



DEPARTMENT OF PUBLIC WORKS
Professional Services Division

Paul A. Fillebrown
Director

345 West 7th Street
Merced, CA 95340
(209) 385-7601
(209) 722-7690
www.co.merced.ca.us

Equal Opportunity Employer

DATE: April 20, 2009

TO: All Interested Architectural Firm

SUBJECT: Request for Proposal
Limited Professional Services for Small County Projects; Two (2) Fiscal Years
Retainer Agreement; Architectural Services.

Attached, please find a Request for Proposal and related information. Architectural Firm having the potential to meet the demands of this service are invited to respond to this request.

Due to the scope, complexity, specialization and time constraints of this service, we respectfully request each firm closely assess their current potentials as they relate to the following areas:

1. Established experience in the design or the performance of Consulting Service for Public Works projects.
2. Ability to meet limited time constraints and achieve necessary approvals.
3. Ability to control project costs.

In order to receive consideration from the Department of Public Works, all information identified in the Request for Proposal must be submitted and received by the Department of Public Works, Professional Services Division, on or before **5:00 p.m., May 8, 2009**.

It is our hope to select a successful applicant and authorize the firm to proceed as soon as services are required. Should you have any questions, please call Robert Dinuzzo, Supervising Architect, at (209) 385-7601.

Sincerely,

Vince Griffiths
Professional Services Director

VEG:ta

cc w/enc: Paul A. Fillebrown, Director of Public Works

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REQUEST FOR PROPOSAL

April 16, 2009

SUBJECT: REQUEST FOR PROPOSALS FOR LIMITED PROFESSIONAL ARCHITECTURAL SERVICES FOR SMALL COUNTY PROJECTS; TWO (2) FISCAL YEARS RETAINER AGREEMENT.

Acting upon instructions from the Merced County Board of Supervisors, the Department of Public Works/Professional Services Division has developed this Request for Proposals for the purpose of reviewing all qualified firms interested in providing Professional Architectural Services.

The Department of Public Works/Professional Services Division is assigned the responsibility for all functions related to the additions, alterations, repairs, and improvements of existing County-owned facilities and Roads Projects. As such, our Department has the need to retain limited, supportive Professional Services for the fiscal years of 2009/2010 and 2010/2011 to address projects of limited size (planned or the result of an emergency) which may require the services of the above identified discipline.

The per project not-to-exceed fee is \$150,000.00 with no annual accumulative total.

SCOPE OF PROFESSIONAL SERVICES:

Support services requested may involve any one, or a combination of, the following service areas:

1. Review of project and/or task to be accomplished and providing preliminary consultation and evaluations as to how best to proceed.
2. Assist the Department in data development for presentation and recommendation to the Board of Supervisors and/or the County Administrator.
3. Provide supportive design, drafting, cost estimating and/or preparation of technical sections of the specifications.
4. Review consultation in regards to documents prepared by the Department of Public Works.

It is the desire to retain one Professional Architectural Consultant in each of the above disciplines to accomplish various small projects, which occur throughout the 2009/2010 and 2010/2011 fiscal years on the basis of an acknowledged hourly rate for said fiscal years. Each time a project or a specific need arises for Consulting Services, the Department of Public Works/Professional Services Division will contact the recognized Consultant for said service, describe and discuss the project and the services needed and meet and jointly establish (by negotiation) a maximum fee for services for said project. Once negotiated, a Project Supplement will be issued for each specific project identifying

the previously established hourly rates for services combined with the negotiated maximum fee (not to exceed) for said project.

Should the County fail to successfully negotiate an acceptable maximum fee for services for specific project with the respective consultant involved, the County reserves the right to retain services elsewhere.

