULTANT").

**WITNESSETH:**

WHEREAS, the COUNTY requires specialized services to conduct the State and Federal-required operation and maintenance of the landfill gas collection and control system (LFGCCS) at the American Avenue Landfill; and

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

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

**I. CONTRACTING OF CONSULTANT:**

A. The COUNTY hereby contracts with the CONSULTANT as an independent consultant to provide all the services required for the project. Said services are described under Article III herein.

B. The CONSULTANT shall retain such engineering and other sub-consultants as CONSULTANT requires to assist in completing the work. All sub-consultants used by CONSULTANT shall be approved in writing by the COUNTY before they are retained by the CONSULTANT, which approval shall not be unreasonably withheld. Should CONSULTANT retain such persons, compensation to be paid to CONSULTANT under Article V below, shall not be increased.

C. The CONSULTANT's services shall be performed as expeditiously as is consistent with professional skill and the orderly progress of the work.

D. The contact person for the CONSULTANT shall be:  
Anton Svorinich (telephone (209) 545-8490, Fax (209) 545-8391).

1 II. DESCRIPTION OF THE WORK COVERED BY THIS AGREEMENT:

2 A. The work covered by this Agreement is for the CONSULTANT services  
3 described in Article III.

4 III. CONSULTANT'S SERVICES:

5 The CONSULTANT agrees to provide professional services as described below  
6 and more specifically described in the CONSULTANT's response to the COUNTY's  
7 Request for Quotation No. 929-4013 (RFQ), which is incorporated herein as Attachment  
8 1:

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21 IV. COUNTY'S OBLIGATIONS:

22 The COUNTY will:

23 A. Compensate the CONSULTANT as provided in this Agreement.

24 B. Provide a "COUNTY Representative" who will represent the COUNTY and  
25 who will coordinate with the CONSULTANT as appropriate to facilitate CONSULTANT's  
26 performance under the provisions of this Agreement. The COUNTY Representative will  
27 be the COUNTY Director of Department of Public Works and Planning or his/her  
28 designee. The CONSULTANT shall communicate and coordinate with the COUNTY

1 Representative who will provide the following services:

2 1. Examine documents submitted to the COUNTY by the  
3 CONSULTANT and timely render decisions pertaining thereto.

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

6 3. Provide right of entry on designated property for accomplishment of  
7 authorized work.

8 C. Give reasonably prompt consideration to all matters submitted by the  
9 CONSULTANT for approval, so as to avoid any substantial delays in the  
10 CONSULTANT's performance of the work. An approval, authorization or request to the  
11 CONSULTANT given by the COUNTY will only be binding upon the COUNTY under the  
12 terms of this Agreement if in writing and signed on behalf of the COUNTY by the  
13 COUNTY Representative or a designee, except under those limited circumstances  
14 expressly specified herein.

15 V. COMPENSATION:

16 A. Total Fee:

17 1. Notwithstanding any other provision in this Agreement, the Total  
18 Fee for the services required under Article III shall be limited to a maximum of \$        )  
19 annually, comprised of a Basic Fee of \$:        annually and an Extra Services  
20 Allocation of :        annually. Thus, if the Agreement is automatically renewed as  
21 provided for in Section XXI.B., then the maximum cumulative amount of the Total Fee,  
22 Basic Fee and Extra Services allocations shall be increased accordingly, without the  
23 need for any amendment of this Agreement. Accordingly, if this Agreement is  
24 automatically renewed for one additional year at the conclusion of its original one-year  
25 term, the Total Fee hereunder would be \$:        , (i.e., \$'        ) annually for each of the  
26 two years the Agreement is in effect). Likewise, if the Agreement is automatically  
27 renewed for the maximum two additional years, then the maximum cumulative amount  
28

1 of the Total Fee hereunder would be : (i.e., \$ annually for each of the  
2 three years the Agreement is in effect).

3 B. Basic Fee:

4 1. Notwithstanding any other provision in this Agreement, the Basic  
5 Fee for the Services required under Article III, Task shall be computed at the  
6 cost rates shown in Attachment 1, which is incorporated herein, and shall be limited to a  
7 maximum of \$ annually. These rates as listed herein are to remain in effect for  
8 the entire duration of this Agreement. Within the Total Fee limitation described in V.A.1.  
9 above, the Annual Basic Fee shall be divided as follows:

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15 2. Upon written agreement and authorization by both County and  
16 CONSULTANT, the above Task amounts may be redistributed within the limits of the  
17 Total Basic Fee with the approval of the Resources Division Manager.

