

CONSULTING SERVICES AGREEMENT FOR THE PAVEMENT CONDITION ASSESSMENT

A-26- _____

THIS AGREEMENT, made and entered into _____, by and between the COUNTY OF SAN JOAQUIN, a political subdivision of the State of California, hereinafter referred to as "COUNTY," and Consultant, _____, a _____ corporation, hereinafter referred to as "CONSULTANT."

WITNESSETH:

WHEREAS, COUNTY desires to conduct consulting services for the Pavement Condition Assessment hereinafter referred to as "PROJECT"; and

WHEREAS, COUNTY has requested consulting services for the Pavement Conditions Assessment from CONSULTANT for the PROJECT; and

WHEREAS, CONSULTANT employs experienced, qualified and duly licensed professional engineers; and

WHEREAS, COUNTY desires to engage the services of CONSULTANT for the PROJECT.

NOW, THEREFORE, the parties hereto mutually agree as follows:

I - SCOPE OF WORK

A. CONSULTANT shall provide Services in accordance with list of "Tasks" as referenced and defined in Exhibit "A," which is attached hereto and incorporated herein by this reference, all the Tasks are hereinafter referred to as "SCOPE OF WORK." CONSULTANT shall provide all labor, equipment, tools, and facilities necessary to complete all Tasks listed in the SCOPE OF WORK.

B. CONSULTANT represents that all professional personnel required to perform the Tasks under this AGREEMENT have been identified in the CONSULTANT's Statement of Qualifications, which is incorporated herein to the SCOPE OF WORK.

C. CONSULTANT represents that all Services provided pursuant to this AGREEMENT, either by CONSULTANT or at its direction, shall be rendered in accordance with the accepted practices and standards of CONSULTANT's profession, and accordance with the applicable laws, rules and regulations of federal, state, and local agencies.

D. COUNTY reserves the right to make changes, as it deems necessary, for the proper completion of the PROJECT by the CONSULTANT in connection with PROJECT and with implementation of PROJECT. Those changes are hereinafter referred to as "TASK ORDERS". TASK ORDERS shall be authorized and issued by COUNTY's Director of Public Works. TASK ORDERS shall constitute a supplement to this AGREEMENT.

E. Each TASK ORDER shall list the scope of altered or additional Services to be performed, state the time period within which the altered or additional work is to be completed, delineate any special conditions, state the compensation in accordance with the personnel wage rate sheets and other costs set forth in the COST PROPOSAL, include support data for work effort and cost detail, and authorize CONSULTANT to proceed with the Services detailed in the TASK ORDER. When compensation for a

Task is subject to adjustment under the provisions of this section, CONSULTANT shall promptly furnish the authorized COUNTY official with adequate cost data for such Task.

F. CONSULTANT shall perform altered or additional Services as requested by COUNTY only after receipt of a TASK ORDER from COUNTY executed and signed by COUNTY's Director of Public Works and CONSULTANT.

II - SCHEDULE

A. This AGREEMENT shall go into effect on _____, contingent upon approval by COUNTY, and CONSULTANT shall commence work after receipt of notification to proceed by COUNTY'S Contract Administrator. The AGREEMENT shall end on _____, unless extended by written agreement.

B. CONSULTANT is advised that any recommendation for contract award is not binding on COUNTY until this AGREEMENT is fully executed and approved by San Joaquin County Board of Supervisors.

C. Tasks shown in the SCOPE OF WORK shall be performed by CONSULTANT in accordance with the estimated schedule listed in Exhibit "B," which is attached hereto and incorporated herein by this reference, hereinafter referred to as "SCHEDULE."

D. The SCHEDULE may be modified by the written consent of COUNTY, but only in the event that such modifications are necessary due to revisions in the SCOPE OF WORK caused by the COUNTY or other reviewing agency, or for other reasons beyond the reasonable control of CONSULTANT, or it is mutually agreed upon and a written request for modification by CONSULTANT is made at least twelve (12) weeks prior to the end of the SCHEDULE.

III – ALLOWABLE COSTS AND PAYMENTS

A. The method of payment for this AGREEMENT will be based on actual cost plus a fixed fee. COUNTY will reimburse CONSULTANT for actual costs (including labor costs, employee benefits, travel, equipment rental costs, overhead and other direct costs) incurred by CONSULTANT in performance of the work. CONSULTANT will not be reimbursed for actual costs that exceed the estimated wage rates, employee benefits, travel, equipment rental, overhead, and other estimated costs set forth in the approved CONSULTANT'S COST PROPOSAL as referenced and defined in Exhibit "C", unless additional reimbursement is provided for by amendment to this AGREEMENT. In no event, will CONSULTANT be reimbursed for overhead costs at a rate that exceeds COUNTY's approved overhead rate set forth in the COST PROPOSAL. In the event, that COUNTY determines that a change to the work from that specified in the COST PROPOSAL and AGREEMENT is required, the AGREEMENT time or actual costs reimbursable by COUNTY shall be adjusted by written agreement or task order to accommodate the changed work. The maximum total cost as specified in Paragraph "H" shall not be exceeded, unless authorized by written agreement.

