

(Resource Management Agency - Professional Services)

MADERA COUNTY MASTER CONTRACT NO. 010
(Resource Management Agency - Professional Services)

RECITALS

A. COUNTY has determined that it is in the public interest to have performed those services described in the Master Cover Sheet (hereinafter, "the Project").

B. COUNTY has determined the Project involves the performance of professional engineering 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 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. **SCOPE.** CONSULTANT's Scope of Work shall be as described in COUNTY's Request for Proposal and Qualifications and CONTRACTOR's Proposal, copies of which are attached to the Master Cover Sheet, and incorporated herein by reference.

CONSULTANT shall determine the methods, details, and means of performing the scope of work. CONSULTANT shall identify, at the earliest feasible time, any factors that could severely inhibit or prohibit the ultimate completion or implementation of the Project. CONSULTANT shall promptly notify COUNTY's representative of CONSULTANT's findings regarding such factors and conclusions related thereto for the purpose of determining the feasibility of continuing with the Project.

2. **COMPENSATION.** COUNTY agrees to pay CONSULTANT for its services, in the amount(s) as provided in the Master Cover Sheet. Payments 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 by Request for Proposals. Payment to CONSULTANT shall be subject to a ten percent (10%) retention by COUNTY. In the event the Project is terminated, CONSULTANT shall be paid for the work completed, in accordance with the provisions of Section 10 below.

3. **ADDITIONAL WORK.** CONSULTANT shall not perform any work or services or incur any expenses, and COUNTY shall have no obligation to pay for any work or services or expenses, costing more than the amount(s) set forth above without the prior written approval of COUNTY.

4. **TIME FOR PERFORMANCE.** Services to be performed pursuant to this Agreement shall be completed as set forth in the Master Cover Sheet.

5. **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.

6. **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.

7. **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.

8. **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.

9. **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.

10. **TERMINATION.** COUNTY or CONSULTANT 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. Upon notice of termination by CONSULTANT, CONSULTANT may continue work on the Project through the date of termination. If either party breaches a material provision of this Agreement, then the other party may, at its option, immediately terminate this Agreement by giving written notice to the breaching party of such termination and specifying the reasons therefor. If this Agreement is terminated prior to completion, CONSULTANT shall be paid for all work satisfactorily performed through the date of termination and for any additional work expressly requested by COUNTY's representative as necessary to complete the work begun prior to the date of termination. Such payment shall be in an amount based upon the hours spent on the work satisfactorily performed and the hourly billing rates for the persons performing the work as set forth in the fee structure contained in CONSULTANT's proposal.

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

11.01 Immediately terminate the Agreement with CONSULTANT;

11.02 Retain the reports and other documents prepared by CONSULTANT;

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

11.04 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.

12. **SUCCESSION AND ASSIGNMENT.** This Agreement is binding upon COUNTY and CONSULTANT and their successors. Except as otherwise provided herein, neither COUNTY nor CONSULTANT shall 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 other.

13. **REPRESENTATIVES.** COUNTY and CONSULTANT shall each designate a representative. The representative shall be the primary contact person for each party regarding performance of this Agreement. The representatives shall cooperate with one another in all matters regarding this Agreement and in such a manner as will result in the performance of the work in a timely and expeditious fashion. The names and contact information for the parties' respective representatives for this Agreement are as set forth in the Master Cover Sheet.

14. **ENTIRE AGREEMENT.** These Standard Contractual Clauses and Master Contract Cover Sheet, and any exhibits specified in the Master Contract Cover Sheet and attached thereto 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 hereto.

15. **RECORD KEEPING.** Where the payment terms provide for compensation on a time and materials basis, CONSULTANT shall maintain adequate records to permit inspection and audit of its time and material charges under this Agreement by CONSULTANT or its authorized representative. All such books, records, and supporting detail shall be retained for a period of at least three (3) years after the expiration of the term of this Agreement, provided, however, that such books, records, and supporting detail shall be retained for a longer period of time as may be required by law.

16. **CONFIDENTIALITY.** COUNTY and CONSULTANT agree that until final approval by COUNTY, all reports and other documents are confidential and will not be released to third parties without the prior written consent of both parties.