18 3. The rates listed herein are to remain in effect for the duration of this  
19 Agreement. The Total Annual Basic Fee may not be increased except upon written  
20 Amendment to this Agreement authorized by the Director of the Department of Public  
21 Works and Planning or Resources Division Manager.

22 C. Extra Services:

23 1. A maximum allocation of \$ annually to pay for authorized  
24 Extra Services is provided herein by this Agreement. Payment of Extra Services in  
25 excess of ' annually is prohibited except upon a written Amendment to this  
26 Agreement pursuant to the provisions of Article XVI hereof.

27 2. The CONSULTANT shall not undertake any Extra Services without  
28 the advance authorization of the COUNTY Representative. Excepting only those

1 circumstances specified in Subparagraphs 'b' and 'c' of Paragraph 4 below, the  
2 CONSULTANT and the COUNTY shall expressly confirm in writing the scope of work,  
3 maximum cost, and authorization for any such services before the CONSULTANT  
4 initiates any work thereon.

5           3.       Payment for Extra Services shall be computed at the hourly cost  
6 rates and material costs shown in the CONSULTANT's response to the COUNTY's  
7 Request for Quotation No. 929-4013, which was previously incorporated herein as  
8 Attachment 1. However, hourly rates for Extra Services may be renegotiated annually  
9 at CONSULTANT's request by submitting the proposed changes to the COUNTY  
10 representative at least sixty (60) days prior to the renewal of this Agreement. Upon  
11 review and approval, the COUNTY may authorize the change in hourly rates.

12           4.       The following are CONSULTANT services which are considered as  
13 not included in Article III herein, but may be required and thus considered Extra  
14 Services.

15                   a.       Providing unforeseen, extraordinary, or unique services,  
16 additional LFGCCS non-routine scheduled maintenance, emergency maintenance,  
17 and/or related work required by regulatory agencies or, items not covered nor normally  
18 included in the Basic Fee, but authorized by the COUNTY Representative.

19                   b.       Non-routine scheduled maintenance (?)  
20 consists of corrective repair or maintenance work identified by the CONSULTANT  
21 during regular Site visits or by COUNTY staff. This work is essential for proper LFGCCS  
22 operation; however, it is considered work that can be scheduled to allow for  
23 procurement of materials or equipment or assignment of personnel. The  
24 CONSULTANT shall provide a scope of work and associated not-to-exceed quote to the  
25 COUNTY for all non-routine scheduled maintenance and work will only be performed  
26 after authorization from the COUNTY to the CONSULTANT. For items requiring less  
27 than 8 hours labor or \$300 worth of material, such authorization may be granted  
28 verbally, to be followed by written confirmation of such verbal authorization. For any

1 other items covered by this Subparagraph 4.b., written authorization will be required  
2 prior to commencement of the work, as generally required under Paragraph 2 above.

3 c. Emergency maintenance ( ) is required  
4 to provide immediate response to protect life, property, and the environment or to  
5 restore system operations. Due to the nature of these items, repairs may have to be  
6 initiated as needed, 24 hours per day, 7 days a week, 365 days per year. Emergency  
7 maintenance will be performed only after verbal authorization from COUNTY staff, to be  
8 followed by written confirmation of such verbal authorization.

9 5. In the event COUNTY expressly authorizes Extra Services,  
10 CONSULTANT shall keep complete records showing the hours and description of  
11 activities worked by each person who works on the project and all costs and charges  
12 applicable to the Extra Services work authorized. Should there be a claim for Extra  
13 Services, the CONSULTANT agrees and acknowledges that the claimant shall  
14 specifically identify the activity, performer of the activity, reason for the activity, and  
15 COUNTY official requesting the activity, and that failure to do so will result in denial of  
16 the claim. CONSULTANT shall be responsible for all sub-consultants keeping similar  
17 records. The CONSULTANT shall not stop the work, including the work in other areas  
18 unrelated to the Extra Services request or claim, unless it can be shown the project  
19 work cannot proceed while a claim or request for Extra Services is being evaluated.

