DESIGN ENGINEERING SERVICES FOR ARMSTRONG ROAD AND BEAR CREEK ROAD CCTC RAILROAD CROSSING IMPROVEMENTS

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 the design engineering services for the Country Club Boulevard Complete Street Project hereinafter referred to as “PROJECT”; and

WHEREAS, through the issuance of a Request for Proposals “RFP”, the COUNTY has requested design engineering services for the PROJECT; and

WHEREAS, CONSULTANT was the qualified firm that responded to the RFP; and

WHEREAS, CONSULTANT employs experienced, qualified, and duly licensed professional engineers and presented the most qualified response to the RFP; 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 and/or Work in accordance with the 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 Services, Work and/or 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 according to said standards and practices regarding the interpretation of the requirements of COUNTY as set forth herein, and other applicable 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 the 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 and/or Tasks 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 (**Exhibit C** hereto), include support data for work effort and cost detail, and authorize CONSULTANT to proceed with the Services and/or Tasks

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",** which is attached hereto, and incorporated herein by this reference**,** unless additional reimbursement is provided for by contract amendment. 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. In addition to the allowable incurred costs, COUNTY will pay CONSULTANT a fixed fee which shall not exceed _____**$().** The fixed fee is nonadjustable for the term of the AGREEMENT, except in the event of a significant change in the SCOPE OF WORK and such adjustment is made by written agreement or task order.

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

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 COUNTY's Contract Administrator before exceeding such cost estimate.

E. Progress payments will be made monthly in arrears based on Services satisfactorily 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 as 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. Upon approval of the Work performed by CONSULTANT as detailed in CONSULTANT's invoices, CONSULTANT will be reimbursed, as promptly as fiscal procedures will permit but not to exceed forty-five (45) days 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 in the approved COST PROPOSAL and shall reference this AGREEMENT number and PROJECT title. Final invoice must contain the final cost and all credits due to 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:

CYPRUS SOMMER
Project Manager
San Joaquin County Department of Public Works
1810 E. Hazelton Avenue
Stockton, CA 95201

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.

J. 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.

K. 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 approval by COUNTY 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.

IV – TERMINATION

A. COUNTY reserves the right to terminate this AGREEMENT upon thirty (30) calendar days' written notice to CONSULTANT with the reasons for termination stated in the notice. CONSULTANT shall cease Work immediately upon receipt of such notice unless directed otherwise by COUNTY to continue Work until termination of AGREEMENT takes effect.

B. COUNTY may terminate this AGREEMENT with CONSULTANT should CONSULTANT fail to perform the covenants herein contained at the time and in the manner herein provided; provided that CONSULTANT has not commenced to cure the breach or non-conformance within a reasonable amount of time, not to exceed thirty (30) business days of COUNTY'S notice of such breach or non-conformance. In the event of such termination, COUNTY may proceed with the Work in any manner deemed proper by COUNTY. If COUNTY terminates this AGREEMENT with CONSULTANT, COUNTY shall pay CONSULTANT the sum due to CONSULTANT under this AGREEMENT prior to termination, unless the cost of completion to COUNTY exceeds the funds remaining in the AGREEMENT, in which case the overage shall be deducted from any sum due CONSULTANT under this AGREEMENT and the balance, if any, shall be paid to CONSULTANT upon demand.

C. The maximum amount for which COUNTY may be liable if this AGREEMENT is terminated shall not exceed **$_____**.

D. Upon termination, CONSULTANT shall immediately turn over to COUNTY all documents, records, papers, projects, drawings, and copies of electronic files, whether finished or not, generated by, or supplied to, CONSULTANT in connection with its performance of Services pursuant to this AGREEMENT. Costs to assemble, package, and transmit information for submission to COUNTY shall be entirely the responsibility of CONSULTANT and shall not be chargeable in any way to COUNTY. Said documents, records, papers, projects, drawings, and copies of electronic files shall become the property of COUNTY upon development.

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 XV - DOCUMENTATION AND SERVICES BY CONSULTANT TO COUNTY**, and **Article XVIII - 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

C. 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

D. 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 AGREEMENT 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 (3) 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 – AUDIT REVIEW PROCEDURES

A. Any dispute concerning a question of fact arising under an interim or post audit of this AGREEMENT that is not disposed of by agreement, shall be reviewed by COUNTY's Auditor Controller.