17. **CONFLICT OF INTEREST.** CONSULTANT shall employ no COUNTY official or employee in the performance of the work pursuant to this Agreement. No officer or employee of COUNTY shall have any financial interest in this Agreement in violation of California Government Code section 1090 and following. 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. During the term of this Agreement, CONSULTANT, its officers and

employees shall not acquire any financial or other interest that would disqualify any or all of them from performing services under this Agreement.

18. **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 at Madera County, California.

19. **ATTORNEY'S FEES AND COSTS.** If either party to this Agreement shall bring or participate in any action for relief arising out of this Agreement, the losing party shall pay to the prevailing party a reasonable sum for attorney's fees (including the value of County Counsel services) incurred in bringing such action or enforcing any judgment granted therein, all of which shall be deemed to have accrued upon the commencement of such action and shall be paid whether or not such action is prosecuted to judgment.

20. **HOLD HARMLESS.** CONSULTANT shall save, keep 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 in any way connected with the performance of this Agreement by CONSULTANT, its officers, employees, or agents, to the extent connected with CONTRACTOR's negligence or willful misconduct arising from or related to this agreement. COUNTY will not be liable for any accident, loss or damage to the work prior to its completion and acceptance. Upon request of COUNTY, CONSULTANT shall, at no cost or expense to COUNTY, its officers, employees, or agents, defend any action asserting a claim for any loss, damage, or liability due to CONSULTANT's negligence, and CONSULTANT shall pay any costs and attorney's fees that may be incurred by COUNTY, its officers, employees, or agents, in connection with any such action.

21. **INSURANCE.** Without limiting CONSULTANT's indemnification of COUNTY, CONSULTANT shall provide at its own expense and maintain at all times during the term of this Agreement the following insurance with insurance companies licensed in the State of California and acceptable to COUNTY's Risk Manager. CONSULTANT shall provide satisfactory proof of all insurance to COUNTY's Risk Manager. Each insurance policy shall name COUNTY, its officers, employees, agents, and volunteers as additional insureds, shall include a provision that the coverage is primary with respect to COUNTY and its officers, employees, and agents, and shall contain a provision preventing cancellation without thirty

(30) days prior notice to COUNTY in writing at the address of COUNTY (Attention: Risk Manager), 200 West Fourth Street, Madera, California, 93637:

21.01 Worker's Compensation Insurance, in compliance with the laws of the State of California;

21.02 General Liability Insurance, with minimum liability limits as specified in the Master Cover Sheet;

21.03 Automobile Liability Insurance, with minimum liability limits as specified in the Master Cover Sheet. This insurance coverage shall extend to owned automobiles, non-owned automobiles, and hired automobiles;

21.04 Errors and Omissions/ Professional Services Liability Insurance with minimum liability limits as specified in the Master Cover Sheet.

22. **DUTY OF LOYALTY.** CONSULTANT acknowledges that the work to be performed under this Agreement will be solely for the benefit of COUNTY and that CONSULTANT owes its duties of performance and loyalty to COUNTY and not to any other person or entity. CONSULTANT also acknowledges and agrees that no provision of this Agreement shall in any way inure to the benefit of any third person or entity so as to constitute any such person or entity a third-party beneficiary of this Agreement or of any one or more of the terms hereof, or otherwise give rise to any cause of action in any person or entity not a party hereto.

23. **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.

24. **SEGREGATION.** 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.

25. **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.

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

* * * * *

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above-written.

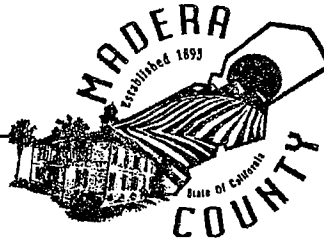
COUNTY OF MADERA

[Signature]
Chairman, Board of Supervisors

06/16/09

ATTEST:

[Signature]
Clerk, Board of Supervisors



Approved as to Form:
RISK MANAGEMENT

By: *[Signature]*

Approved as to Legal Form:
COUNTY COUNSEL

By: *[Signature]*

ACCOUNT NUMBER(S)