20 D. Payments:

21 1. Progress payments will be made by the COUNTY upon receipt and  
22 approval of the CONSULTANT's monthly invoices based on the COUNTY's evaluation  
23 of the completion of the respective components of the projects(s). Invoices shall clearly  
24 identify each task to which the work pertains, clearly identify charges for tasks  
25 authorized as Extra Services, and shall be submitted with the documentation identified  
26 in Article V.D.4. Invoices shall be submitted to:

27  
28 Attn: Marion L. Miller  
Resources Manager  
Fresno County Department of Public

Works and Planning, Resources Division  
2220 Tulare Street, Sixth Floor  
Fresno, CA 93721-2106

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

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

4. Concurrently with the invoices, the CONSULTANT shall provide its certification acceptable to the COUNTY, and shall provide, on COUNTY request, copies of issued checks, receipts, or other COUNTY pre-approved documentation, that complete payment has been made to all sub-consultants as provided herein for all previous invoices paid by the COUNTY.

5. Final invoice shall be submitted to COUNTY no later than sixty (60) days after project is completed. Payment shall not be made until all post-project services are completed, including but not limited to furnishing of required reports.

6. In the event the COUNTY reduces the scope of the project, the CONSULTANT will be compensated on a pro rata basis 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 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 and approved Extra Services. The CONSULTANT will be responsible for all sub-consultants keeping similar records.

1 VII. AUDITS, ACCOUNTING AND INSPECTIONS ACCESS:

2 A. The CONSULTANT shall at any time during regular business hours, and  
3 as often as the COUNTY may deem necessary, make available to the COUNTY  
4 Auditor-Controller/Treasurer-Tax Collector, or their authorized representatives for  
5 examination all of its records and data with respect to matters covered by this  
6 Agreement. The CONSULTANT shall permit the COUNTY to audit and inspect all  
7 invoices, materials, payrolls, records of personnel, conditions of employment, and other  
8 data relating to matters covered by this Agreement.

9 B. The CONSULTANT shall be subject to the examination and audit of the  
10 Auditor General for a period of three (3) years after final payment under Agreement  
11 (Government Code Section 8546.7)

12 VIII. ERRORS OR OMISSION CLAIMS AND DISPUTES:

13 A. Definitions:

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

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

27 B. In the spirit of cooperation between the COUNTY and CONSULTANT, the  
28 following procedures are established in the event of any claim or dispute alleging an

1 error, omission, or negligent act of the CONSULTANT.

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

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

10 3. If the COUNTY and CONSULTANT cannot reach agreement under  
11 Section VIII.B.2., the disputed issues may, upon concurrence by all parties, be  
12 submitted to a panel of three (3) for a recommended resolution. The CONSULTANT  
13 and the COUNTY shall each select one (1) member of the panel, and the third member  
14 shall be selected by the other two panel members. The discovery rights provided by  
15 California Code of Civil Procedure for civil proceedings shall be available and  
16 enforceable to resolve the disputed issues. Either party requesting this dispute  
17 resolution process shall, when invoking the rights to this panel, give to the other party a  
18 notice describing the claims, disputes and other matters in question. Prior to twenty  
19 (20) days before the initial meeting of the panel, both parties shall submit all documents  
20 such party intends to rely upon to resolve such dispute. If it is determined by the panel  
21 that any party has relied on such documentation, but has failed to previously submit  
22 such documentation on a timely basis to the other party, the other party shall be entitled  
23 to a 20-day continuance of such initial meeting of the panel. Issuance of the panel's  
24 recommended decision is not a condition precedent to arbitration, mediation or litigation.  
25 4. Upon receipt of the panel's recommended resolution of the dispute  
26 issues, the COUNTY and the CONSULTANT shall again meet and confer and attempt to  
27 reach agreement. If the parties still are unable to reach agreement, each party shall  
28 have recourse to all appropriate legal and equitable remedies.

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

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

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

10 IX. JOINDER OF PARTIES:

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

24 X. CONSULTANT'S OBLIGATIONS RELATING TO REGULATORY  
25 REQUIREMENTS:

26 In the performance of its services hereunder, the CONSULTANT shall analyze  
27 and adhere to all applicable statutory and regulatory requirements, including but not  
28 limited to applicable provisions of Titles 14, 22, 23 and 27 of the California Code of

1 Regulations, Title 40 of the Code of Federal Regulations, and all such other statutory or  
2 regulatory requirements as may be enacted or promulgated to regulate operations at  
3 municipal solid waste landfills or otherwise applicable to CONSULTANT's performance  
4 of its services hereunder, and becoming effective during the term (including any  
5 extensions) hereof.