In order for the requested Consulting Services to be of valid benefit to the Department of Public Works and ultimately the Board of Supervisors, it is essential that the Consulting Individual/Firm retained offered the following qualities and capabilities:

1. Possess an established Firm history demonstrating a high level of professional competency and established experience in the field of "Public" (projects) contracts and documents.
2. Exhibit the ability to offer a high level of close coordination with our staff both by visitations and consultations at our offices and visitations to the project site.
3. Exhibit the capability to offer timely Consulting Services upon requests made by the Department of Public Works.
4. Clearly indicated ability to offer timely response (on an immediate basis) when called upon by the Department of Public Works to respond to an identified emergency occurring at an existing occupied County-owned structure or facility.

SPECIFIC PROPOSAL INFORMATION

The Department of Public Works/Professional Services Division, 345 West 7th Street, Merced, California, 95340 will receive proposals from all interested individuals or firms until **5:00 p.m., May 8, 2009.**

Each interested Applicant is required to specifically respond to and/or provide all information in relation to the items requested in this Request for Proposal in order to receive further consideration. Additional, pertinent information may be submitted at the discretion of the applicant.

CONSULTANT QUALIFICATIONS AND CAPABILITIES

1. Please provide a brief history of your Firm's background and services. Include a list and background of the Firm's active Principals and identify the Principal or Principals that will be specifically involved with the services rendered our Department.
2. Provide specific data on Lead or Alternative Personnel who may be assigned to provide requested services to our County.
3. Provide specific data on all sub-Consultants that your Firm would utilize on services requested by the County.

4. Please list and describe your experience in the area of Public (Governmental procedures) Consulting Services and the preparation of construction documents for Public projects.
5. Please identify and describe in some detail Consulting Services your Firm has provided and/or are now providing to Public Agencies which are similar in nature or content to our request for services.
6. Specifically respond in written form to the following:
 - a. Describe your abilities to offer a high level of close coordination with our Staff, both by visitations and consultations at our office and visitations to project sites.
 - b. Describe how you envision you will offer timely services throughout the two (2) Fiscal Years, and upon the request for our Department.
 - c. Clearly indicate your ability and how you will respond in a timely manner (immediate basis) when called upon by our Department to respond to an identified emergency.

COMPENSATION FOR SERVICES:

As indicated previously in this Request for Proposal, we are requesting each interested Applicant to identify and include in the response a detailed hourly rate chart identifying unit costs for all levels of Staff involved and functional areas of service. Hourly rates provided shall be valid throughout the County's Fiscal Years 2009/2010 and 2010/2011.

If the interested Applicant feels that they must also be compensated for items associated with their services, which are beyond that of the clearly identified hourly rates, excluding reproduction of contract documents for competitive bids, which (if needed) will be compensated at direct cost to the consultant, the Firm should clearly indicate same and include said unit costs as part of the hourly rate chart. Such unit costs might be in the areas of transportation, lodging and long distance communications, etc.

AGREEMENT FOR SERVICES

The successful Applicant will be required to enter into an AGREEMENT FOR SPECIAL SERVICES BETWEEN MERCED COUNTY AND CONSULTANT. A copy of this Agreement is attached to this Request for Proposal in order to fully inform the Applicant of the conditions of said services. **(Exhibit A).**

Each Applicant submitting a proposal for consideration agrees that they will be willing to enter into an Agreement with the Owner (as per the attached Agreement) upon successful completion of negotiations for the services requested and would perform such Services for a fixed fee. The hourly rates for various personnel as submitted under COMPENSATION FOR SERVICES of this Request for Proposal will be used as the basis in negotiating each project.

SELECTION PROCEDURES:

All proposals received will be reviewed by the Department of Public Works/Professional Services Division on an immediate basis. The Screening Committee **MAY** select any or all of the firms from the interested list of applicants received to appear before an Official Screening Committee for a thirty (30) minute informal interview. Upon completion of said reviews, the Department of Public Works/Professional Services Division shall recommend to the Board of Supervisors the Firm which they feel can best service the needs of the County and the Department. Upon approval by the Board of Supervisors, said Consultant will be retained by a Project Supplement (**Exhibit B**) on a Per Project basis throughout the 2009/2010 and 2010/2011 Fiscal Years.

