

COUNTY OF FRESNO
ADDENDUM NUMBER: ONE (1)
REQUEST FOR QUALIFICATIONS NUMBER: 952-5375
ON-CALL COMPLIANCE SERVICES FOR VARIOUS
PROJECT UTILIZING PROPOSITION 84 FUNDS

Issue Date: September 11, 2015

IMPORTANT: SUBMIT STATEMENT OF QUALIFICATIONS IN SEALED PACKAGE WITH QUALIFICATION NUMBER, CLOSING DATE AND BUYER'S NAME MARKED CLEARLY ON THE OUTSIDE TO:

COUNTY OF FRESNO, Purchasing
4525 EAST HAMILTON AVENUE, 2nd Floor
FRESNO, CA 93702-4599

CLOSING DATE WILL BE AT 2:00 P.M., ON SEPTEMBER 21, 2015.

RESPONSES WILL BE CONSIDERED LATE WHEN THE OFFICIAL PURCHASING TIME CLOCK READS 2:00 P.M.

All proposal information will be available for review after contract award.

Clarification of specifications is to be directed to: **Nick Chin,**
phone (559) 600-7110 or e-mail CountyPurchasing@co.fresno.ca.us.

NOTE THE FOLLOWING AND ATTACHED ADDITIONS, DELETIONS AND/OR CHANGES TO THE REQUIREMENTS OF REQUEST FOR QUALIFICATION NUMBER: 952-5375 AND INCLUDE THEM IN YOUR RESPONSE. PLEASE SIGN IN BLUE INK AND RETURN THIS ADDENDUM WITH YOUR STATEMENT OF QUALIFICATIONS.

- **Replace “Attachment H” in totality with the “Revised Attachment H” provided with this addendum.**

ACKNOWLEDGMENT OF ADDENDUM NUMBER ONE (1) TO RFQ 952-5375

COMPANY NAME: _____
(PRINT)

SIGNATURE (In Blue Ink): _____

NAME & TITLE: _____
(PRINT)

PURCHASING USE: NC; ssj

ORG/Requisition: 55121906/ 5101600078

QUESTIONS AND ANSWERS

Q1. Would the County please provide a copy of the correct Sample Consultant Master Agreement for labor compliance services for review?

A1. An incorrect copy of the sample agreement was attached to the original RFQ. A correct copy has been attached to this addendum. (See Revised Attachment "H" – Sample Contract)

Q2. The RFQ includes a variety of forms. Would the County provide a bulleted list of all forms required to be submitted by the Prime and/or Subcontractors at the RFQ stage?

A2. Consultants and sub-consultants, are to submit the following forms with the SOQ: Attachment D (Disclosure of Lobbying), Attachment F (Debarment and Suspension Certification), Attachment B(1) (list of consultant's staff & sub-consultants). Attachment B (2) (rates list(s) for consultant and subs) must be submitted prior to contract execution, and may be submitted with the SOQ (though should be either password locked or sealed, until we look at the firms' other qualifications). The other attachments are for information, guidance, and/or future use.

Q3. The County asks for a list of projects and specific information for each project for the last four years. Would the County consider the following alternatives:

1) List 10 Public Agencies for whom the firm has performed labor compliance work over the last 4 years, including contract information, number, description, type of projects and funding source i.e. Prop 84, Davis Bacon, CA PW only.

2) Break out the level of detail you request for 10 different projects over the last 4 years

A3. Yes, if more than 10 projects have been completed in that timeframe, please provide a sample of at least 10 recent projects (with all originally requested information) AND contact information for 3 or more public agencies for whom the firm has performed labor compliance services.

CONSULTANT MASTER AGREEMENT

This Agreement for Labor Compliance Services is made and entered into this _____ day of _____ 2015, by and between the County of Fresno, a political subdivision of the State of California (County); and _____, whose address is (Street, City, State, ZIP) (Consultant).

WITNESSETH

WHEREAS, County desires to retain Consultant to provide on-call labor compliance services as necessary to assist County staff in performing various projects financed in whole or in part by Proposition 84 funds (Projects) proposed by County; and

WHEREAS, it is required that State of California Department of Industrial Relations (DIR) approval be attained on the labor compliance program which is to be applied to these projects, which will be administered by County; and

WHEREAS, the County desires to retain on-call consultants to assist in the oversight of contractor labor compliance obligations, as required by the Labor Code; and

WHEREAS, the County may require litigation support services, should any withholdings or penalty assessments be challenged by court action; and

WHEREAS, the Consultant is able and willing to provide services needed by the County subject to the terms and conditions of the Agreement; and

WHEREAS, said Consultant has been selected in accordance with the County's Ordinance Code Chapter 4.10 on the selection of architects, engineers, and other professionals to provide the services necessary for the Projects; and

WHEREAS, the individual listed below

Name

County of Fresno, Department of Internal Services

Address

Phone #

1 is designated as the Contract Administrator for this Agreement on behalf of the County, and
2 shall remain so unless the Consultant is otherwise notified in writing by the County's
3 Director of Public Works and Planning or his/her designee (Director); and

4 WHEREAS, the individual below

5 Project Manager

6 Street Address

7 City, State

8 Telephone

9 Email Address

10 is designated as the Project Manager for the Consultant for this Agreement, and shall
11 remain so unless the Consultant requests, and the Director approves, in writing, a change
12 of the Consultant's Project Manager, approval of which will not be unreasonably withheld;
13 and

14 WHEREAS, said Agreement is subject to Title 40 of the Code of Federal
15 Regulations (40 CFR), Part 33 Participation by Disadvantaged Business Enterprises,
16 Disadvantaged Business Enterprise programs established by other federal agencies and/or
17 County's Disadvantaged Business Enterprise Program (collectively, DBE Program(s)),

18 NOW, THEREFORE, in consideration of the promises and covenants set forth
19 herein, the above named parties agree as follows:

20 I. CONTRACTING OF CONSULTANT

21 A. The County hereby contracts with the Consultant as an independent
22 contractor to provide labor compliance services as required for the Projects. Said services
23 are described in Article II and enumerated in Article III herein.