B. Not later than 30 days after issuance of the final audit report, CONSULTANT may request a review by COUNTY's Auditor Controller of unresolved audit issues. The request for review will be submitted in writing.

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

D. CONSULTANT and subconsultant contracts, including cost proposals and ICR, are subject to audits or reviews such as, but not limited to, a contract audit, an incurred cost audit, an ICR audit, or a CPA ICR audit work paper review. If selected for audit or review, the AGREEMENT, COST PROPOSAL and ICR, and related work papers, if applicable, will be reviewed to verify compliance with 48 CFR, Part 31, and other related laws and regulations. In the instances of a CPA ICR audit work paper review it is CONSULTANT's responsibility to ensure federal, state, or local government officials are allowed full access to the CPA's work papers including making copies as necessary. The AGREEMENT, COST PROPOSAL, and ICR shall be adjusted by CONSULTANT and approved by COUNTY's contract manager to conform to the audit or review recommendations. CONSULTANT agrees that individual terms of costs identified in the audit report shall be incorporated into the AGREEMENT by this reference if directed by COUNTY at its sole discretion. Refusal by CONSULTANT to incorporate audit or review recommendations, or to ensure that the federal, state, or local governments have access to CPA work papers, will be considered a breach of AGREEMENT terms and cause for termination of the AGREEMENT and disallowance of prior reimbursed costs.

VIII – PERSONNEL AND SUBCONTRACTING

A. Nothing contained in this AGREEMENT 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 AGREEMENT 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), such approval shall not be unreasonably withheld by COUNTY.

IX – 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's 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 as a result of this AGREEMENT is subject to the following: "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, 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 sale 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 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." 49 CFR, Part 18, requires a credit to Federal funds when participating equipment with a fair market value greater than $5,000 is credited to the PROJECT.

X –STATE PREVAILING WAGE RATES

A. 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 AGREEMENT, 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.

C. When prevailing wages apply to the Services described in the SCOPE OF WORK, transportation and subsistence costs shall be reimbursed at the minimum rates set by the Department of Industrial Relations (DIR) as outlined in the applicable Prevailing Wage Determination. See http://www.dir.ca.gov.

XI – CONFLICT OF INTEREST

The CONSULTANT affirms, to the best of its knowledge, 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 PROJECT. 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.

XII – 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.

XIII – 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 local agency 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 AGREEMENT 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.

XIV – DOCUMENTATION AND SERVICES BY COUNTY TO CONSULTANT

CONSULTANT shall collect and COUNTY shall furnish access to all information, data, and maps as such may currently exist in files necessary for carrying out the Services, Work and/or Tasks as set forth in this AGREEMENT and the SCOPE OF WORK attached hereto, to CONSULTANT, without charge, and COUNTY shall cooperate in the carrying out of such 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.

XV – DOCUMENTATION AND SERVICES BY CONSULTANT TO COUNTY

A. CONSULTANT shall furnish all reports and drawings/projects, 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, projects, and other documents delivered to COUNTY by CONSULTANT upon

completion of the AGREEMENT or early termination of the AGREEMENT, as provided in **ARTICLE IV - TERMINATION** 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.

XVI – 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. However, this ownership shall not include any ownership interest in CONSULTANT'S preexisting information including, but not limited to, computer programs, software, patents, patents pending, standard details, templates, figures, or specifications. 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.

XVII – 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.

XVIII – INDEMNIFICATION

A. The CONSULTANT shall, at its expense, defend, indemnify, and hold harmless the County of San Joaquin and its employees, officers, and directors from and against any losses, liabilities, damages, penalties, costs, fees including, without limitation, reasonable attorneys' fees and expenses from any third party's 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.

XIX – 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 licensed to perform services 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, CONSULTANT will provide COUNTY with 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 certificate will bear an endorsement or statement waiving right of cancellation or reduction in coverage 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 limit in the minimum amount of Five Million Dollars ($5,000,000) each occurrence and general aggregate, 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, and its employees, as additional insured.

