

**MADERA COUNTY CONTRACT NO. \_\_\_\_\_**  
(Contract for Professional Engineering Services)

**THIS AGREEMENT** is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2019, by and between the COUNTY OF MADERA, a political subdivision of the State of California ("COUNTY"), and \_\_\_\_\_ ("CONSULTANT").

**RECITALS**

A. COUNTY has determined that it is in the public interest to have performed those services described in CONSULTANT's \_\_\_\_\_, 2019 proposal ("Proposal") entitled \_\_\_\_\_. Said proposal is attached hereto as Exhibit "A," and incorporated in this Agreement.

B. COUNTY has determined the project involves the performance of professional engineering consultation services of a temporary nature.

C. COUNTY does not have available employees to perform the services required for the project.

D. CONSULTANT has the experience and expertise necessary for the performance of the professional engineering consultation services required for the project.

E. COUNTY has requested that CONSULTANT perform services for the project and CONSULTANT has agreed to do so under the terms and conditions of this Agreement.

**AGREEMENT**

1. **TERM.** This agreement will commence on \_\_\_\_\_, 2019, and will terminate upon completion of the services outlined in the Proposal, or \_\_\_\_\_, whichever is sooner.

2. **SCOPE OF SERVICES.** CONSULTANT will perform its services in accordance with the Proposal, a copy of which is attached as Exhibit "A," and incorporated into this Agreement.

3. **COMPENSATION AND COSTS.** CONSULTANT shall be compensated in an amount not to exceed \_\_\_\_\_ dollars (\$\_\_\_\_\_), as contemplated in the Proposal attached hereto as Exhibit "A." CONSULTANT's compensation under this Agreement, including the labor rates charged for work under this Agreement, shall not be increased without the written modification of this Agreement by the COUNTY and CONSULTANT. Payments under this Agreement shall be made within thirty (30) days after CONSULTANT's regular monthly invoicing to COUNTY. COUNTY's payment obligations under this Agreement are contingent upon the receipt, in a form and substance acceptable to COUNTY, of the deliverables required under the Proposal. COUNTY shall have no payment obligation any consultant or contractor utilized by CONSULTANT for its work under this Agreement, including those listed in the Proposal.

4. **NOTICES.** All notices required by this Agreement shall be in writing and shall be effective upon personal service or deposit in the mail, postage prepaid and addressed as follows:

**COUNTY**

County of Madera  
Dept of Water and Natural Resources  
200 West 4<sup>th</sup> Street,  
Madera, CA 93637

**CONSULTANT**

5. **INSURANCE.** CONSULTANT shall maintain the following insurance: General liability, One Million Dollars (\$1,000,000.00) per occurrence and One Million Dollars (\$2,000,000.00) aggregate, with additional-insured endorsement; Automobile liability, One Million Dollars (\$1,000,000.00); Worker's Compensation as required by California law; Professional liability, One Million Dollars (\$1,000,000.00) per occurrence and One Million Dollars (\$1,000,000.00) aggregate.

6. **CONFLICT OF INTEREST AND REPORTING.** CONSULTANT shall at all times avoid any conflict of interest, or appearance of a conflict of interest, in performance of this Agreement. CONSULTANT represents that CONSULTANT and its officers and employees have no present financial or other conflict of interest that would disqualify any or all of them from entering into or performing services under this Agreement. CONSULTANT shall also refrain from engaging in business which opposes projects in which the COUNTY is processing while this contract is in place.

7. **CHANGE OF PERSONNEL.** COUNTY shall have the right to renegotiate this Agreement if project management staff as identified in the scope of work is changed.

8. **INDEPENDENT CONTRACTOR.** All services performed pursuant to this Agreement by CONSULTANT shall be performed as an independent contractor. Under no circumstances shall CONSULTANT, its officers, employees, or agents, look to COUNTY as its employer, or as a partner, agent, or principal. CONSULTANT shall not be entitled to any benefits accorded to COUNTY's employees. CONSULTANT shall be responsible for providing, at its own expense, and in its name, disability, worker's compensation, or other insurance as well as licenses or permits usual or necessary for conducting the services hereunder. CONSULTANT shall pay, when and as due, any and all taxes incurred as a result of CONSULTANT's compensation hereunder.

9. **PERFORMANCE OF SERVICES.** CONSULTANT represents that it has the qualifications and ability to perform the services required under this Agreement. CONSULTANT will perform such services with reasonable care and diligence, and in a professional manner according to accepted standards. CONSULTANT shall be solely responsible for the performance of the services hereunder, and shall receive no assistance, direction, or control from COUNTY.