24 B. The Consultant's services shall be performed as expeditiously as is consistent
25 with professional skill and the orderly progress of the work, based on schedules for each
26 specific Project mutually agreed upon in advance by the Contract Administrator and the
27 Consultant.

C. The Consultant's Project team staff, including subconsultants, shall be as listed in Attachment B(1), attached hereto and incorporated herein. Any proposed substitutions of personnel shall be approved by the Contract Administrator prior to effectuating, approval of which shall not be unreasonably withheld. The Consultant shall notify the Contract Administrator of the names and classifications of employees assigned to each specific Project, and shall not reassign such employees to other projects of the Consultant without notification to and prior approval by County's Contract Administrator.

D. The Consultant may retain, as subconsultants, specialists in disciplines as the Consultant requires to assist in completing the work. All subconsultants used by the Consultant shall be approved in writing by the Contract Administrator before they are retained by the Consultant; approval of which shall not be unreasonably withheld. The subconsultants listed in Attachment B(1) shall be considered as approved by the Contract Administrator. Should the Consultant retain any subconsultants, the maximum amount of compensation to be paid to the Consultant under Article VI below shall not be increased, and any additional compensation to be paid to the Consultant for such subconsultants' work shall be limited to a maximum of ten (10%) of the total costs incurred by the Consultant as a result of the subconsultant's involvement in any Project.

E. Any subcontract in excess of \$25,000 entered into as a result of this Agreement, shall contain all the provisions stipulated in this Agreement to be applicable to subcontractors.

F. The Consultant is responsible for being fully informed regarding the requirements of 40 CFR, Part 33 and the State Water Resources Control Board Disadvantaged Business Enterprise program developed pursuant to the regulations, as detailed in Attachment A, attached hereto and incorporated herein.

II. DESCRIPTION OF THE WORK COVERED BY AGREEMENT

A. The work to be performed by the Consultant under the Agreement includes professional services under Article III for various Projects, including but not limited to, labor

compliance services required for the Projects.

B. The Consultant agrees to provide the professional services necessary for each Project when expressly authorized in writing by Contract Administrator. Such work by the Consultant shall not begin until the Consultant has received a written Notice to Proceed from the Contract Administrator authorizing the service, agreed upon fee, and scope of work.

III. CONSULTANT'S SERVICES

A. The Consultant shall submit a price quote in response to task orders issued by the Contract Administrator on a project-by-project basis. For routine Projects, Consultant will be issued a task order and will have five (5) working days to submit a price quote for the requested work. The Consultant with the lowest price quote that can meet the schedule requirements of the Project will be selected.

B. Depending on the exact nature of the Project(s), the Consultant may be asked by the Contract Administrator to describe special experience that they may possess and/or their ability to meet the Project deadlines prior to issuing a task order. Under such circumstances, a task order will only be issued by the Contract Administrator to the Consultant most qualified to provide the specific services required for the Projects. In the event two or more Consultants are equally qualified, the Consultant with the lowest price quote that can meet the specific requirements of the Project will be selected.

C. The Consultant agrees to provide the professional services that are necessary to complete the following tasks when expressly authorized in writing by the Contract Administrator:

1. Labor Compliance Services:

Upon receiving written authorization to proceed from the Contract Administrator, Consultant will assist County's oversight of Project construction contractors. Consultant will monitor contractors' practices and records for any potential Labor Code violations including, but not limited to, violations or inconsistencies or applicable wage decisions or posting

requirements. Consultant will communicate any potential violations to County and, if applicable, to DIR with an assessment regarding the seriousness of the violation and the necessity to remediate it through assessments, penalties or withholdings. Periodically Consultant shall submit reports summarizing progress and labor compliance activities, as required by DIR; Consultant will request assistance from County, as necessary to complete any reports. Consultant agrees to copy County on all communications with DIR.

The Consultant warrants that if he/she has any interest, present or contemplated, in any property or business affected by the Agreement, the Consultant will notify the Contract Administrator and will withdraw his/her bid for that Project.

The Consultant agrees that his/her work, reports and conclusions are for the use of County and that any report, conclusions and other work, whether completed or partially completed, are the sole property of the County.

2. Litigation Preparation

Upon notice from the County that an action has been filed pertaining to Project labor compliance oversight, the Consultant shall provide and be compensated for all necessary assistance in litigating such action including, but not limited to, pretrial conferences, depositions, and court appearances.

IV. OBLIGATIONS OF COUNTY

County will:

A. Provide a Contract Administrator as a representative of the County and who, as such, will work with the Consultant in carrying out the provisions of the Agreement.

B. Issue task orders on a project-by-project basis. Task orders will at a minimum include scope of work, location, and schedule for the Project.

C. Provide all project plans, specifications, and contract administration.

D. Examine documents submitted and render timely decisions pertaining thereto.

E. Provide assistance to Consultant, and copies of any records ascertained in relation to Project labor compliance activities.

F. Provide a Contract Administrator who will provide information regarding engineering design philosophy, the schedule, and the purpose of the Project.

I. Examine documents submitted to the County by the Consultant and render timely decisions pertaining thereto.

K. Give reasonably prompt consideration to all matters submitted by the Consultant for approval to the end that there will be no substantial delays in Consultant's program of work. An approval, authorization or request to Consultant given by County will be binding upon County under the terms of Agreement only if it is made in writing and signed on behalf of County by Contract Administrator.

V. PERFORMANCE PERIOD

A. The term of the Agreement will be three years, unless prior to its expiration its term is extended in writing, for no more than two additional one-year terms, by mutual consent of the Director or his/her designee and the Consultant.

B. The Consultant is advised and hereby acknowledges its understanding that any recommendation for award is not binding on the County until the Agreement is fully executed following its approval by the County's Board of Supervisors.