B. The indirect cost rate established for this AGREEMENT is extended through the duration of this specific AGREEMENT.

C. Reimbursement for transportation and subsistence costs shall not exceed the rates specified in the approved COST PROPOSAL.

D. When milestone cost estimates are included in the approved COST PROPOSAL, CONSULTANT shall obtain prior written approval for a revised milestone cost estimate from the Contract Administrator before exceeding such cost estimate.

E. Progress payments will be made monthly in arrears based on services provided and allowable incurred costs. A pro rata portion of CONSULTANT's fixed fee will be included in the monthly progress payments. If CONSULTANT fails to submit the required deliverable items according to the SCHEDULE set forth in the SCOPE OF WORK, COUNTY shall have the right to delay payment or terminate this AGREEMENT in accordance with the provisions of Article IV - Termination.

F. No payment will be made prior to approval of any work, nor for any work performed prior to approval of this AGREEMENT.

G. CONSULTANT will be reimbursed, as promptly as fiscal procedures will permit upon receipt by COUNTY's Contract Administrator of itemized invoices in triplicate. Invoices shall be submitted no later than 45 calendar days after the performance of work for which CONSULTANT is billing. Invoices shall detail the work performed on each milestone and each project as applicable. Invoices shall follow the format stipulated for the approved COST PROPOSAL and shall reference this AGREEMENT number and project title. Final invoice must contain the final cost and all credits due COUNTY including any equipment purchased under the provisions of Article IX - Equipment Purchase of this AGREEMENT. The final invoice should be submitted within 60 calendar days after completion of CONSULTANT's work. Invoices shall be mailed to COUNTY's Contract Administrator at the following address:

AIMEE CAMBRA
 Project Manager
 San Joaquin County Department of Public Works
 1810 E. Hazelton Avenue
 Stockton, CA 95205

H. The total amount payable by COUNTY, including the fixed fee, shall not exceed ____

I. Salary increases will be reimbursable if the new salary is within the salary range identified in the approved Cost Proposal and is approved by COUNTY's Contract Administrator.

For personnel subject to prevailing wage rates as described in the California Labor Code, all salary increases, which are the direct result of changes in the prevailing wage rates are reimbursable.

J. COUNTY shall manage and administer task expenditure limits and associated CONSULTANT and subconsultant expenditure limits in accordance with the COST PROPOSAL. If tasks are completed by CONSULTANT and subconsultants and accepted by COUNTY, and if CONSULTANT can verify cost savings that result in available residual unexpended funds, then these amounts shall be identified by CONSULTANT and reported to COUNTY. If CONSULTANT forecasts any task expenditure limit overruns and associated CONSULTANT cost limit overruns or subconsultant cost limit overruns, then these cost overruns shall be identified by CONSULTANT and reported to COUNTY. Prior written COUNTY approval must be secured before any cost overrun can be authorized. If residual unexpended funds are available, then these funds, at COUNTY'S discretion and with prior written COUNTY approval, may be applied to cost overruns as well as additional supplemental work COUNTY may request from CONSULTANT. CONSULTANT shall provide a monthly written summary of progress, critical issues,

schedule, and budget performance, etc, and any cost savings or forecasted overruns are to be identified by CONSULTANT and reported to COUNTY.

K. Upon the written request of CONSULTANT, COUNTY may, at its sole discretion, reduce the retention percentage to less than five (5) percent of payments for completed tasks and deliverables identified in the SCOPE OF WORK.

IV – TERMINATION

A. This AGREEMENT may be terminated by COUNTY for any reason, provided that COUNTY gives not less than thirty (30) calendar days' written notice (delivered by certified mail, return receipt requested) of intent to terminate. Upon termination, COUNTY shall be entitled to all work, including but not limited to, reports, investigations, appraisals, inventories, studies, analyses, drawings and data estimates performed to that date, whether completed or not, and in accordance with Article XV – WORK PRODUCT, Property of COUNTY.

