

ATTACHMENT NO. FIVE  
SAMPLE AGREEMENT

1 **AGREEMENT FOR ENGINEERING CONSULTANT SERVICES**

2 THIS AGREEMENT made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,  
3 between the County of Fresno, a political subdivision of the State of California  
4 (hereinafter called "COUNTY"), and **[Consultant's firm name]**  
5 \_\_\_\_\_, Engineer, (A [State] Corporation / Partnership),  
6 **[Individual's name]** \_\_\_\_\_ a sole proprietor doing business as  
7 **[Firm name],**  
8 **[address]** \_\_\_\_\_, (hereinafter called "CONSULTANT").

9 **WITNESSETH:**

10 WHEREAS, the COUNTY requires specialized CONSULTANT services to prepare  
and implement:

- 11 1. An EMP in accordance with Title 27 of the California Code of Regulations (CCR),  
12 Chapter 3, Subchapter 3, Article 1, Sections 20385 (a)(2) and (4); and in accordance  
13 with Evaluation Monitoring Specification No. F.3 from Waste Discharge Requirement  
14 (WDR) R5-2005-0067 (ATTACHMENT 2) with a new proposed agency submittal date to  
15 be provided by the consultant.
- 16 2. Perform an EFS for a CAP to meet the requirements of Title 27 of the CCR, Section  
17 20430; and in accordance with Evaluation Monitoring Specification No. F.6 from Waste  
18 Discharge Requirement (WDR) R5-2005-0067 (ATTACHMENT 2) with a new proposed  
19 agency submittal date to be provided by the consultant.
- 20 3. Design and implementation of the CAP in accordance with Title 27 of the CCR,  
21 Sections 20430 and 20425 (a)(2); and in accordance with Evaluation Monitoring  
22 Specification No. F.7 from Waste Discharge Requirement (WDR) R5-2005-0067  
23 (ATTACHMENT 2) with a new proposed agency submittal date to be provided by the  
24 consultant.

25 The specific requirements are contained but not limited to those listed above and are  
26 discussed in the accompanying Request for Proposals (RFP); and

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

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

3 I. CONTRACTING OF CONSULTANT:

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

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

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

15 D. The contact person for the CONSULTANT shall be:  
16 \_\_\_\_\_ Telephone (\_\_\_\_) \_\_\_\_-\_\_\_\_, Fax (\_\_\_\_) \_\_\_\_-\_\_\_\_, e-mail  
17 \_\_\_\_\_, web \_\_\_\_\_.

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

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

21 III. CONSULTANTS SERVICES:

22 The CONSULTANT agrees to provide professional services as described below:  
23 Complete the EMP, perform an EFS for a CAP to meet the requirements of Title 27 of  
24 the CCR, Section 20430 and other regulatory requirements listed.

25 The services required of the Consultant shall include, but are not necessarily  
26 limited to the following:  
27  
28

1) An analysis and report in accordance with item # 3 on page 6 of the previously submitted EMP (ATTACHMENT 3). This report shall also be in accordance with the review of the EMP conducted by the CRWQCB (ATTACHMENT 4).

Additional services required of the Consultant shall also include, but are not necessarily limited to the following items related to the EFS:

2) Consultant will perform a site investigation, including site inspection, personal interviews, review of landfill records, and review of site history. This investigation includes, but is not limited to the following:

A. A review of landfill's existing groundwater monitoring system, procedures, and most recent analytical data;

B. A description of the regulatory status of the landfill (e.g., results of department inspections, compliance history, permit status, etc.);

C. A determination if a field investigation should be conducted.

3) If a field investigation is required, the Consultant will prepare a field investigation work plan that describes all of the field work and laboratory analysis which are part of the feasibility study, including but not limited to:

A. All proposed work areas;

B. The number and location of all borings, trenches, and test pits and their estimated depth and volume;

C. A description of all excavation and material handling operations;

D. A description of all material quantification methods and laboratory analyses;

E. A delineation of project management responsibilities and a proposed work schedule.

4) Upon approval of the feasibility study work plan, the field investigation may be performed. Upon completion of the field investigation, the data must be compiled and presented in a feasibility study report submitted to the department.