VI. ALLOWABLE COSTS AND PAYMENTS

A. Total Fee:

1. Notwithstanding any other provisions in this Agreement, the Maximum Total Fee for the services required under the Agreement, shall not exceed the total sum of One Hundred Thousand and No/100 Dollars (\$100,000.00) over the entire term of the Agreement. Compensation for the services rendered shall be computed at the hourly and cost rates shown in Attachment B(2), subject to any adjustments that may be approved in accordance with Article VI, Section A, Paragraph 3.

2. The hourly and cost rates listed herein for services rendered by the Consultant and subconsultants shall remain in effect for the entire duration of the Agreement unless adjusted in accordance with the provisions of Article VI, Section A,

Paragraphs 3, 5, or 6.

3. The hourly rates paid for services performed by the Consultant and by subconsultants and the rates for expenses incidental to the Consultant's and subconsultant's performance of services may be adjusted no more than once annually for inflation, in accordance with the following provisions: the Consultant may request new labor rates and new rates for expenses incidental to the Consultant and subconsultant's performance of services subject to written approval of the Contract Administrator in accordance with the provisions of this Article VI, Section A, Paragraph 3. The Consultant shall initiate the rate adjustment process by submitting to the Contract Administrator a proposed adjusted fee schedule. The proposed adjusted fee schedule shall include proposed hourly rates for all categories of the Consultant and subconsultants wage classifications and proposed rates for incidental expenses listed in Attachment B(2). The proposed adjusted fee schedule shall not take effect unless approved in writing by the Contract Administrator. The Consultant hereby acknowledges its understanding that approval by the Contract Administrator of any upward adjustment in the hourly and cost rates shall not provide a basis for any increase in the total fee, as set forth in Article VI, Section A, Paragraph 1.

4. Expenses incidental to the Consultant's and subconsultant's performance of services under Article III of the Agreement shall be charged at the rates listed in Attachment B(2), subject to any adjustments that may be approved in accordance with Article VI, Section A, Paragraphs 3, 5, or 6. Unless incorporated in an adjusted fee schedule approved by the Contract Administrator in accordance with Article VI, Section A, Paragraphs 3, 5, or 6, all other expenses incidental to the Consultant's and subconsultant's performance of the services under Article III of the Agreement that are not listed in Attachment B(2) shall be borne by the Consultant.

5. In the event that, in accordance with Article I, Section D, the Contract Administrator approves the Consultant to retain additional subconsultants not listed in

Attachment B(2), hourly rates paid for services performed by such additional subconsultants of the Consultant and the rates for expenses incidental to subconsultants performance of services may be adjusted no more than once annually for inflation, in accordance with Article VI, Section A, Paragraph 3. The first annual adjustment of hourly and incidental expense rates for such additional subconsultants shall not be approved prior to one year after the Contract Administrator approval of the retention of such additional subconsultant(s) by the Consultant.

6. Notwithstanding any other provisions in this Agreement, the Contract Administrator may, at any time, authorize in writing the revision of the Consultant's or subconsultant's charge rates for incidental expenses to include additional categories of such expenses if, in the opinion of the Contract Administrator, such revision is necessary to facilitate the Consultant's performance of the Projects.

B. Payments:

1. Progress payments will be made by the County upon receipt of the Consultant's monthly invoices and approval by the Contract Administrator thereof based on the Contract Administrator's evaluation of the completion of the respective components of the assigned Project. Invoices shall clearly identify the Project, Phase and Task of the work, and shall be submitted with the documentation identified in Article VI, Section B, Paragraph 5. Invoices shall be forwarded electronically to:

PWPBusinessOffice@co.fresno.ca.us.

2. Upon receipt of a proper invoice, the Contract Administrator 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 will be returned to the Consultant for correction and resubmittal. Payment, less retention, if applicable, will be issued to the Consultant within forty (40) calendar days of the date the Auditor Controller/Treasurer Tax Collector receives the approved invoice.

3. The County is entitled to withhold a ten percent (10%) retention from the

Consultant's earned compensation in accordance with the provisions of Article VII of the Agreement.

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

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

6. Final invoices, and separate invoices for retentions, shall be submitted to Contract Administrator no later than thirty (30) days after the phase is completed. Payment for retentions, if any, shall not be made until all services for the phase are completed.

7. In the event the Contract Administrator reduces the scope of Consultant's work under the Agreement for a specific Project (or discontinues a specific Project), whether due to a deficiency in the appropriation of anticipated funding or otherwise, the Consultant will be compensated on a pro rata basis for actual work completed and accepted by the Contract Administrator in accordance with the terms of the Agreement.

VII. RETENTION FROM EARNED COMPENSATION

In addition to any amounts withheld under Article III, the Consultant agrees that the County, at the discretion of the Contract Administrator, may withhold a ten percent (10%) retention from the earned compensation of the Consultant. If the Contract Administrator determines that retention will be withheld for a Project, the Contract Administrator will so state in writing prior to commencement of the Project by the Consultant and will identify the Project-specific prerequisites (such as successful completion of a Project phase, as an example) for the release of retentions.

VIII. TERMINATION

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 VI, together with such additional services satisfactorily performed after termination which are expressly authorized by the County 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 \$10,000 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 work. The County's entitlement to such reimbursement shall in no way be construed as a limitation on other damages that may be recoverable by the County as a result of the Consultant's termination, in breach of its obligations hereunder. Nothing herein shall be construed as limiting the recompense for actual damages caused by any Project delay, including lost funding, caused by a material breach by Consultant.

C. The County may immediately suspend or terminate the 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 Consultant. Neither shall such payment impair or prejudice any remedy available to the

County with respect to the breach or default. The Director 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 Director and as determined in accordance with the procedures of Article XVI, 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 the 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 the Agreement terminated at any time by giving the Consultant thirty (30) days advance written notice. In the event of termination on the basis of this Paragraph, the Consultant's entitlement to payment, in accordance with the payment provisions set forth hereinabove, shall apply only to work performed by the Consultant prior to receipt of written notification of such non-allocation of sufficient funding.