B. COUNTY may temporarily suspend this AGREEMENT, at no additional cost to COUNTY, provided that CONSULTANT is given written notice (delivered by certified mail, return receipt requested) of temporary suspension. If COUNTY gives such notice of temporary suspension, CONSULTANT shall immediately suspend its activities under this AGREEMENT. A temporary suspension may be issued concurrent with the notice of termination provided for in subsection A of this section

C. Notwithstanding any provisions of this AGREEMENT, CONSULTANT shall not be relieved of liability to COUNTY for damages sustained by COUNTY by virtue of any breach of this AGREEMENT by CONSULTANT, and COUNTY may withhold any payments due to CONSULTANT until such time as the exact amount of damages, if any, due COUNTY from CONSULTANT is determined.

D. In the event of termination, CONSULTANT shall be compensated as provided for in this AGREEMENT, except as provided in ARTICLE VIII – EQUIPMENT PURCHASE, Paragraph "C". Upon termination, COUNTY shall be entitled to all work, including but not limited to, reports, investigations, appraisals, inventories, studies, analyses, drawings and data estimates performed to that date, whether completed or not, and in accordance with ARTICLE XV – WORK PRODUCT, Property of COUNTY.

E. Except as to any rights or obligations which survive discharge, this AGREEMENT shall be discharged, and the parties shall have no further obligation to each other, upon completion of the PROJECT as certified by CONSULTANT and accepted by COUNTY. The following provisions in this AGREEMENT shall survive discharge: Article XIV - DOCUMENTATION AND SERVICES BY CONSULTANT TO COUNTY, and Article XVII - INDEMNIFICATION.

V - COST PRINCIPLES AND ADMINISTRATIVE REQUIREMENTS

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

B. CONSULTANT also agrees to comply with federal procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

C. Any costs for which payment has been made to CONSULTANT that are determined by subsequent audit to be unallowable under 49 CFR, Part 18 and 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., are subject to repayment by CONSULTANT to COUNTY.

VI - RETENTION OF RECORDS AND AUDIT

For the purpose of determining compliance with Public Contract Code 10115, et seq., and Title 21, California Code of Regulations, Chapter 21, Section 2500, et seq., when applicable and other matters connected with the performance of the contract pursuant to Government Code 8546.7; CONSULTANT, subconsultants, and COUNTY shall maintain and make available for inspection all books, documents, papers, accounting records, and other evidence pertaining to the performance of the AGREEMENT, including, but not limited to, the costs of administering the AGREEMENT. All parties shall make such materials available at their respective offices at all reasonable times during the AGREEMENT period and for three years from the date of final payment under the AGREEMENT. The State, State Auditor, COUNTY, FHWA, or any duly authorized representative of the Federal Government shall have access to any books, records, and documents of CONSULTANT and its Certified Public Accountant's (CPA) work papers that are pertinent to the AGREEMENT and Indirect Cost Rates (ICR) for audit, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested.

VII- PERSONNEL AND SUBCONTRACTING

A. Nothing contained in this contract or otherwise, shall create any contractual relation between COUNTY and any subconsultant(s), and no subcontract shall relieve CONSULTANT of its responsibilities and obligations hereunder. CONSULTANT agrees to be as fully responsible to COUNTY for the acts and omissions of its subconsultant(s) and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by CONSULTANT. CONSULTANT's obligation to pay its subconsultant(s) is an independent obligation from COUNTY'S obligation to make payments to the CONSULTANT.

B. CONSULTANT shall perform the work contemplated with resources available within its own organization and no portion of the work pertinent to this AGREEMENT shall be subcontracted without written authorization by COUNTY's Contract Administrator, except that, which is expressly identified in the approved COST PROPOSAL.

C. CONSULTANT shall pay its subconsultants within ten (10) calendar days from receipt of each payment made to CONSULTANT by COUNTY.

D. All subcontracts entered into as a result of this contract shall contain all the provisions stipulated in this AGREEMENT to be applicable to subconsultants.

E. Any substitution of subconsultant(s) must be approved in writing by COUNTY's Contract Administrator prior to the start of work by the subconsultant(s).

VIII - EQUIPMENT PURCHASE

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

B. For purchase of any item, service, or consulting work not covered in CONSULTANT's COST PROPOSAL and exceeding \$5,000 prior authorization by COUNTY's Contract Administrator; three competitive quotations must be submitted with the request or the absence of bidding must be adequately justified.