#### IV. COUNTY'S OBLIGATIONS:

1 The COUNTY will:

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

3 B. Provide a "COUNTY Representative" who will represent the COUNTY and  
4 who will work with the CONSULTANT in carrying out the provisions of this Agreement.

5 The COUNTY Representative will be the COUNTY Manager of Planning & Resource  
6 Management Department or his/her designee. The CONSULTANT shall communicate  
7 and coordinate with the COUNTY Representative who will provide the following  
8 services:

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

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

13 3. Provide right of entry on designated property for Detection Monitoring,  
14 geotechnical and engineering work.

15 C. Give reasonably prompt consideration to all matters submitted by the  
16 CONSULTANT for approval to the end that there will be no substantial delays in the  
17 CONSULTANT's program of work. An approval, authorization or request to the  
18 CONSULTANT given by the COUNTY will only be binding upon the COUNTY under the  
19 terms of this Agreement if in writing and signed on behalf of the COUNTY by the  
20 COUNTY Representative or a designee.

21 D. Provide CONSULTANT with copies of reports prepared previously for the  
22 COUNTY, as well as other landfill records.

23 V. COMPENSATION:

24 A. Total Fee:

25 1. Notwithstanding any other provision in this Agreement, the Total Fee  
26 for the services required under Article III shall be limited to a maximum of \$ \_\_\_\_\_  
27 comprised of a Basic Fee of \$ \_\_\_\_\_ and an Extra Service Allocation of \$ \_\_\_\_\_.

28 B. Basic Fee:

1                   1. Notwithstanding any other provision in this Agreement, the Basic Fee  
2 for the Basic Services required under Article III, shall be paid at the rates shown below  
3 and shall be limited to a maximum of \$\_\_\_\_\_. These rates as listed herein are to  
4 remain in effect for the entire duration of this Agreement. Within the Total Fee limitation  
5 described in V.A.1. above, the Basic Fee shall be divided as follows:

6                   2. Upon written agreement and authorization by both COUNTY and  
7 CONSULTANT, the above amounts may be modified within the limits of the Total Basic  
8 Fee.

9                   C. Extra Services:

10                  1. A maximum allocation of \$\_\_\_\_\_ to pay for authorized Extra  
11 Services is provided herein by this Agreement. Payment of Extra Services in excess of  
12 \$\_\_\_\_\_ is prohibited except upon a written Amendment to this Agreement pursuant  
13 to the provisions of Article XVI hereof.

14                  2. The CONSULTANT shall submit a request for authorization to perform  
15 extra services and an appropriate fee schedule for said extra services. The  
16 CONSULTANT shall not undertake any Extra Services without the advance written  
17 authorization of the COUNTY Representative. The CONSULTANT and the COUNTY  
18 shall expressly confirm in writing the authorization and maximum cost for any such  
19 services before the CONSULTANT is compensated for any work thereon.

20                  3. Payment for Extra Services will be at the identical hourly and cost rates  
21 set forth in Attachment “\_\_\_” of this contract.

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

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

27                   b) Making changes to documents, which are ordered by the  
28 COUNTY subsequent to COUNTY approval thereof.

1                   5. In the event COUNTY Representative expressly authorizes Extra  
2 Services, CONSULTANT shall keep complete records showing the hours and  
3 description of activities worked by each person who works on the project and all costs  
4 and charges applicable to the Extra Services work authorized. Should there be a claim  
5 for Extra Services, the CONSULTANT agrees that he shall identify the activity,  
6 performer of the activity, reason for the activity, and COUNTY official requesting the  
7 activity or the claim will be denied. CONSULTANT shall be responsible for all  
8 subconsultants keeping similar records. The CONSULTANT shall not stop the work,  
9 including the work in other areas unrelated to the Extra Services request or claim,  
10 unless it can be shown the project work cannot proceed while a claim or request for  
11 Extra Services is being evaluated.