IX. FUNDING REQUIREMENTS

A. It is mutually understood between the parties that this Agreement may have been written before ascertaining the availability of funds or appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays that would occur if the Agreement were executed after that determination was made.

B. This Agreement is subject to any additional restrictions, limitations, conditions, or any legislation enacted by the Congress, State Legislature or County Board of Supervisors that may affect the provisions, terms, or funding of the Agreement in any manner.

C. It is mutually agreed that if sufficient funds are not appropriated, this Agreement may be amended to reflect any reduction in funds.

D. The County has the option to void the Agreement under the 30-day cancellation clause, or to amend the Agreement by mutually acceptable modification of its provisions to reflect any reduction of funds.

1 X. CHANGE IN TERMS

2 A. The Agreement may be amended or modified only by mutual written
3 agreement of both parties. Except as provided in Article V, Section A, any such written
4 amendment to this Agreement may be approved on the County's behalf only by its Board of
5 Supervisors.

6 B. The Consultant shall only commence work covered by an amendment after
7 the amendment has been fully executed and written notification to proceed has been
8 issued by the Contract Administrator.

9 XI. DISADVANTAGED BUSINESS ENTERPRISES (DBE) PARTICIPATION

10 A. The Consultant must give consideration to Disadvantaged Business
11 Enterprise (hereinafter referred to as "DBE") firms as specified in 40 Code of Federal
12 Regulations (hereinafter referred to as "CFR"), Part 33. The Consultant must meet the
13 DBE goal established for PROJECTS by using DBEs as subconsultants or document a
14 good faith effort to have met the goal. If a DBE subconsultant is unable to perform, the
15 Consultant must make a good faith effort to replace him/her with another DBE
16 subconsultant if the goal is not otherwise met.

17 B. The Consultant is responsible for being fully informed regarding the
18 requirements of Title 40 CFR, Part 33 and SWRCB's Disadvantaged Business Enterprise
19 program developed pursuant to the regulations, as outlined in Attachment A, Guidelines for
20 Meeting the California State Revolving Fund (CASRF) Programs (Clean Water and
21 Drinking Water SRF) Disadvantaged Business Enterprise (DBE) Requirements, attached
22 hereto and incorporated herein; or any successor document or regulation.

23 C. A DBE subconsultant may be terminated only with written approval by the
24 Contract Administrator and only for documented cause, and with the consent of the
25 Contract Administrator. Adequate opportunity must be given to allow for remediation by the
26 DBE subconsultant.

27 XII. COST PRINCIPLES

1 A. The Consultant agrees that the Contract Cost Principles and Procedures,
2 Title 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., shall
3 be used to determine the allowability of cost for individual items.

4 B. The Consultant also agrees to comply with appropriate federal procedures
5 and program administrative requirements in accordance with the relevant section(s) of Title
6 40 CFR, Part 35, State and Local Assistance.

7 C. Any costs for which payment has been made to the Consultant that are
8 determined by subsequent audit to be unallowable, are subject to repayment by the
9 Consultant to the County.

10 XIII. COVENANT AGAINST CONTINGENT FEES

11 The Consultant warrants, by execution of this Agreement, that the Consultant has
12 not employed or retained any company or person, other than a bona fide employee working
13 for the Consultant; to solicit or secure this Agreement; and that Consultant has not paid or
14 agreed to pay any company or person other than a bona fide employee, any fee,
15 commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or
16 resulting from the award or formation of the Agreement. For breach or violation of this
17 warranty, the County shall have the right to annul the Agreement without liability, and to
18 pay only for the value of the work actually performed by the Consultant, or alternatively in
19 the County's discretion, to deduct from the contract price or consideration, or otherwise
20 recover the full amount of such any such commission, percentage, brokerage fee, gift,
21 contingent fee or similar form of consideration previously paid by the Consultant.

22 XIV. RETENTION OF RECORDS/AUDIT

23 A. For the purpose of determining the sufficiency of the Consultant's
24 performance of the contract (and compliance with Public Contract Code 10115, et seq. and
25 Title 21, California Code of Regulations, Chapter 21, Section 2500 et seq., when
26 applicable), the Consultant, subcontractors, and the County, and each of them, shall
27 maintain all books, documents, papers, accounting records, and other evidence pertaining

1 to the performance of this Agreement, including but not limited to, the costs of
2 administering this Agreement.

3 B. All parties shall make such materials available at their respective offices at all
4 reasonable times throughout the entirety of the contract term and for three years from the
5 date of final payment under the contract, pursuant to Government Code 8546.7. The state,
6 the State Auditor, the County, United States Environmental Protection Agency (USEPA), or
7 any duly authorized representative of the federal government shall have access to any
8 books, records, and documents of the Consultant that are pertinent to the contract for audit,
9 examinations, excerpts, and transactions, and copies thereof shall be furnished if
10 requested. It shall be the responsibility of the Consultant to ensure that all subcontracts in
11 excess of \$25,000 shall contain this provision.

12 C. The Consultant and subconsultants' contracts, including cost proposals and
13 indirect cost rates (ICR), are subject to audits or reviews such as, but not limited to, a
14 Contract Audit, an Incurred Cost Audit, an ICR Audit, or a certified public accountant (CPA)
15 ICR Audit Workpaper Review. If selected for audit or review, the Agreement, cost proposal
16 and ICR and related workpapers, if applicable, will be reviewed to verify compliance with 48
17 CFR, Part 31 and other related laws and regulations. In the instances of a CPA ICR Audit
18 Workpaper Review it is the Consultant's responsibility to ensure federal, state, or local
19 government officials are allowed full access to the CPA's workpapers. The Agreement, cost
20 proposal, and ICR shall be adjusted by the Consultant and approved by the Contract
21 Administrator to conform to the audit or review recommendations. The Consultant agrees
22 that individual terms of costs identified in the audit report shall be incorporated into the
23 Agreement by this reference if directed by County at its sole discretion. Refusal by the
24 Consultant to incorporate audit or review recommendations, or to ensure that the Federal,
25 State, or local governments have access to CPA workpapers, will be considered a breach
26 of the Agreement terms and cause for termination of the Agreement and disallowance of
27 prior reimbursed costs.