C. Any equipment purchased with funds provided under the terms of this AGREEMENT is subject to the following:

1. 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 five thousand dollars (\$5,000) or more. If the purchased equipment needs replacement and is sold or traded in, COUNTY shall receive a proper refund or credit at the conclusion of the AGREEMENT, or if the AGREEMENT is terminated, CONSULTANT may either keep the equipment and credit 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 COUNTY in an amount equal to the sales price. If CONSULTANT elects to keep the equipment, fair market value shall be determined at CONSULTANT's expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to by COUNTY and CONSULTANT, if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by COUNTY.
2. Regulation 2 CFR Part 200 requires a credit to Federal funds when participating equipment with a fair market value greater than five thousand dollars (\$5,000) is credited to the project.

IX - STATE PREVAILING WAGE RATES

A. No CONSULTANT or subconsultant may be awarded an AGREEMENT containing public work elements unless registered with the Department of Industrial Relations (DIR) pursuant to Labor Code §1725.5. Registration with DIR must be maintained throughout the entire term of this AGREEMENT, including any subsequent amendments.

B. The CONSULTANT shall comply with all of the applicable provisions of the California Labor Code requiring the payment of prevailing wages. The General Prevailing Wage Rate Determinations applicable to work under this AGREEMENT are available and on file with the Department of Transportation's Regional/District Labor Compliance Officer (http://www.dot.ca.gov/hq/construc/LaborCompliance/documents/District-Region_Map_Construction_7-8-15.pdf). These wage rates are made a specific part of this AGREEMENT by reference pursuant to Labor Code §1773.2 and will be applicable to work performed at a construction project site. Prevailing wages will be applicable to all inspection work performed at COUNTY construction sites, at COUNTY facilities and at off-site locations that are set up by the construction contractor or one of its subcontractors solely and specifically to serve COUNTY projects. Prevailing wage requirements do not apply to inspection work performed at the facilities of vendors and commercial materials suppliers that provide goods and services to the general public.

C. General Prevailing Wage Rate Determinations applicable to this project may also be obtained from the Department of Industrial Relations Internet site at <http://www.dir.ca.gov>.

D. Payroll Records

1. Each CONSULTANT and Subconsultant shall keep accurate certified payroll records and supporting documents as mandated by Labor Code §1776 and as defined in 8 CCR §16000 showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by the CONSULTANT or Subconsultant in connection with the public work. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:
 - a. The information contained in the payroll record is true and correct.
 - b. The employer has complied with the requirements of Labor Code §1771, §1811, and §1815 for any work performed by his or her employees on the public works project.
2. The payroll records enumerated under paragraph (1) above shall be certified as correct by the CONSULTANT under penalty of perjury. The payroll records and all supporting documents shall be made available for inspection and copying by COUNTY representative at all reasonable hours at the principal office of the CONSULTANT. The CONSULTANT shall provide copies of certified payrolls or permit inspection of its records as follows:
 - a. A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or the employee's authorized representative on request.
 - b. A certified copy of all payroll records enumerated in paragraph (1) above, shall be made available for inspection or furnished upon request to a representative of COUNTY, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards of the Department of Industrial Relations. Certified payrolls submitted to COUNTY, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards shall not be altered or obliterated by the CONSULTANT.
 - c. The public shall not be given access to certified payroll records by the CONSULTANT. The CONSULTANT is required to forward any requests for certified payrolls to the COUNTY's Contract Administrator by both email and regular mail on the business day following receipt of the request.
3. Each CONSULTANT shall submit a certified copy of the records enumerated in paragraph (1) above, to the entity that requested the records within ten (10) calendar days after receipt of a written request.
4. Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by COUNTY shall be marked or obliterated in such a manner as to prevent disclosure of each individual's name, address, and social security number. The name and address of the CONSULTANT or Subconsultant performing the work shall not be marked or obliterated.

5. The CONSULTANT shall inform COUNTY of the location of the records enumerated under paragraph (1) above, including the street address, city and county, and shall, within five (5) working days, provide a notice of a change of location and address.
6. The CONSULTANT or Subconsultant shall have ten (10) calendar days in which to comply subsequent to receipt of written notice requesting the records enumerated in paragraph (1) above. In the event the CONSULTANT or Subconsultant fails to comply within the ten (10) day period, he or she shall, as a penalty to COUNTY, forfeit one hundred dollars (\$100) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Such penalties shall be withheld by COUNTY from payments then due. CONSULTANT is not subject to a penalty assessment pursuant to this section due to the failure of a subconsultant to comply with this section.

E. When prevailing wage rates apply, the CONSULTANT is responsible for verifying compliance with certified payroll requirements. Invoice payment will not be made until the invoice is approved by the COUNTY's Contract Administrator.