6 XI. INDEPENDENT CONSULTANT:

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

20 B. Because of its status as an independent contractor, CONSULTANT shall  
21 have absolutely no right to employment rights and benefits available to COUNTY  
22 employees. CONSULTANT shall be solely liable and responsible for providing to, or on  
23 behalf of its employees all legally-required employee benefits. In addition,  
24 CONSULTANT shall be solely responsible and save COUNTY harmless from all  
25 matters relating to payment of CONSULTANT's employees, including compliance with  
26 Social Security, withholding, and all other regulations governing such matters. It is  
27 acknowledged that during the term of this Agreement CONSULTANT may be providing  
28 services to others unrelated to the COUNTY or to this Agreement.

1 XII. PARTIES BOUND BY AGREEMENT:

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

5 XIII. REQUIRED APPROVALS:

6 It is understood that the CONSULTANT shall not assign, sublet, subcontract, or  
7 transfer CONSULTANT's rights or obligations in this Agreement without the prior  
8 express, written consent of the COUNTY. Such approval shall only be given by the  
9 COUNTY Board of Supervisors.

10 XIV. COMPLIANCE WITH LAWS:

11 CONSULTANT shall comply with Federal, State, and local laws, ordinances,  
12 regulations, and Fresno County Charter Provisions applicable and in effect when  
13 professional services are performed.

14 XV. GOVERNING LAW:

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

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

22 XVI. AMENDMENTS:

23 Any changes to this Agreement requested either by the COUNTY or  
24 CONSULTANT may be effected only if mutually agreed upon and in writing by Director  
25 of the Department of Public Works and Planning or his/her Designee. This Agreement  
26 shall not be modified or amended, nor shall any rights of a party hereto be waived,  
27 except by such a writing.

28 XVII. CONSULTANT'S LEGAL AUTHORITY:

Each individual executing this Agreement on behalf of CONSULTANT hereby covenants, warrants, and represents: (i) 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; (ii) that this Agreement is binding upon such corporation; and (iii) that CONSULTANT is a duly organized and legally existing corporation in good standing in the State of California.

XVIII. HOLD HARMLESS:

A. CONSULTANT shall 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 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 failure to perform of any COUNTY consultant or subconsultant in the PROJECT. Such cooperation may include an agreement to prepare and present a cooperative defense after consultation with CONSULTANT's professional liability insurance carrier.

XIX. 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

1 Liability Insurance, naming the COUNTY as an additional insured, with limits of not less  
2 than \$1,000,000 per occurrence.

3 2. Comprehensive Automobile Liability Insurance with limits for bodily  
4 injury of not less than \$250,000 per person, \$250,000 per accident and for property  
5 damage of not less than \$50,000, or such coverage with a combined single limit of  
6 \$500,000.

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

9 4. Professional Liability Insurance:

10 a. In the minimum amount of at least \$1,000,000 coverage per  
11 claim, with an annual aggregate of at least \$3,000,000.

12 b. CONSULTANT and sub-consultants shall make full  
13 disclosure, in writing to the COUNTY, of all pending and open claims and disputes  
14 during the course of this agreement that affect the specified aggregate limits of the  
15 Professional Liability Insurance policy.

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

19 d. In the event that CONSULTANT voluntarily changes or  
20 involuntarily changes, due to circumstances beyond its control, Professional Liability  
21 Insurance policy carrier during the course of this Agreement, such new policy shall  
22 include prior acts coverage retroactive, at least, to the date of execution of this  
23 Agreement. CONSULTANT may, at its option and expense, purchase supplemental or  
24 "tail" coverage from the former policy carrier, negotiate a retroactive reporting date with  
25 the new policy carrier for claims incurred but not reported as of the date of change in  
26 policy carrier, and shall in any event maintain Professional Liability Insurance in a  
27 manner that provides continuous coverage to the COUNTY throughout the term of this  
28 Agreement, and for a period of two (2) years past the issuance of final payment to the

1 CONSULTANT.

2 e. The CONSULTANT may, at its option and expense and  
3 upon approval of the COUNTY, provide specific project professional liability insurance  
4 for itself and all sub-consultants for this project, extending from the beginning of project  
5 until two (2) years past the issuance of final payment to the CONSULTANT. This time  
6 period specifically includes that time required for the resolution of all claims and  
7 disputes.

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

12 C. The COUNTY, its officers, agents and employees, individually and  
13 collectively, shall be named as additional insured in Commercial General Liability  
14 Insurance or Comprehensive General Liability Insurance, but only insofar as the  
15 operations under this contract are concerned. Such coverage of COUNTY as additional  
16 insured shall apply as primary insurance and any other insurance, or self-insurance,  
17 maintained by the COUNTY, its officers, agents, and employees, shall be excess only  
18 and not contributing with insurance provided under the CONSULTANT's policies herein.