1 XV. AUDIT REVIEW PROCEDURES

2 A. Any dispute concerning a question of fact arising under an interim or post
3 audit of this contract that is not disposed of by agreement between the parties, shall be
4 reviewed by the County's Auditor/Controller/Treasurer/Tax-Collector.

5 B. Not later than 30 days after issuance of the final audit report, the Consultant
6 may request a review by the County's Auditor/Controller/Treasurer/Tax-Collector of
7 unresolved audit issues. The request for review will be submitted in writing.

8 C. Neither the pendency of a dispute nor its consideration by the County will
9 excuse the Consultant from full and timely performance, in accordance with the terms of
10 this Agreement.

11 D. The Consultant and subconsultants' contracts, including cost proposals and
12 indirect cost rates (ICR), are subject to audits or reviews such as, but not limited to, a
13 Contract Audit, an Incurred Cost Audit, an ICR Audit, or a certified public accountant (CPA)
14 ICR Audit Workpaper Review. If selected for audit or review, the contract, cost proposal
15 and ICR and related workpapers, if applicable, will be reviewed to verify compliance with 48
16 CFR, Part 31 and other related laws and regulations. In the instances of a CPA ICR Audit
17 Workpaper Review it is the Consultant's responsibility to ensure federal, state, or local
18 government officials are allowed full access to the CPA's workpapers. The Agreement, cost
19 proposal, and ICR shall be adjusted by Consultant and approved by the Contract
20 Administrator to conform to the audit or review recommendations. The Consultant agrees
21 that individual terms of costs identified in the audit report shall be incorporated into the
22 contract by this reference if directed by the County at its sole discretion. Refusal by the
23 Consultant to incorporate audit or review recommendations, or to ensure that the Federal,
24 State, or local governments have access to CPA workpapers, will be considered a breach
25 of contract terms and cause for termination of the Agreement and disallowance of prior
26 reimbursed costs.

27 XVI. ERRORS OR OMISSIONS CLAIMS AND DISPUTES

1 A. Definitions:

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

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

15 3. A "Contractor" is a duly licensed individual or business entity who has been
16 employed by County for the purpose of constructing, or assisting in the construction of, a
17 Project.

18 B. In the spirit of cooperation between the County and the Consultant, the
19 following procedures are established in the event of any claim or dispute alleging a
20 negligent error, act, or omission, of the Consultant.

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

24 2. The County and the Consultant shall meet and confer and attempt to reach
25 agreement on any dispute, including what damages have occurred, the measure of
26 damages and what proportion of damages, if any, shall be paid by either party. The parties
27 agree to consult and consider the use of mediation or other form of dispute resolution prior

1 to resorting to litigation.

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

17 4. Upon receipt of the panel's recommended resolution of the disputed issue(s),
18 the County and the Consultant shall again meet and confer and attempt to reach
19 agreement. If the parties still are unable to reach agreement, each party shall have
20 recourse to all appropriate legal and equitable remedies.

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

23 D. The Consultant shall continue to perform its obligations under this Agreement
24 pending resolution of any dispute, and the County shall continue to make payments of all
25 undisputed amounts due under this Agreement.

26 E. When a claim by either party has been made alleging the Consultant's
27 negligent error, act, or omission, the County and the Consultant shall meet and confer

within twenty-one (21) working days after the written notice of the claim has been provided.

XVII. SUBCONTRACTING

A. The Consultant shall perform the work contemplated with resources available within its own organization; and no portion of the work pertinent to this contract shall be subcontracted without written authorization by the Contract Administrator, excepting only those portions of the work and the responsible subconsultants that are expressly identified in Attachment B(1) hereto.

B. Any subcontract in excess of \$25,000 entered into as a result of the Agreement, shall contain all the provisions stipulated in this Agreement to be applicable to subconsultants.

C. Any substitution of subconsultants must be approved in writing by the Contract Administrator.

XVIII. EQUIPMENT PURCHASE

A. Prior authorization in writing, by the Contract Administrator shall be required before the Consultant enters into any unbudgeted purchase order, or subcontract exceeding \$5,000 for supplies, equipment, or Consultant services. The Consultant shall provide an evaluation of the necessity or desirability of incurring such costs.

B. Prior authorization by the Contract Administrator shall be required for purchase of any item, service or consulting work in excess of \$5,000 that is not covered in the Consultant's Cost Proposal; and the Consultant's request must be accompanied by at least three competitive quotations, unless the absence of bidding is adequately justified, to the satisfaction of the Contract Administrator in his or her discretion, by written explanation provided by the Consultant with its submittal.

C. Any authorized purchase of equipment as a result of this Agreement is subject to the following: "The Consultant shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least two years and an acquisition cost of \$5,000 or more. If the purchased equipment needs replacement

and is sold or traded in, the County shall receive a proper refund or credit at the conclusion of the contract, or if the contract is terminated, the Consultant may either keep the equipment and credit the County in an amount equal to its fair market value, or sell such equipment at the best price obtainable at a public or private sale, in accordance with established County procedures; and credit the County in an amount equal to the sales price. If the Consultant elects to keep the equipment, fair market value shall be determined at the Consultant's expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an Consultant mutually agreeable to by the County and the Consultant, if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by the County."

XIX. INSPECTION OF WORK

The Consultant and any subcontractor shall permit the County, the state, and the USEPA to review and inspect the Project activities and files at all reasonable times during the performance period of the Agreement including review and inspection on a daily basis.

XX. INSURANCE

A. Without limiting the County's right to obtain indemnification from the Consultant or any third parties, the Consultant, at its sole expense, shall maintain in full force and effect, the following insurance policies prior to commencement of any work for the County and, thereafter, throughout the entire term of this Agreement (with the exception of Professional Liability Insurance, which the Consultant shall maintain in full force and effect for the additional period of time required by Article XX, Section A, Paragraph 4).