F. Penalty:

1. The CONSULTANT and any of its Subconsultants shall comply with Labor Code §1774 and §1775. Pursuant to Labor Code §1775, the CONSULTANT and any Subconsultant shall forfeit to the COUNTY a penalty of not more than two hundred dollars (\$200) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the Director of DIR for the work or craft in which the worker is employed for any public work done under the AGREEMENT by the CONSULTANT or by its Subconsultant in violation of the requirements of the Labor Code and in particular, Labor Code §§1770 to 1780, inclusive.
2. The amount of this forfeiture shall be determined by the Labor Commissioner and shall be based on consideration of mistake, inadvertence, or neglect of the CONSULTANT or Subconsultant in failing to pay the correct rate of prevailing wages, or the previous record of the CONSULTANT or Subconsultant in meeting their respective prevailing wage obligations, or the willful failure by the CONSULTANT or Subconsultant to pay the correct rates of prevailing wages. A mistake, inadvertence, or neglect in failing to pay the correct rates of prevailing wages is not excusable if the CONSULTANT or Subconsultant had knowledge of the obligations under the Labor Code. The CONSULTANT is responsible for paying the appropriate rate, including any escalations that take place during the term of the AGREEMENT.
3. In addition to the penalty and pursuant to Labor Code §1775, the difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the CONSULTANT or Subconsultant.
4. If a worker employed by a Subconsultant on a public works project is not paid the general prevailing per diem wages by the Subconsultant, the prime CONSULTANT of the project is not liable for the penalties described above unless the prime CONSULTANT had knowledge of that failure of the Subconsultant to pay the specified

prevailing rate of wages to those workers or unless the prime CONSULTANT fails to comply with all of the following requirements:

- a. The AGREEMENT executed between the CONSULTANT and the Subconsultant for the performance of work on public works projects shall include a copy of the requirements in Labor Code §§ 1771, 1775, 1776, 1777.5, 1813, and 1815.
- b. The CONSULTANT shall monitor the payment of the specified general prevailing rate of per diem wages by the Subconsultant to the employees by periodic review of the certified payroll records of the Subconsultant.
- c. Upon becoming aware of the Subconsultant's failure to pay the specified prevailing rate of wages to the Subconsultant's workers, the CONSULTANT shall diligently take corrective action to halt or rectify the failure, including but not limited to, retaining sufficient funds due the Subconsultant for work performed on the public works project.
- d. Prior to making final payment to the Subconsultant for work performed on the public works project, the CONSULTANT shall obtain an affidavit signed under penalty of perjury from the Subconsultant that the Subconsultant had paid the specified general prevailing rate of per diem wages to the Subconsultant's employees on the public works project and any amounts due pursuant to Labor Code §1813.
5. Pursuant to Labor Code §1775, COUNTY shall notify the CONSULTANT on a public works project within fifteen (15) calendar days of receipt of a complaint that a Subconsultant has failed to pay workers the general prevailing rate of per diem wages.
6. If COUNTY determines that employees of a Subconsultant were not paid the general prevailing rate of per diem wages and if COUNTY did not retain sufficient money under the AGREEMENT to pay those employees the balance of wages owed under the general prevailing rate of per diem wages, the CONSULTANT shall withhold an amount of money due the Subconsultant sufficient to pay those employees the general prevailing rate of per diem wages if requested by COUNTY.

G. Hours of Labor

Eight (8) hours labor constitutes a legal day's work. The CONSULTANT shall forfeit, as a penalty to the COUNTY, twenty-five dollars (\$25) for each worker employed in the execution of the AGREEMENT by the CONSULTANT or any of its Subconsultants for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week in violation of the provisions of the Labor Code, and in particular §§1810 to 1815 thereof, inclusive, except that work performed by employees in excess of eight (8) hours per day, and forty (40) hours during any one week, shall be permitted upon compensation for all hours worked in excess of eight (8) hours per day and forty(40) hours in any week, at not less than one and one-half (1.5) times the basic rate of pay, as provided in §1815.

H. Employment of Apprentices

1. Where either the prime AGREEMENT or the subagreement exceeds thirty thousand dollars (\$30,000), the CONSULTANT and any subconsultants under him or her shall comply with all applicable requirements of Labor Code §§ 1777.5, 1777.6 and 1777.7 in the employment of apprentices.
2. CONSULTANTS and subconsultants are required to comply with all Labor Code requirements regarding the employment of apprentices, including mandatory ratios of journey level to apprentice workers. Prior to commencement of work, CONSULTANT and subconsultants are advised to contact the DIR Division of Apprenticeship Standards website at <https://www.dir.ca.gov/das/>, for additional information regarding the employment of apprentices and for the specific journey-to- apprentice ratios for the AGREEMENT work. The CONSULTANT is responsible for all subconsultants' compliance with these requirements. Penalties are specified in Labor Code §1777.7.