12                   D. Payments:

13                   1. Progress payments will be made by the COUNTY upon receipt and  
14 approval of the CONSULTANT's monthly invoices based on the COUNTY's evaluation  
15 of the completion of the respective components of the projects(s). Invoices shall clearly  
16 identify the site and task to which the work pertains and shall be submitted with the  
17 documentation identified in Article V.D.4. Invoices shall be submitted to:

18                                   Resources Division  
19                                   Attn: John R Thompson, Interim Resources  
20                                   Manager  
21                                   County of Fresno  
22                                   Department of Public Works and Planning  
23                                   2220 Tulare Street, Sixth Floor  
24                                   Fresno, CA 93721-2106

25                   2. Upon receipt of a proper invoice, the COUNTY Department of Public  
26 Works and Planning will take a maximum of five (5) working days to review, approve,  
27 and submit it to the COUNTY Auditor-Controller/Treasurer-Tax Collector.  
28 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.

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

3                   4. Concurrently with the invoices, the CONSULTANT shall provide its  
4 certification acceptable to the COUNTY, and shall provide, on COUNTY request, copies  
5 of issued checks, receipts, or other COUNTY pre-approved documentation, that  
6 complete payment, less a ten percent (10%) retention, has been made to all  
7 subconsultants as provided herein for all previous invoices paid by the COUNTY.

8                   5. Final invoice, and separate invoice for retentions, shall be submitted to  
9 COUNTY no later than thirty (30) days after project is completed. Payment for  
10 retentions shall not be made until all post-project services are completed, including but  
11 not limited to furnishing of required reports.

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

15 VI.    COMPENSATION RECORDS:

16                  The CONSULTANT shall keep complete records showing the hours and  
17 description of activities performed by each person who works on the project and all  
18 associated costs or charges applicable to work covered by the Basic Fee and approved  
19 Extra Services. The CONSULTANT will be responsible for all sub-consultants keeping  
20 similar records.

21 VII.   AUDITS, ACCOUNTING AND INSPECTIONS ACCESS:

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

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

4 VIII. ERRORS OR OMISSION CLAIMS AND DISPUTES:

5 A. Definitions:

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

10 2. A "Claim" is a demand or assertion by one of the parties seeking, as a  
11 matter of right, adjustment or interpretation of contract terms, payment of money,  
12 extension of time, change orders, or other relief with respect to the terms of the  
13 contract. The term "Claim" also includes other disputes and matters in question  
14 between the COUNTY and CONSULTANT arising out of or relating to the contract.  
15 Claims must be made by written notice. The provisions of Government Code section  
16 901, et seq., shall apply to every claim made to COUNTY. The responsibility to  
17 substantiate claims shall rest with the party making the claim. The term "Claim" also  
18 includes any allegation of an error or omission by the CONSULTANT.

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

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

25 2. The project manager of COUNTY and CONSULTANT shall meet and  
26 confer and attempt to reach agreement on any dispute, including what damages have  
27 occurred, the measure of damages and what proportion of damages, if any, shall be

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1 paid by either party. The parties agree to consult and consider the use of mediation or  
2 other form of dispute resolution prior to resorting to litigation.

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

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

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

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

27           E. When a claim by either party has been made alleging the CONSULTANT's  
28 error, omission or negligent act, the COUNTY Project Manager and the CONSULTANT

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

3 IX. JOINDER OF PARTIES:

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

17 X. CONSULTANT'S OBLIGATIONS RELATING TO REGULATORY  
18 REQUIREMENTS:

19 A. The CONSULTANT shall analyze and adhere to requirements of all  
20 relevant regulatory codes to include, but not be limited to, applicable provisions of Titles  
21 14, 22, 23, and 27 of the CCR, and to WDRs Order and Monitoring and Reporting  
22 Program No. R5-2005-0067.