SUBMITTAL AND SELECTION INFORMATION:

1. All correspondence, communication and response in reference to this Request for Proposal shall be directed to:

Robert Dinuzzo., Supervising Architect Phone (209) 385-7601
Merced County Public Works/Professional Services Division
345 West 7th Street
Merced, CA 95340

2. Costs of preparation of Proposals will be borne by the Applicant and the Proposals received shall become the property of the County, whether accepted or rejected.

Applicants are required to submit three (3) copies of the response to this Request for Proposals.

3. Selection of qualified proposers will be approved by County procedure, consistent with applicable laws and as previously described under Selection Procedures.
4. This Request for Proposal does not constitute an offer of employment nor to contract for services. The County reserves the right to reject any and all proposals and to waive any informality, technical defect or clerical errors in any proposal as the interest of the County may require.
5. All proposals shall remain firm for sixty (60) calendar days following the last day to receive proposals.
6. Each proposal shall be placed in a sealed envelope or carton with the name of the firm, proposal name and closing date on the outside.

PROPOSAL DEADLINE:

ALL RESPONSES TO THE REQUEST FOR PROPOSAL SHALL BE RECEIVED BY THE DEPARTMENT OF PUBLIC WORKS ON OR BEFORE 5:00 P.M., May 8, 2009.

Responses after this date will not be accepted.

END

MERCED COUNTY
CONTRACT NO. _____

AGREEMENT FOR SPECIAL SERVICES
BETWEEN
MERCED COUNTY
AND
CONSULTANT

THIS AGREEMENT, is made and entered into this _____ day of _____, 2009, by and between the **COUNTY OF MERCED**, a political subdivision of the State of California, (hereinafter referred to as "**COUNTY**"), and _____, (hereinafter referred to as "**CONSULTANT**"), WITNESSETH THAT:

WHEREAS, the County desires to contract for special services, pursuant to Government Code Section 31000, which may consist of services, advice, education or training for public entities or the employees thereof; and

WHEREAS, the Consultant is specially trained, experienced, expert and competent to perform such services in connection with Electrical Engineering, Mechanical Engineering, Landscape Architecture, and Hazardous Materials; and

WHEREAS, the parties desire to set forth herein the terms and conditions under which special services shall be furnished;

NOW, THEREFORE, in consideration of the mutual covenants and promises herein contained, the parties hereby agree as follows:

1. GENERAL

Consultant shall provide consulting services in a good and professional manner and in accordance with the terms and conditions stated herein, and any specifically referenced attachments hereto. The following exhibits are attached and become a part hereof, except when in conflict with this Agreement or modified herein:

- A. Exhibit A is attached and becomes a part hereof (Project Supplement).
- B. Exhibit B is attached and becomes a part hereof (Hourly Rate Schedule).

2. SCOPE OF SERVICES

Services shall include all activities of Consultant necessary to its performance of the work included in the scope herein described and shall perform all services as an independent contractor; not as an agent or employee of the County. The scope of such services shall be as set forth in Exhibits attached hereto and incorporated by referenced herein.

Such services include, but are not limited to, the following:

Provide Consulting and/or Professional Services upon the request of the Owner of either Owner-Declared emergency projects not exceeding an estimated cost of Professional Consulting Services of \$150,000.00 with no Fiscal Year Accumulative Total Fee.

Requested services may involve any one, or a combination of, the following Professional Service areas:

- A. Review Owner's requested project and/or task to be accomplished and provide preliminary consultation, research and evaluation of same.
- B. Assist the Owner's Department of Public Works in Data Development for presentation and/or recommendation to the Owner or its Administrator.
- C. Provide design engineering and/or concepts, drafting, cost estimates and/or specifications necessary to bid and accomplish projects in support of the Owner's Department of Public Works.
- D. Review Consultation in regard to documents prepared by the Owner's Department of Public Works.
- E. Provide Professional Services as necessary to accomplish scope of services in Exhibit "A" in order to resolve a project declared by the Owner to be an emergency project.