X - CONFLICT OF INTEREST

The CONSULTANT affirms that the CONSULTANT presently has no interest that has not been previously disclosed to the COUNTY; and, shall not acquire any interest, direct or indirect, which could conflict in any manner or degree with the performance of services required to be performed under this AGREEMENT; and, in the event of change in either private interests or services under this AGREEMENT, the CONSULTANT will immediately raise with the COUNTY any question regarding possible conflict of interest which may arise as a result of such change. The CONSULTANT further agrees that in the performance of this AGREEMENT, no person having any such interest shall be employed. A potential conflict of interest includes, but is not limited to, work related to contracts with County departments, (other cities), (other parties), local land developers and current clients who may have a financial interest in the outcome of the PROGRAM. At the COUNTY's discretion, a potential conflict of interest may be waived or factored into a modified SCOPE OF WORK, as the case may be.

XI - REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION

CONSULTANT warrants that this AGREEMENT was not obtained or secured through rebates, kickbacks, or other unlawful consideration, either promised or paid to any COUNTY employee. For breach or violation of this warranty, COUNTY shall have the right, at its discretion, to terminate the AGREEMENT without liability; to pay only for the value of the work actually performed; or to deduct from the agreed to price; or otherwise recover the full amount of such rebate, kickback, or other unlawful consideration.

XII- PROHIBITION OF LOBBYING USING COUNTY, STATE, OR FEDERAL FUNDS

A. CONSULTANT certifies to the best of his or her knowledge and belief that:

1. No state, federal, or COUNTY appropriated funds have been paid, or will be paid by or on behalf of 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 the awarding of

any state or federal contract; the making of any state or federal grant; the making of any state or federal loan; the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any state or federal contract, grant, loan, or cooperative agreement.

2. If any funds other than federal 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; CONSULTANT shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

B. This certification 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 Section 1352, Title 31, U.S. Code. Any person who fails to file the required representation shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

C. 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.

XIII - DOCUMENTATION AND SERVICES BY COUNTY TO CONSULTANT

CONSULTANT shall collect and COUNTY shall furnish access to all information, data, and maps as currently exist in files necessary for carrying out the services as set forth in this AGREEMENT, to CONSULTANT, without charge, and COUNTY shall cooperate in the carrying out of the work without undue delay. CONSULTANT agrees that COUNTY's responsibility to provide access to information is limited to data in COUNTY files and in the format as stored. CONSULTANT shall check and investigate existing information and conditions and notify the COUNTY of any deficiencies that the CONSULTANT discovers.

XIV - DOCUMENTATION AND SERVICES BY CONSULTANT TO COUNTY

A. CONSULTANT shall furnish all reports and drawings/plans, in hard copy and electronic format as determined by COUNTY, upon completion of this AGREEMENT or earlier termination. All documents and electronic files including, but not limited to, passwords, source codes, etc., submitted by CONSULTANT to COUNTY shall become the property of COUNTY upon completion of this AGREEMENT or earlier termination. CONSULTANT agrees to provide all required documentation to transfer ownership.

B. No material prepared in connection with this AGREEMENT shall be subject to copyright in the United States or any other country. All drawings, specifications, documents, and other memoranda relating to work and services hereunder, shall remain or become the property of the COUNTY whether executed by or for the CONSULTANT for COUNTY, or otherwise by or for the CONSULTANT, or by or for a subcontractor operating under the CONSULTANT's supervision, or direction, and all such documents and copies thereof shall be returned or transmitted to COUNTY forthwith upon COUNTY's written demand, termination, or completion of the work under this AGREEMENT.

C. COUNTY agrees that if COUNTY alters any of the instruments of service, including supporting studies, materials, plans, and other documents delivered to COUNTY by CONSULTANT upon completion of the AGREEMENT or early termination of the AGREEMENT, as provided in Section XI of the AGREEMENT, any use by COUNTY of such instruments of service for this or any other project shall be at the COUNTY's sole risk and responsibility.