23 XI. INDEPENDENT CONTRACTOR:

24 A. In performance of the work, duties, and obligations assumed by  
25 CONSULTANT under this Agreement, it is mutually understood and agreed that  
26 CONSULTANT, including any and all of CONSULTANT's officers, agents and  
27 employees, will at all times be acting and performing as an independent contractor, and  
28 shall act in an independent capacity and not as an officer, agent, servant, employee,

1 joint venturer, partner or associate of the COUNTY. Furthermore, COUNTY shall have  
2 no right to control or supervise or direct the manner or method by which CONSULTANT  
3 shall perform its work and function. However, COUNTY shall retain the right to  
4 administer this Agreement so as to verify that CONSULTANT is performing its  
5 obligations in accordance with the terms and conditions thereof. CONSULTANT and  
6 COUNTY shall comply with all applicable provisions of law and the rules and  
7 regulations, if any, of Governmental authorities having jurisdiction over matters of the  
8 subject thereof.

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

18 XII. PARTIES BOUND BY AGREEMENT:

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

22 XIII. REQUIRED APPROVALS:

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

27 XIV. COMPLIANCE WITH LAWS:

28           CONSULTANT shall comply with Federal, State, and local laws, ordinances,

1 regulations, and Fresno County Charter Provisions applicable and in effect when  
2 professional services are performed.

3 XV. GOVERNING LAW:

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

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

11 XVI. AMENDMENTS:

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

16 XVII. CONSULTANT'S LEGAL AUTHORITY:

17 Each individual executing this Agreement on behalf of CONSULTANT hereby  
18 covenants, warrants, and represents: (i) that he or she is duly authorized to execute  
19 and deliver this Agreement on behalf of such corporation in accordance with a duly  
20 adopted resolution of the corporation's board of directors and in accordance with such  
21 corporation's articles of incorporation or charter and bylaws; (ii) that this Agreement is  
22 binding upon such corporation; and (iii) that CONSULTANT is a duly organized and  
23 legally existing corporation in good standing in the State of California.

24 XVIII. HOLD HARMLESS:

25 A. CONSULTANT shall hold harmless and indemnify COUNTY, its officers,  
26 agents, and employees, against the payment of any and all costs and expenses  
27 (including reasonable attorney fees and court costs), damages, claims, suits, losses,  
28 and liability for bodily and personal injury to or death of any person or for loss of any

1 property resulting from or arising out of any negligent or wrongful acts, errors or  
2 omissions of CONSULTANT, its officers, agents, and employees, in performing or  
3 failing to perform any work, services, or functions under this Agreement.

4 B. COUNTY and CONSULTANT hereby declare their mutual intent to  
5 cooperate in the defense of any claim, suit, or other action alleging liability, arising from  
6 the negligent performance or failure to perform of any COUNTY contractor or  
7 subcontractor in connection with the project. Such cooperation may include an  
8 agreement to prepare and present a cooperative defense after consultation with  
9 CONSULTANT's professional liability insurance carrier.

10 XIX. LIABILITY INSURANCE:

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

16 1. Commercial General Liability Insurance or Comprehensive General  
17 Liability Insurance, naming the COUNTY as an additional insured, with limits of not less  
18 than \$1,000,000 per occurrence.

19 2. Comprehensive Automobile Liability Insurance with limits for bodily  
20 injury of not less than \$250,000 per person, \$500,000 per accident and for property  
21 damage of not less than \$50,000, or such coverage with a combined single limit of  
22 \$500,000.

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

25 4. Professional Liability Insurance:

26 a. In the minimum amount of at least \$\_\_\_\_\_ coverage per  
27 claim, with an annual aggregate of at least \$\_\_\_\_\_, and with a deductible not to  
28 exceed \$50,000. A deductible greater than \$50,000 will be accepted upon the

1 COUNTY receiving satisfactory, certified information of the CONSULTANT's ability to  
2 support such a deductible. The financial ability to support the difference between the  
3 \$50,000 and greater deductible amount requested by CONSULTANT shall be  
4 guaranteed by any of the following:

- 5 1. Cash deposit with a trustee bank.
- 6 2. Irrevocable letter of credit issued by a bank for a  
7 period sufficient for the COUNTY to determine if there  
8 is a claim to be made against the CONSULTANT, e.g.  
9 six months after termination of Agreement.

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

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

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

28 e. The CONSULTANT may, at its option and expense and upon

1 approval of the COUNTY, provide specific project professional liability insurance for  
2 itself and all sub-consultants for this project, extending from the beginning of project to  
3 two (2) years past the issuance of final payment to the CONSULTANT. This time period  
4 specifically includes that time required for the resolution of all claims and disputes.