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

2. Comprehensive Automobile Liability Insurance with limits for bodily injury of Two Hundred Fifty Thousand Dollars **(\$250,000.00)** per person, Five Hundred Thousand Dollars **(\$500,000.00)** per accident and for property damages of Fifty Thousand Dollars **(\$50,000.00)**, or such coverage with a combined single limit of Five Hundred Thousand Dollars **(\$500,000.00)**. Coverage should include owned and non-owned vehicles used in connection with this Agreement.

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

4. Professional Liability Insurance:

a. If the Consultant employs licensed professional staff in providing services, Professional Liability Insurance with limits of One Million Dollars **(\$1,000,000.00)** per claim, Three Million Dollars **(\$3,000,000.00)** annual aggregate.

b. The Professional Liability Insurance shall be kept in full force and effect for a period of three (3) years from the date of substantial completion of the Consultant's work as determined by the County.

The Consultant shall obtain endorsements to the Commercial General Liability insurance naming the County, its officers, agents, and employees, individually and collectively, as additional insured, but only insofar as the operations under this Agreement are concerned. Such coverage for 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. The Consultant shall give the County at least thirty (30) days advance written notice of any cancellation, expiration, reduction or other material change in coverage with respect to any of the aforesaid policies.

Prior to commencing any such work under the Agreement, the Consultant shall provide to the County certificates of insurance and endorsements for all of the required policies as specified above, stating that all such insurance coverage has been obtained and

1 is in full force; that the County, its officers, agents and employees will not be responsible for
2 any premiums on the policies; that such Commercial General Liability insurance names the
3 County, its officers, agents and employees, individually and collectively, as additional
4 insured, but only insofar as the operations under this Agreement are concerned; that such
5 coverage for additional insured shall apply as primary insurance and any other insurance,
6 or self-insurance, maintained by the County, its officers, agents and employees, shall be
7 excess only and not contributing with insurance provided under the Consultant's policies
8 herein; and that this insurance shall not be cancelled or changed without a minimum of
9 thirty (30) days advance, written notice given to the County. All certificates shall clearly
10 indicate the County's identifying Contract Number for this Agreement, and the certificates
11 shall be sent to the attention of the Contract Administrator.

12 In the event the Consultant fails to keep in effect at all times insurance coverage as
13 herein provided, the County may, in addition to other remedies it may have, suspend or
14 terminate this Agreement upon the occurrence of such event. All policies shall be issued
15 by admitted insurers licensed to do business in the State of California, and all such
16 insurance shall be purchased from companies possessing a current A.M. Best, Inc. rating
17 of A and FSC VII or better.

18 XXI. OWNERSHIP OF DATA

19 A. All documents, including preliminary documents, calculations, and survey
20 data, required in performing services under the Agreement shall be submitted to, and shall
21 remain at all times the property of the County regardless of whether they are in the
22 possession of the Consultant or any other person, firm, corporation or agency.

23 B. The Consultant understands and agrees the County shall retain full ownership
24 rights of the drawings and work product of the Consultant for the Project, to the fullest
25 extent permitted by law. In this regard, the Consultant acknowledges and agrees
26 Consultant's services are on behalf of the County and are "works made for hire," as that
27 term is defined in copyright law, by the County; that the drawings and work product to be

prepared by the Consultant are for the sole and exclusive use of the County, and that the County shall be the sole owner of all patents, copyrights, trademarks, trade secrets and other rights and contractual interests in connection therewith which are developed and compensated solely under the Agreement; that all the rights, title and interest in and to the drawings and work product will be transferred to the County by the Consultant to the extent the Consultant has an interest in and authority to convey such rights; and the Consultant will assist the County to obtain and enforce patents, copyrights, trademarks, trade secrets, and other rights and contractual interests relating to said drawings and work product, free and clear of any claim by the Consultant or anyone claiming any right through the Consultant. The Consultant further acknowledges and agrees the County's ownership rights in such drawings or work product, shall apply regardless of whether such drawings or work product, or any copies thereof, are in possession of the Consultant, or any other person, firm, corporation, or entity. For purposes of this Agreement the terms "drawings and work product" shall mean all reports and study findings commissioned to develop the Project design, drawings and schematic or preliminary design documents, certified reproducibles of the original final construction contract drawings, specifications, the approved estimate, record drawings, as-built plans, and discoveries, developments, designs, improvement, inventions, formulas, processes, techniques, or specific know-how and data generated or conceived or reduced to practice or learning by the Consultant, either alone or jointly with others, that result from the tasks assigned to the Consultant by the COUNTY under the Agreement.

C. If the Agreement is terminated during or at the completion of any phase under Article III, a reproducible copy of report(s) or preliminary documents shall be submitted by the Consultant to the County, which may use them to complete the Project at a future time.

D. If the Project is terminated at the completion of a construction document phase of the Project, certified reproducibles on 4 mil thick double matte film of the original final construction contract drawings, specifications, and approved engineer's estimate shall

be submitted by the Consultant to the County.

E. Documents, including drawings and specifications, prepared by Consultant pursuant to Agreement are intended to be suitable for reuse by County or others on extensions of the services provided for Project. Any use of completed documents for projects other than Project and/or any use of uncompleted documents will be at County's sole risk and without liability or legal exposure to Consultant.

The electronic files provided by the Consultant to the County are submitted for an acceptance period lasting until the expiration of the Agreement (i.e., throughout the duration of the contract term, including any extensions). Any defects the County discovers during such acceptance period will be reported to the Consultant and will be corrected as part of the CONSULTANT'S "Basic Scope of Work."

F. The County, in the discretion of its Board of Supervisors, may permit the copyrighting of reports or other products of the Agreement; and provided further, that if copyrights are permitted; the Consultant hereby agrees and this Agreement shall be deemed to provide that the Federal Highway Administration shall have the royalty-free nonexclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the work for government purposes.