XV- WORK PRODUCT

COUNTY and CONSULTANT acknowledge and agree that "Work Product," and all components of it, provided or developed by CONSULTANT hereunder or in connection herewith, shall constitute "works made for hire" within the meaning of Title 17 United States Code, Section 101, et seq., (the "Copyright Act"), and all right, title, and interest in and to the Custom Products shall vest in the COUNTY immediately upon development. To the extent any such Custom Products may not be the sole and exclusive property of the COUNTY and/or may not be a "work made for hire" as defined in the Copyright Act upon development, then CONSULTANT agrees to and hereby does sell, transfer, grant, and assign to the COUNTY all copyrights, patents, trade secrets, inventions, and other proprietary rights, title, and interest in and to such Custom Products upon development.

XVI – ASSIGNMENT

Both parties shall give their personal attention to the faithful performance of this AGREEMENT and shall not assign, transfer, convey, or otherwise dispose of this AGREEMENT or any right, title, or interest in, or to, the same or any part thereof without the prior written consent of the other party and then only subject to such terms and conditions as the other party may require. A consent to one assignment shall not be deemed to be a consent to any subsequent assignments. Any assignments without such approval shall be void and, at the option of the other party, shall terminate this AGREEMENT and any license, right, or privilege granted herein. This AGREEMENT and interest herein shall not be assignable by operation of law without the prior written consent of the other party.

XVII - INDEMNIFICATION

A. The CONSULTANT shall, at its expense, defend, indemnify, and hold harmless the County of San Joaquin and its employees, officers, directors, contractors, and agents from and against any losses, liabilities, damages, penalties, costs, fees including, without limitation, reasonable attorneys' fees and expenses from any claim or action including, without limitation, for bodily injury or death, to the extent caused by, or arising from, the negligence or willful misconduct of CONSULTANT, its employees, officers, agents, or subconsultants.

B. The duty of CONSULTANT to indemnify and save harmless as set forth herein, shall include both the duty to indemnify and, at CONSULTANT's own cost and expense, the duty to defend as set forth in Section 2778 of the California Civil Code and as limited in section 2782.8 of the California Civil Code. This duty to defend arises when such claim is made and shall be independent of any finding of negligence. CONSULTANT shall provide legal counsel reasonably acceptable to the COUNTY.

XVIII - INSURANCE

A. CONSULTANT shall not commence any work until CONSULTANT obtains, at CONSULTANT's own expense, all required insurance that shall be primary, shall name the COUNTY as additional insured, except for professional liability insurance and Workman's Compensation insurance, and shall expressly indicate that such insurance is related to CONSULTANT's activities under this AGREEMENT. CONSULTANT shall furnish certification of insurance within ten (10) calendar days of execution of this AGREEMENT by COUNTY and prior to issuance by COUNTY of the Notice to Proceed. Such insurance must be from an insurer admitted to or authorized in the State of California and have the approval of COUNTY as to limit, form, and amount. The types of insurance CONSULTANT are required to obtain for the full term of this AGREEMENT will be Commercial General Liability Insurance, Professional Liability Insurance, and Worker's Compensation Insurance. As evidence of specified insurance coverage, COUNTY may, in lieu of actual policies, accept certificates issued by the insurance carrier showing such policies are in force for the specified period during which services will be provided by CONSULTANT. Each policy, or certificate, will bear an endorsement or statement waiving right of cancellation or reduction in coverage (for professional liability) without thirty (30) calendar days notice in writing to be delivered by registered mail to COUNTY.

B. Commercial General Liability Insurance - CONSULTANT shall obtain, and keep in force and effect during the term of this AGREEMENT, at the CONSULTANT's own expense, General Liability Insurance on an occurrence-based policy, including contractual liability, with a combined single limit in the minimum amount of Five Million Dollars (\$5,000,000), and automobile liability insurance with a combined single limit in the minimum amount of Two Million Dollars (\$2,000,000). Such insurance shall name COUNTY, its officers, agents, its employees, and representatives as additional insured.

C. Professional Liability Insurance - CONSULTANT shall obtain, at CONSULTANT's own expense, and provide evidence of Professional Liability Insurance on a claim policy with an aggregate limit in the minimum amount of Two Million Dollars (\$2,000,000.00).

D. Workers' Compensation Insurance - CONSULTANT shall take out and maintain, during the life of the AGREEMENT, Workers' Compensation Insurance for all employees of CONSULTANT employed at the site of the project and, in case any work is sublet, the CONSULTANT shall require subconsultant(s) to similarly provide Workers' Compensation Insurance for all of the latter's employees. If any class of employees engaged in hazardous work under this AGREEMENT at the site of the project is not protected under the Workers' Compensation Statute, the CONSULTANT shall provide and shall cause any subconsultant to provide insurance for the protection of employees engaged in hazardous work.