3. GENERAL DESCRIPTION AND PROCEDURES

This Agreement is to serve as a Retainer Agreement between the Owner and Consultant and will serve as the Basic Document, in conjunction with a Project Supplement (**Exhibit A**) issued by the Owner for each requested service, for the period from execution of this Agreement through and inclusive of June 30, 2011.

Through its Department of Public Works/Professional Services Division, the County will request services of the Consultant on an individual project basis as the need arises. A specific Project Supplement shall be issued for each Service (Project) Request specifically delineating the requested services with fees for said services based upon the

rates identified in **Exhibit B** and in conjunction with a jointly agreeable, negotiated maximum fee for said services. Should the County through its Department of Public Works fail to successfully negotiate an acceptable maximum fee for services for a specific project with the Consultant involved, the County reserves the right to seek and retain said services elsewhere.

4. **TERM**

The term of this Agreement shall commence on the 1st day of July, 2009, and continue until the 30th day of June, 2011, unless sooner terminated in accordance with Sections 6 or 7 hereof. Notwithstanding the foregoing, the obligations of Consultant to County under Section 11, "INDEMNIFICATION", shall continue for a period of four years in full force and effect after said expiration or earlier termination as to the liability for acts and omissions occurring during the term of this Agreement.

5. **COMPENSATION**

In consideration of Consultant performing such work as prescribed under Section 2, "SCOPE OF SERVICES" County shall Consultant at the rates set forth in **Exhibit B** attached hereto and incorporated by reference herein. No other expenses shall be paid to Consultant without formal approval of the County's Board of Supervisors or its authorized agent. In no event shall the total services to be performed hereunder exceed the Rates set forth in **Exhibit B**.

Compensation paid to Consultant may be subject to withholding for State of California income tax.

6. **TERMS OF PAYMENT**

Payment for full and complete satisfactory performance of such services prescribed in Section 2, "SCOPE OF SERVICES," of this Agreement shall be made in the following manner:

Consultant shall submit monthly invoices, or as deemed appropriate by County, for services performed under this Agreement. Each invoice must:

- a. Detail by task the service performed by Consultant.
- b. Detail the labor cost (number of hours) attributed to each task.
- c. Show the cumulative cost for all tasks performed to date.
- d. Provide any additional information and data requested by County as deemed necessary by County to properly evaluate or process Consultant's invoice claim.

Upon approval by the County, the sum due hereunder shall be paid to the Consultant within thirty (30) days following receipt of a proper invoice. In the event of termination, Consultant shall be paid in accordance for actual services rendered as prescribed under Section 6 or 7.

7. TERMINATION FOR CAUSE

If Consultant shall fail to fulfill in a timely and proper manner Consultant's obligations under this Agreement or otherwise breach this Agreement, County may, in addition to any other remedies it may have, terminate this Agreement by giving ten (10) calendar days written notice to Consultant in the manner set forth under Section 24, "NOTICES".

8. TERMINATION FOR CONVENIENCE

This Agreement notwithstanding anything to the contrary hereinabove or hereinafter set forth, may be terminated by either party at any time without cause or legal excuse by providing the other party with thirty (30) calendar days written notice of such termination. The obligation of the Consultant or the County arising under Section 11, "INDEMNIFICATION", shall continue in full force and effect upon termination of the Agreement for convenience hereunder for a period of four years after said termination as to the limited issue of liability for indemnification for acts or omissions of either party arising during the term of this Agreement.

Upon effective date of termination, County shall have no further liability to Consultant except for payment for actual services incurred during the performance hereunder to the time specified in said notice, not previously reimbursed by County to the extent such costs are actual, necessary, reasonable, and verifiable costs and have been incurred by Consultant prior to, and in connection with, discontinuing the work hereunder.