C. Professional Liability Insurance - CONSULTANT shall obtain, at CONSULTANT's own expense, and provide evidence of Professional Liability Insurance on an occurrence-based 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.

XX – 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.

XXI – 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 maybe 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*.

XXII – COSTS AND ATTORNEY'S FEES

In any action brought by a party to enforce the terms of this AGREEMENT, 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.

XXIII – 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, 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.

XXIV – 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 (non-procurement)," 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.

XXV - DISADVANTAGED BUSINESS ENTERPRISES (DBE)

CONSULTANT, or subconsultant, shall take necessary and reasonable steps to ensure that DBEs have opportunities to participate in the contract (49 CFR 26).

In accordance with 49 CFR 26.13(b):

CONSULTANT, or subconsultant, shall not discriminate on the basis of race, color, national origin, or sex in the performance of this AGREEMENT. CONSULTANT shall carry out applicable requirements of 49 CFR 26 in the award and administration of federal-aid contracts. Failure by the CONSULTANT to carry out these requirements is a material breach of this AGREEMENT, which may result in the termination of this AGREEMENT or such other remedy as the COUNTY deems appropriate, which may include, but is not limited to:

(1) Withholding monthly progress payments;

(2) Assessing sanctions; and/or

(3) Disqualifying CONSULTANT from future proposing as non-responsible

XXVI – 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: **CYPRUS SOMMER**
Project Manager
San Joaquin County Department of Public Works
1810 E. Hazelton Avenue
Stockton, CA 95201

CONSULTANT:

XXVII – CONSULTANT'S STATUS

In the performance of Work, Services, duties and obligations imposed by this AGREEMENT, the CONSULTANT and/or its employees are at all times acting as independent contractor(s) practicing their profession(s) and not as employees of the COUNTY. CONSULTANT shall not have any claim under this AGREEMENT or otherwise against the COUNTY for vacation, sick leave, retirement benefits, social security or workers' compensation benefits. CONSULTANT shall be responsible for federal and state payroll taxes such as social security and unemployment.

XXVIII - CALIFORNIA PUBLIC RECORD ACT (CPRA)

CONSULTANT hereby acknowledges that COUNTY is subject to the California Public Records Act (CPRA)(Cal. Gov. Code §7920.000 et seq.) and that documents within the COUNTY's possession may be subject to the CPRA. COUNTY shall comply with requests for disclosure made pursuant to the CPRA, unless a statutory exemption from disclosure applies. COUNTY reserves the right to independently determine, in its sole discretion, whether any document (or portion thereof) is subject to disclosure under the CPRA. If in accordance with this AGREEMENT, COUNTY receives confidential records or information from CONSULTANT and determines that such records or information are subject to disclosure under the CPRA, or if a court of competent jurisdiction orders the COUNTY to disclose such records or information, COUNTY shall (i) notify CONSULTANT promptly in writing of any such determination or order; and (ii) reasonably cooperate with CONSULTANT in any proceeding for CONSULTANT to obtain an appropriate protective order or other remedy; provided, however, that nothing herein shall require COUNTY to incur any cost or expense in connection with any such cooperation or to withhold the disclosure of records or information required by law. CONSULTANT agrees to defend and indemnify COUNTY for any liability, costs, and expenses incurred in asserting such confidentiality to protect CONSULTANT's records or information from public disclosure.

XXIX – COUNTERPARTS AND ELECTRONIC SIGNATURES

This AGREEMENT may be executed in one or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument. CONSULTANT and COUNTY agree that this AGREEMENT may be electronically signed, and that any electronic signatures appearing on this AGREEMENT, or such other related documents, are the same as handwritten signatures for the purpose of validity, enforceability, and admissibility.

XXX – ENTIRE AGREEMENT AND MODIFICATION

This AGREEMENT represents the entire integrated AGREEMENT between COUNTY and CONSULTANT, and supersedes all prior negotiations, representations, or agreements, either written or oral. This AGREEMENT 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,
political subdivision of the State of California

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

_____.
a _____Corporation.

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.
Director of Public Works

APPROVED AS TO FORM

By:_____
ERIN H. SAKATA
Deputy County Counsel