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

22 XX. OWNERSHIP OF DOCUMENTS:

23 A. CONSULTANT understands and agrees that COUNTY shall retain full  
24 ownership rights of the drawings and the work-product of CONSULTANT for the project,  
25 to the fullest extent permitted by law. In this regard, CONSULTANT acknowledges and  
26 agrees that CONSULTANT's services are on behalf of COUNTY and are "works made  
27 for hire," as that term is defined in copyright law, by COUNTY; that the drawings and  
28 work-product to be prepared by CONSULTANT are for the sole and exclusive use of

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

24 B. All documents, including calculations, required in performing services  
25 under this Agreement shall be submitted to, and shall remain the property of the  
26 COUNTY.

27 XXI. TIME OF COMPLETION:  
28

1           A.     CONSULTANT shall diligently proceed with the agreed scope of services  
2 and shall provide such services in a timely manner. Failure of the CONSULTANT to  
3 provide such services on a timely basis, is sufficient cause to terminate this Agreement  
4 immediately, at the option of the COUNTY, in accordance with Article XXIIB, unless the  
5 delay is attributable to the COUNTY or State.

6           B.     This Agreement shall become effective on the date of execution, and shall  
7 remain in effect for a term of one (1) year. This Agreement shall automatically renew for  
8 two (2) additional (1) year terms unless COUNTY notifies CONSULTANT in writing of its  
9 intent not to renew this Agreement, such notice to be given at least thirty (30) days prior  
10 to the end of the then current one year term.

11 **XXII. TERMINATION OF AGREEMENT:**

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

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

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

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

1 part of the CONSULTANT. Neither shall such payment impair or prejudice any remedy  
2 available to the COUNTY with respect to the breach or default. The COUNTY shall  
3 have the right to demand of the CONSULTANT the repayment to the COUNTY of any  
4 funds disbursed to the CONSULTANT under this Agreement, which, in the judgment of  
5 the COUNTY and as determined in accordance with the procedures of Article VIII,  
6 "Errors or Omissions Claims and Disputes", were not expended in accordance with the  
7 terms of this Agreement. The CONSULTANT shall promptly refund any such funds  
8 upon demand.

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

14 **XXIII. ENTIRE AGREEMENT:**

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

19 **XXIV. CONFLICT OF INTEREST:**

20 The CONSULTANT shall comply with the provisions of the COUNTY's Conflict of  
21 Interest Code, attached hereto as Attachment 2 and incorporated herein. Such  
22 compliance shall include the filing of annual statements pursuant to the regulations of  
23 the State Fair Political Practices Commission.

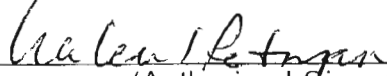
24 **XXV. SEVERABILITY:**

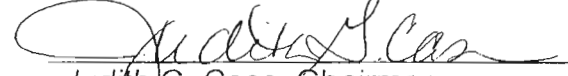
25 Should any provision herein be found or deemed to be invalid, this Agreement  
26 shall be construed as not containing such provision, and all other provisions which are  
27 otherwise lawful shall remain in full force and effect, and to this end the provisions of  
28 this Agreement are hereby declared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

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

3 **CONSULTANT**

**COUNTY OF FRESNO**

4   
(Authorized Signature)

  
Judith G. Case, Chairman  
Board of Supervisors

5  
6 Galen S. Petoyan/Sr. Vice President  
Print Name & Title

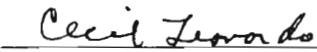
7  
8 4707 GREENLEAF CIRCLE SUITE F  
MODESTO, CA 95356  
Mailing Address

9  
10 DATE: 4/1/05

APR 26 2005  
DATE:


11 TAXPAYER FEDERAL I.D. #:  
12 54-0913440


REVIEWED & RECOMMENDED  
FOR APPROVAL

13   
Cecil Leonardo, Interim Director,  
Department of Public Works and  
Planning

14  
15  
16  
17 APPROVED AS TO LEGAL FORM

APPROVED AS TO ACCOUNTING  
FORM.

18   
19 Dennis Marshall, County Counsel

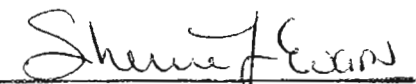
  
Vicki Crow, C.P.A., Auditor-  
Controller/Treasurer-Tax  
Collector

20  
21 FOR ACCOUNTING USE ONLY:

22 ORG No.: 9026  
23 Account No.: 7295

ATTEST:

BERNICE E. SEIDEL, Clerk  
Board of Supervisors

24 By   
Deputy