9. DISPOSITION OF WORK UPON TERMINATION

In the event of termination under Section 6 or 7, all finished or unfinished documents and other materials, if any, at the option of County, shall become its property and Consultant shall be entitled to receive compensation for any work completed prior to receipt of the notice of termination. Neither party, however, shall be relieved of liability to the other for damages sustained by either party by virtue of any breach of the Agreement, regardless of whether the Agreement was terminated for convenience or cause. County may withhold any payments not yet made to Consultant for purpose of setoff until such time as the exact amount of damages due to County from Consultant is determined.

10. CHANGES

The County may, from time to time, require changes in the scope of services of Consultant to be performed hereunder. Such changes, which are mutually agreed upon by and between the County and the Consultant shall be incorporated in written amendment to this Agreement and signed by the parties hereto.

11. INSURANCE

- A. Consultant shall purchase and maintain for the duration of this contract, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Consultant, its employees, representatives, agents, or sub-consultants. A certificate of insurance is to be provided to the Owner which specifically identified compliance with the amount stated above.
- B. The term "County" when used as respects insurance requirements and indemnity shall be defined to mean and include, "The County of Merced, its elected and appointed officials, administrators, directors, executives, employees, volunteers and agents."
- C. Minimum Insurance and Limits: The Consultant shall, without limiting any indemnity requirements, maintain the following types of insurance coverage and limits as minimum requirements:
 1. General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. If the commercial General Liability from any other policy with a general aggregate limit is used, either the aggregate limit shall be endorsed to apply separately to this project or the aggregate limit shall be twice the above occurrence limit.
 2. Automobile Liability: split limits of \$250,000 per person / \$500,000 per accident for bodily injury and \$1,000,000 per accident for property damage.
 3. Workers' Compensation: Statutory coverage and limits as required by the California Labor Code; including Employers' Liability limits of \$1,000,000 per accident. The policy shall be endorsed to waive the insurer's subrogation rights against the County.
 4. Professional Liability: \$1,000,000 limit per occurrence and \$1,000,000 annual aggregate limit covering Consultant's wrongful acts, errors and omissions.
- D. Minimum Scope of Insurance: Coverage shall be at least as broad as the following described forms or corresponding equivalent forms:
 1. Commercial General Liability Coverage (ISO "occurrence" form CG 0001) or Comprehensive General Broad Form Liability coverage (ISO "occurrence" forms GL 0002 and GL 0404) insuring the Consultant's premises, operation, products, completed operations, contractual and independent Consultants liabilities. The coverage shall contain no special limitations on the scope of protection afforded to the County.

2. Business Auto Coverage (ISO form CA 0001) covering Automobile Liability on all of Consultant's owned, leased, hired, non-owned or borrowed automobiles and vehicles used in the performance of this contract.
 3. Liability policies shall be preferably written on an "occurrence" form. If only a "claims made" form is available, it must be endorsed to provide for a five year extended discovery and claim reporting period, and shall be subject to prior approval by the County Risk Manager.
- E. Deductibles or Self-Insured Retentions (SIR), in excess of \$25,000 per loss shall be disclosed to and approved by the County Risk Manager, and at the option of the County, the Consultant may be required to reduce or eliminate the deductible/SIR as respects the County, or procure a bond guaranteeing payment of the cost of investigation, defense and damage under the deductible/SIR amount.
- F. Other Insurance Provisions:
1. The County, as defined, shall be endorsed as an "Additional Insured" to all of the Consultant's Liability policies for such liability as may be incurred in the performance of this contract.
 2. Each of the above required policies shall be endorsed to provide the County with 30 days prior written notice of cancellation or reduction of limits or coverage.
 3. The Consultant's insurance coverage shall be primary insurance as respects the County, and any insurance or self-insurance maintained by the County shall be excess of Consultant's insurance and shall not contribute until Consultant's insurance limits are expended by payment of damages.
 4. The Consultant shall apply separately to each insured or additional insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
 5. The Consultant shall include all sub-consultants as insureds under its policies or shall furnish Certificates of Insurance for each sub-consultant. All coverages for sub-consultants shall be subject to all of the requirements and limits stated herein.
 6. Insurance is to be placed with admitted insurers rated by A.M. Best Co. as A:VII or higher. Lower rated, or approved but not admitted insurers, may be accepted if prior approval is given by the County Risk Manager.
 7. Consultant shall, prior to commencing work, furnish Certificates of Insurance to County of Merced, Attention: John D. Glenn, Jr., Department of Public Works, Professional Services Division, 345 West 7th

Street, Merced, CA 95340. Certificates shall have any special policy endorsements attached that may be required to effect or accomplish the coverages and conditions specified, if not described on the Certificates.