XXII. CLAIMS FILED BY COUNTY'S CONSTRUCTION CONTRACTOR

A. If claims are filed by the County's Contractor relating to work performed by the Consultant's personnel, and additional information or assistance from the Consultant's personnel is required in order to evaluate or defend against such claims, then the Consultant hereby agrees in such event to make its personnel available for consultation with the County's construction contract administration and legal staff and for testimony, if necessary, at depositions and at trial or arbitration proceedings.

B. The Consultant's personnel that the County considers essential to assist in defending against the Contractor claims will be made available on reasonable notice from the Director. Services of the Consultant's personnel in connection with consultation or

testimony for this purpose will be performed pursuant to a written contract amendment, if determined by the parties to be necessary or appropriate.

XXIII. CONFIDENTIALITY OF DATA

A. All financial, statistical, personal, technical, or other data and information relative to the County's operations, which are designated confidential by the County and made available to the Consultant in order to carry out the Agreement, shall be protected by the Consultant from unauthorized use and disclosure.

B. Permission to disclose information on one occasion, or public hearing held by the County relating to the contract, shall not authorize the Consultant to further disclose such information, or disseminate the same on any other occasion.

C. The Consultant shall not comment publicly to the press or any other media regarding the Agreement or the County's actions on the same, except to the County's staff, the Consultant's own personnel involved in the performance of the Agreement, at public hearings or in response to questions from a Legislative committee.

D. The Consultant shall not issue any news release or public relations item of any nature, whatsoever, regarding work performed or to be performed under the Agreement without prior review of the contents thereof by the County, and receipt of the County's written permission.

E. All information related to the construction estimate is confidential, and shall not be disclosed by the Consultant to any entity other than the County.

XXIV. NATIONAL LABOR RELATIONS BOARD CERTIFICATION

In accordance with Public Contract Code Section 10296, the CONSULTANT hereby states under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against the Consultant within the immediately preceding two-year period, because of the Consultant's failure to comply with an order of a federal court that orders the Consultant to comply with an order of the National Labor Relations Board.

XXV. EVALUATION OF CONSULTANT

The Consultant's performance will be evaluated by the County using the form attached as Attachment G. A copy of the evaluation will be sent to the Consultant for comments. The evaluation together with the comments shall be retained as part of the contract record.

XXVI. STATEMENT OF COMPLIANCE: NON-DISCRIMINATION

A. The Consultant's signature affixed herein, and dated, shall constitute a certification under penalty of perjury under the laws of the State of California that the Consultant has, unless exempt, complied with, the nondiscrimination program requirements of Government Code Section 12990 and Title 2, California Administrative Code, Section 8103.

B. During the performance of the Agreement, the Consultant and its subconsultants shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave. The Consultant and subconsultants shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. The Consultant and subconsultants shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into the Agreement by reference and made a part hereof as if set forth in full. The Consultant and subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

C. In accordance with 40 CFR, Part 33, the Consultant shall abide by and include in any subconsultant contracts, the following term and condition: *The CONSULTANT shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The CONSULTANT shall carry out the applicable requirements of 40 CFR, Part 33, in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the contractor to carry out these requirements is a material breach of this contract which may result in the termination of this contract or other legally available remedies.*

D. The Consultant and subconsultants shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

XXVII. DEBARMENT AND SUSPENSION CERTIFICATION

A. The Consultant's signature affixed herein, shall constitute a certification under penalty of perjury under the laws of the State of California, that the Consultant has complied with Title 40, Code of Federal Regulations, Part 35, Debarment and Suspension, which certifies that he/she or any person associated therewith in the capacity of owner, partner, director, officer, or manager, is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency; has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years; does not have a proposed debarment pending; and has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years. Any exceptions to this certification must be disclosed to the County on Attachment F.

B. Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining Consultant responsibility. Disclosures must indicate to whom exceptions apply, initiating agency, and dates of action.

C. Exceptions to the Federal Government Excluded Parties Listing System maintained by the General Services Administration are to be determined by the USEPA.

XXVIII. COMPLIANCE WITH LAWS AND STATE PREVAILING WAGE RATES

A. The Consultant shall comply with the State of California's General Prevailing Wage Rate requirements in accordance with California Labor Code, Section 1770, and all Federal, State, and local laws and ordinances applicable to the work.

B. Any subcontract entered into as a result of this contract if for more than \$25,000 for public works construction or more than \$15,000 for the alteration, demolition, repair, or maintenance of public works, shall contain all of the provisions of this Article.

XXVIII. CONFLICT OF INTEREST

A. The Consultant shall comply with the provisions of the Fresno County Department of Public Works and Planning Conflict of Interest Code, attached hereto as Attachment C and incorporated herein. Such compliance shall include the filing of annual statements pursuant to the regulations of the State Fair Political Practices Commission including, but not limited to, portions of Form 700.

B. The Consultant shall disclose any financial, business, or other relationship with the County that may have an impact upon the outcome of this contract, or any ensuing County construction project. The Consultant shall also list current clients who may have a financial interest in the outcome of this contract, or any ensuing County construction project, which will follow.

C. The Consultant hereby certifies that it does not now have, nor shall it acquire any financial or business interest that would conflict with the performance of services under this AGREEMENT.

D. The Consultant hereby certifies that neither the Consultant, nor any firm affiliated with the Consultant will bid on any construction contract, or on any contract to provide construction inspection for any construction Project resulting from this Agreement; provided, however, that this shall not be construed as disallowing Consultant or affiliated

1 firm from performing, pursuant to this Agreement or other agreement with the County,
2 construction inspection services on behalf of County for the Project. An affiliated firm is
3 one, which is subject to the control of the same persons through joint ownership, or
4 otherwise.

5 E. Except for subconsultants or subcontractors whose services are limited to
6 providing surveying or materials testing information, no subcontractor who has provided
7 design services in connection with this contract shall be eligible to bid on any construction
8 contract, or on any contract to provide construction inspection for any construction project
9 resulting from this contract; provided, however, that this shall not be construed as
10 disallowing subcontractors who have provided design services for the Project from
11 performing, pursuant to this Agreement or other agreement with the County, construction
12 inspection services on behalf of the County for the Project.