E. CONSULTANT, by executing this AGREEMENT, certifies that CONSULTANT is aware of the provisions of Section 3700, et seq., of the Labor Code of the State of California requiring every employer to be insured against the liability for Workers' Compensation or to undertake self insurance in accordance with the provisions of that code, and certifies that CONSULTANT will comply with such provisions before commencing the performance of the work of this AGREEMENT.

XIX- WAIVER

In the event that either COUNTY or CONSULTANT shall at any time, or times, waive any breach of this AGREEMENT by the other, such waiver shall not constitute a waiver of any other or succeeding breach of this AGREEMENT whether of the same or any other covenant, condition, or obligation.

XX – DISPUTES AND REMEDIES

A. Notice of any disputes, claims, or breach raised by CONSULTANT, arising under this AGREEMENT, must be submitted, in writing, to COUNTY within ninety (90) days of the incident(s). If such issues cannot be resolved within ninety (90) days following written notice, and if the parties mutually agree, the claim may be submitted to arbitration. Arbitration, if expressly agreed upon in writing by COUNTY and CONSULTANT, shall be pursuant to the provisions of California Code of Civil Procedure, Section 1280, et seq.

B. At the COUNTY's discretion, COUNTY may elect to raise a dispute or claim by submitting it, in writing, to CONSULTANT. Such dispute or claim would include conditions and time constraints required of CONSULTANT to remedy.

C. Neither the pendency of a dispute nor its consideration will excuse the parties from full and timely performance in accordance with terms of this AGREEMENT.

D. Any legal action or proceeding with respect to this AGREEMENT shall be brought in the courts of the State of California for the County of San Joaquin, or the courts of the United States of America for the Eastern District of California, and in no other courts and, by execution of this AGREEMENT, CONSULTANT hereby accepts such jurisdiction and venue and generally and unconditionally waives any objection, including, without limitation, any objection to the laying of venue or based on the grounds of *forum non conveniens*.

XXI - COSTS AND ATTORNEY'S FEES

In any action brought by a party to enforce the terms of this AGREEMENT, each party shall bear its own costs and fees. The prevailing party shall be entitled to reasonable attorney's fees and costs, including the reasonable value of any services provided by in-house counsel. The reasonable value of services provided by either party's counsel shall be capped at the hourly rate charged by Deputy County Counsel IV attorneys in the office of the County Counsel of San Joaquin County, California.

XXII - NO CONTINGENT FEE

The CONSULTANT represents that he/she has not employed or retained any company or person, other than a bona fide employee working for the CONSULTANT, to solicit or secure this AGREEMENT; and that he/she has not paid, or agreed to pay, any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon, or resulting from, the award or formation of this AGREEMENT. For breach or violation of this representation, the COUNTY shall have the right to annul this AGREEMENT without liability, or at its discretion, to deduct from the AGREEMENT price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

XXIII - DEBARMENT AND SUSPENSION CERTIFICATION

A. CONSULTANT's signature affixed herein, shall constitute a certification under penalty of perjury under the laws of the State of California, that CONSULTANT has complied with Title 2 CFR, Part 180, "OMB Guidelines to Agencies on Government wide Debarment and Suspension (nonprocurement)", 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 COUNTY.

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 List System maintained by the General Services Administration are to be determined by the Federal Highway Administration.

XXIV -NOTIFICATION

All notices and communications that may be required under this AGREEMENT shall be in writing and shall be given by personal service, registered mail, or overnight delivery to the person named at the address shown below:

COUNTY: AIMEE CAMBRA
 Project Manager
 San Joaquin County Department of Public Works
 1810 E. Hazelton Avenue
 Stockton, CA 95201

CONSULTANT:

XXV - AGREEMENT CONTAINS ALL UNDERSTANDING

This AGREEMENT represents the entire integrated AGREEMENT between COUNTY and CONSULTANT, and supersedes all prior negotiations, representations, or agreements, either written or oral. This document may be amended only by written instrument signed by both COUNTY and CONSULTANT. This AGREEMENT shall be governed by the laws of the State of California

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

COUNTY OF SAN JOAQUIN, a political subdivision of the State of California.

, a _____ corporation

By: _____
SUKHMINDER S. DHALIWAL, Chair
of the Board of Supervisors
"COUNTY"

By: _____
NAME
Title
"CONSULTANT"

ATTEST: RACHÉL DeBORD, Clerk of the Board
of Supervisors of the County of San
Joaquin, State of California

By: _____

RECOMMENDED FOR APPROVAL

By: _____
NAJEE ZARIF, P.E., MPA
Director of Public Works

APPROVED AS TO FORM

By: _____
ERIN SAKATA
Deputy County Counsel