12. INDEMNIFICATION

Consultant shall indemnify, defend and hold harmless, County, its officers, employees and agents from and against any and all liability, expense including defense cost, legal fees, and claims for damages of any nature whatsoever, including but not limited to bodily injury, death, personal injury, or property damage arising from or related to Consultant, Consultant's subcontractors, acts or omissions in the performance of services or provisions of this Agreement including any Worker's Compensation suits, liability or expense arising from or connected with services performed on behalf of Consultant, Consultant's agents, employees or subcontractors pursuant to this Agreement.

County shall indemnify, defend and hold harmless, Consultant, its officers, employees and agents from and against any and all liability, expense including defense cost, legal fees, and claims for damages of any nature whatsoever, including but not limited to bodily injury, death, personal injury, or property damage arising from or related to County, County's subcontractors, acts or omissions in the performance of services or provisions of this Agreement including any Worker's Compensation suits, liability or expense arising from or connected with services performed on behalf of County, County's agents, employees or subcontractors pursuant to this Agreement.

13. INDEPENDENT CONSULTANT

It is mutually understood and agreed that Consultant is an independent contractor in the performance of the work duties and obligations devolving upon him under this Agreement. County shall neither have, nor exercise any control or direction over the methods by which Consultant shall perform his professional work and functions. The sole interest and responsibility of the County is to assure that the services covered by this Agreement shall be performed and rendered in a competent, efficient and satisfactory manner.

It is mutually understood and agreed that no employer-employee relationship is created and Consultant shall hold County harmless and be solely responsible for withholding, reporting and payment of any federal, state or local taxes, contributions or premiums imposed or required by workers' compensation, unemployment insurance, social security, income tax, other statutes or codes applying to Consultant, or its subcontractors and employees, if any.

It is mutually agreed and understood that Consultant, its sub-contractors and employees, if any, shall have no claim under this Agreement or otherwise against the County for vacation pay, sick leave, retirement or social security benefits, occupational or non-occupational injury, disability or illness, or loss of life or income, by whatever cause.

14. RECORDS AND INSPECTIONS

Consultant shall maintain full and accurate records with respect to all matters covered under this Agreement. The County shall have free access at all proper times or until the expiration of four (4) years after the furnishing of services to such records, and the right to examine and audit the same and to make transcripts therefrom, and to inspect all data, documents, proceedings, and activities pertaining to this Agreement.

15. REPORTS AND INFORMATION

Consultant shall furnish County such periodic reports as County may request pertaining to the work or services undertaken pursuant to the Agreement, the costs and obligations incurred or to be incurred in connection therewith, and any other matters covered by this Agreement.

16. OWNERSHIP OF DOCUMENTS

All drawings, plans, specifications, calculations, reports, and other documents prepared by Consultant under this Agreement shall become the property of the County. At the County's request, such documents shall be delivered to the County upon completion of services under the Agreement

The Client acknowledges the Consultant's construction documents, including electronic files, as instruments of professional service. Nevertheless, the final construction documents prepared under this Agreement shall become the property of the Client upon completion of the services and payment in full of all monies due to the Consultant. The Client shall not reuse or make any modification to the construction documents without the prior written authorization of the Consultant. The Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Consultant, its officers, directors, employees and subconsultants (collectively, Consultant) against any damages, liabilities or costs, including reasonable attorneys' fees and defense costs, arising from or allegedly arising from or in any way connected with the unauthorized reuse or modification of the construction documents by the Client or any person or entity that acquires or obtains the construction documents from or through the Client without the written authorization of the Consultant.