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

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

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

19 **XX. OWNERSHIP OF DOCUMENTS:**

20 A. CONSULTANT understands and agrees that COUNTY shall retain full  
21 ownership rights of the work-product of CONSULTANT for the project, to the fullest  
22 extent permitted by law. In this regard, CONSULTANT acknowledges and agrees that  
23 CONSULTANT's services are on behalf of COUNTY and are "works made for hire," as  
24 that term is defined in copyright law, by COUNTY; that the work-product to be prepared  
25 by CONSULTANT is for the sole and exclusive use of COUNTY, and shall be the sole  
26 property of COUNTY and its assigns, and the COUNTY and its assigns shall be the sole  
27 owner of all patents, copyrights, trademarks, trade secrets and other contractual and  
28 intangible rights in connection therewith; that all the rights, title, and interest in and to

1 the work-product will be transferred to COUNTY by CONSULTANT, and CONSULTANT  
2 will assist COUNTY to obtain and enforce patents, copyrights, trademarks, trade  
3 secrets, and all contractual and other rights of any kind or nature relating to COUNTY's  
4 ownership of said work-product; and that COUNTY shall be and become the owner of  
5 such work product, free and clear of any claim by CONSULTANT or anyone claiming  
6 any right through CONSULTANT. CONSULTANT further acknowledges and agrees  
7 that COUNTY's ownership rights in such work product shall apply regardless of whether  
8 such work product, or any copies thereof, are in the possession of CONSULTANT, or  
9 any other person, firm, corporation, or entity. For the purpose of this Agreement the  
10 term "work-product" shall mean all reports and study findings commissioned to develop  
11 each project, discoveries, developments, designs, improvements, inventions, formulas,  
12 processes, techniques, or specific know-how and data generated or conceived or  
13 reduced to practice or learning by CONSULTANT, either alone or jointly with others,  
14 that result from the tasks assigned to CONSULTANT by COUNTY under this  
15 Agreement.

16 B. All documents, including calculations and electronic data files, required in  
17 performing services under this Agreement shall be submitted to, and shall remain the  
18 property of the COUNTY.

19 **XXI. TIME OF COMPLETION:**

20 A. CONSULTANT shall diligently proceed with the agreed scope of services  
21 and shall provide such services in a timely manner, **PRIOR** to the following deadlines:

<u>Activity Description:</u>	<u>Deadline</u>
1. Submit a work plan for completing an EMP that meets the provisions of Section 20425(b) of CCR Title 27	<u>Proposal</u>
2. Submit a report describing completion of the EMP	<u>Proposal</u>
3. Submit a final EFS for a CAP pursuant to Title 27 of the CCR, Chapter 3, Subchapter 3, Article 1, Section 20420(k)(6)	<u>Proposal</u>
4. Submit an amended Report of Waste Discharge to establish a Corrective Action Program meeting the provisions of Section 20430 of CCR Title 27. The amended Report of Waste Discharge shall contain a plan and proposed time schedule to cleanup and abate the effects of all waste discharged to the soil	<u>Proposal</u>

1 and groundwater.

2 Failure of the CONSULTANT to provide such services on a timely basis, is sufficient  
3 cause to terminate this Agreement immediately, at the option of the COUNTY, in  
4 accordance with Article XXIIB, unless the delay is attributable to the COUNTY or State.

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

10 XXII. TERMINATION OF AGREEMENT:

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

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

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

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

1 available to the COUNTY with respect to the breach or default. The COUNTY shall  
2 have the right to demand of the CONSULTANT the repayment to the COUNTY of any  
3 funds disbursed to the CONSULTANT under this Agreement, which, in the judgment of  
4 the COUNTY and as determined in accordance with the procedures of Article IX, "Errors  
5 or Omissions Claims and Disputes", were not expended in accordance with the terms of  
6 this Agreement. The CONSULTANT shall promptly refund any such funds upon  
7 demand.

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

13 XXIII. ENTIRE AGREEMENT:

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

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