CONSULTANT shall have sole discretion and control of its services and the manner in which performed. However, COUNTY retains the right to administer this Agreement so as to verify that CONSULTANT is performing its obligations in accordance with the terms and conditions of the Agreement.

10. **COMPLIANCE WITH APPLICABLE LAW.** CONSULTANT shall use reasonable care and diligence to comply with the applicable federal, state, and local laws in performance of work under this Agreement.

11. **NON-DISCRIMINATION.** During the performance of this Agreement, CONSULTANT will not discriminate against any employee or applicant for employment on any basis prohibited by state or federal law including race, religion, creed, color, national origin, sex, age or disability.

12. **OWNERSHIP AND RETENTION OF DOCUMENTS.** All reports and other documents prepared by CONSULTANT pursuant to this Agreement shall become the property of COUNTY. COUNTY is entitled to full and unrestricted use of such reports and other documents for this Project. COUNTY may also retain the original of the reports and other documents upon request. CONSULTANT shall not apply for copyrights or patents on all or any part of the work performed under this Agreement.

13. **TERMINATION FOR CONVENIENCE.** COUNTY may terminate this Agreement without cause by giving at least thirty (30) days written notice to the other party, which notice shall include the date of termination. If this Agreement is terminated prior to completion, CONSULTANT shall be paid for all work satisfactorily performed through the date of termination.

14. **REMEDIES UPON BREACH.** If CONSULTANT materially breaches the terms of this Agreement, COUNTY shall have all of the following remedies:

14.01: Immediately terminate the Agreement with CONSULTANT;

14.02: Retain the reports and other documents prepared by CONSULTANT;

14.03: Complete the unfinished work under this Agreement with a different consultant;

14.04: Charge CONSULTANT with the difference between the cost of completion of the unfinished work pursuant to this Agreement and the amount that would otherwise be due CONSULTANT, had CONSULTANT completed the work.

15. **SUCCESSION AND ASSIGNMENT.** This Agreement is binding on CONSULTANT and its successors. Except as otherwise provided herein, CONSULTANT shall not assign, sublet or

transfer its interest in this Agreement, or any part thereof or delegate its duties hereunder without the prior written consent of the COUNTY.

16. **ENTIRE AGREEMENT**. This Agreement, any exhibits attached hereto and incorporated by reference, shall constitute the entire agreement between CONSULTANT and COUNTY with respect to the subject matter hereof, and supersedes in its entirety all previous negotiations, proposals, commitments, writings, advertisements, publications, and understandings of any nature whatsoever unless expressly included in this Agreement. No other agreement, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind either of the parties herein.

17. **GOVERNING LAW**. The laws of the State of California shall govern the rights, obligations, duties and liabilities of the parties to this Agreement and shall also govern the interpretation of this Agreement. Venue for any dispute arising under this Agreement shall be the Superior Court for the County of Madera, California.

18. **INDEMNITY**. To the fullest extent allowed by law, CONSULTANT shall defend, indemnify, and hold harmless COUNTY, its officers, employees, and agents from any loss, cost, expense (including attorney's fees), damage, claim, or liability resulting from, arising out of, or is in any way connected with the performance of this Agreement by CONSULTANT, its officers, employees, or agents, except to the extent that such damage, claim, or liability is proven to be caused exclusively by COUNTY's sole negligence or willful misconduct in its performance of this agreement. COUNTY will not be liable for any accident, loss, or damage to the work prior to its completion and acceptance.

19. **SURVIVAL OF OBLIGATIONS**. All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating responsibility or liability between the parties shall survive the completion of the services hereunder and/or the termination of this Agreement.

20. **SEVERABILITY**. In the event that one or more provisions of this Agreement may be deemed unenforceable, the remainder of the Agreement shall continue in full force and effect.

21. **SECTION HEADINGS**. The section headings, enumeration, and sequence of sections appearing herein are for convenience purposes only and shall not be deemed to govern, limit, modify, or in any manner affect the scope, meaning or intent of the provisions of this Agreement.

22. **TIME OF ESSENCE**. Time is of the essence to this Agreement.



ATTEST:

\_\_\_\_\_  
Clerk, Board of Supervisors

Approved as to Legal Form:  
COUNTY COUNSEL

By: \_\_\_\_\_

ACCOUNT NUMBER(S)

\_\_\_\_\_  
\_\_\_\_\_

CONSULTANT

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

Title: \_\_\_\_\_