13
14 **XXX. REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION**

15 The Consultant warrants that this Agreement was not obtained or secured through
16 rebates kickbacks or other unlawful consideration, either promised or paid to any County
17 employee. For breach or violation of this warranty, the County shall have the right, in its
18 discretion, to do any of the following: terminate the Agreement without liability; or to pay
19 only for the value of the work actually performed; or to deduct from the Agreement price, or
20 otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

21 **XXXI. PROHIBITION OF EXPENDING COUNTY STATE OR FEDERAL FUNDS FOR**
22 **LOBBYING**

23 A. The Consultant shall sign the lobbying forms, attached hereto and
24 incorporated herein as Attachment D, as required by the instructions found on each form.

25 B. The Consultant certifies to the best of his or her knowledge and belief that:

26 1. No state, federal or County appropriated funds have been paid, or will be paid
27 by or on behalf of the Consultant to any person for influencing or attempting to influence an

officer or employee of any state or federal agency; a Member of the State Legislature or United States Congress; an officer or employee of the Legislature or Congress; or any employee of a Member of the Legislature or Congress, in connection with any of the following:

- a. the awarding of any state or federal contract;
- b. the making of any state or federal grant;
- c. the making of any state or federal loan;
- d. the entering into of any cooperative agreement, or
- e. the extension, continuation, renewal, amendment, or modification of any state or federal contract, grant, loan, or cooperative agreement.

2. If any funds other than federally appropriated funds have been paid, or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency; a Member of Congress; an officer or employee of Congress, or an employee of a Member of Congress; in connection with this federal contract, grant, loan, or cooperative agreement, then the Consultant shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

C. The certification required by the provisions of this Article is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Title 31, U.S. Code Section 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

D. The Consultant also agrees by signing this document that he or she shall require that the language of this certification be included in all lower-tier subcontracts, which exceed \$100,000, and that all such sub-recipients shall certify and disclose accordingly.

XXXII. INDEPENDENT CONTRACTOR

1 A. In performance of the work, duties and obligations assumed by the Consultant
2 under this Agreement, it is mutually understood and agreed that the Consultant, including any
3 and all of the Consultant's officers, agents, and employees will at all times be acting and
4 performing as an independent contractor, and shall act in an independent capacity and not as
5 an officer, agent, servant, employee, joint venturer, partner, or associate of the County.
6 Furthermore, County shall have no right to control or supervise or direct the manner or method
7 by which the Consultant shall perform its work and function. However, County shall retain the
8 right to administer this AGREEMENT so as to verify that the Consultant is performing its
9 obligations in accordance with the terms and conditions thereof.

10 B. The Consultant and the County shall comply with all applicable provisions of law
11 and the rules and regulations, if any, of governmental authorities having jurisdiction over
12 matters the subject thereof.

13 C. Because of its status as an independent contractor, the Consultant shall have
14 absolutely no right to employment rights and benefits available to County employees. the
15 Consultant shall be solely liable and responsible for providing to, or on behalf of, its employees
16 all legally-required employee benefits. In addition, the Consultant shall be solely responsible
17 and save County harmless from all matters relating to payment of the Consultant's
18 employees, including compliance with Social Security withholding and all other regulations
19 governing such matters. It is acknowledged that during the term of this Agreement, the
20 Consultant may be providing services to others unrelated to the County or to this Agreement.

21 **XXXIII. DISCLOSURE OF SELF-DEALING TRANSACTIONS**

22 This provision is only applicable if the Consultant is operating as a corporation (a for-
23 profit or non-profit corporation) or if during the term of the Agreement, the Consultant
24 changes its status to operate as a corporation. Members of the Consultant's Board of
25 Directors shall disclose any self-dealing transactions that they are a party to while the
26 Consultant is providing goods or performing services under the Agreement. A self-dealing
27 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 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 hereto and incorporated as Attachment E and submitting it to the County prior to commencing with the self-dealing transaction or immediately thereafter.

XXXIV. NOTIFICATION

All notices hereunder and communications regarding interpretation of the terms of this Agreement and changes thereto, shall be effected by the mailing thereof by registered or certified mail, return receipt requested, postage prepaid, and addressed to the Contract Administrator and the Consultant's Project Manager identified on Page 1 of this Agreement.

XXXV. NON-ASSIGNMENT

Neither party shall assign, transfer or sub-contract this Agreement or any of its respective rights or duties hereunder, without the prior written consent of the other party.

XXXVI. CONSULTANT'S LEGAL AUTHORITY

Each individual executing or attesting the Agreement on behalf of the Consultant hereby covenants, warrants, and represents: (i) that he or she is duly authorized by or in accordance with Consultant's corporate by-laws to execute or attest and deliver the Agreement on behalf of the Consultant; and (ii) that the Agreement, once he or she has executed it, is and shall be binding upon such Corporation.

XXXVII. BINDING UPON SUCCESSORS

The Agreement shall be binding upon and inure to the benefit of the parties and their respective successors in interest, assigns, legal representatives, and heirs.

XXXVIII. INCONSISTENCIES

In the event of any inconsistency in interpreting the documents which constitute the Agreement, the inconsistency shall be resolved by giving precedence in the following order of priority: (1) the text of the Agreement (excluding Appendices); (2) Appendices to the Agreement.

XXXIX. SEVERABILITY

Should any part of this Agreement be determined to be invalid or unenforceable, then 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.

XL. FINAL AGREEMENT

Both of the above-named parties to this Agreement hereby expressly agree that this Agreement constitutes the entire agreement which is made and concluded in duplicate between the two parties with respect to the subject matter hereof and supersedes all previous negotiations, proposals, commitments, writing, advertisements, publications, and understandings of any nature whatsoever unless expressly included in this Agreement. In consideration of promises, covenants and conditions contained in this Agreement, the Consultant and the County, and each of them, do hereby agree to diligently perform in accordance with the terms and conditions of the Agreement, as evidenced by the signatures below.