17. QUALITY OF SERVICE

Consultant shall perform its services with care, skill, and diligence, in accordance with the applicable professional standards currently recognized by such profession, and shall be responsible for the professional quality, technical accuracy, completeness, and coordination of all reports, designs, drawings, plans, information, specifications, and other items and services furnished under the Agreement. Consultant shall comply with all applicable Federal, State, and Local laws, ordinances, codes, and regulations in performing its services.

Consultant shall, without additional compensation, correct or revise any errors or deficiencies in its reports, drawing, specifications, designs, and other related items or services.

18. PROVISIONS CONCERNING CERTAIN WAIVERS

Subject to applicable law, any right or remedy which the County may have under this Agreement may be waived in writing by the County by a formal waiver, if, in the judgment of the County, this Agreement, as so modified, will still conform to the terms and requirements or pertinent California laws.

19. COMPLETENESS OF AGREEMENT

This Agreement and any additional or supplementary document or documents incorporated herein by specific reference contain all the terms and conditions agreed upon by the parties hereto, and no other agreements, oral or otherwise, regarding the subject matter of the Agreement or any part thereof shall have any validity or bind any of the parties hereto.

20. COUNTY NOT OBLIGATED TO THIRD PARTIES

The County shall not be obligated or liable hereunder to any party other than Consultant.

21. STANDARDS OF PRACTICE

Standards of practice of Consultant shall be determined by all applicable provisions of law and other rules and regulations of any and all governmental authorities relating to provision of services as defined in the Agreement.

22. COMPLIANCE WITH STATE LAWS AND REGULATIONS

The Consultant and the County agree to comply with all State laws and regulations that pertain to construction, health and safety, labor, fair employment practice, equal opportunity, and all other matters applicable to the Consultant and County, their subgrantees, contractors, or subcontractor, and their work.

23. DEATH AND DISABILITY

It is understood and agreed that because this Agreement is entered into for the unique personal services of Consultant, in the event of his/her death, this Agreement is forthwith terminated. In the event Consultant is disabled permanently or for an extended period, County may, at its option, terminate this Agreement forthwith. Permanent or extended disability means that Consultant is unable to perform the services of the Agreement for such a period of time that it would cause a detriment to the County as determined by the reasonable judgment of the County.

24. COUNTY'S RIGHTS NOT WAIVED BY PAYMENTS

In no event shall the making, by the County, of any payment to Consultant constitute, or be construed as, a waiver by the County of any breach of covenant, or any default which may then exist, on the part of Consultant, and the making of any such payment by the County while any such breach or default shall exist be construed as acceptance of substandard or careless work or as relieving Consultant from its full responsibility under the Agreement.

25. PERSONNEL

Consultant represents that it has, or will secure at its own expense, all personnel required in performing the services under this Agreement. All of the services required hereunder will be performed by Consultant or under its supervision, and all personnel engaged in the work shall be qualified to perform such services. Consultant's personnel expressly agreed to be the employees of the Consultant and not the employees of the County.

26. NOTICES

Any notices herein provided to be given by either party to the other shall be deemed to have been fully given when made in writing and deposited in the United States mail, postage prepaid or by giving such notice by personal service addressed as follows:

County of Merced c/o
Department of Public Works
Attention: Robert Dinuzzo.
345 West 7th Street
Merced, CA 95340

Consultant

27. APPLICABLE LAW

All parties agree that this Agreement and all documents issued or executed pursuant hereto and the rights and obligations of the parties thereunder and hereunder is subject to and governed by the laws of the State of California in all respects as to interpretation, construction, operation, effect and performance.

Notwithstanding any other provisions of this Agreement, any dispute concerning any question of fact or law arising under this Agreement, which is not disposed of by agreement between the parties shall be decided by a Court of competent jurisdiction of the State of California.

28. WAIVER OF TERMS

No waiver of any term, condition, or covenant of this Agreement, by either party shall be deemed as a waiver of any other term, condition, or covenant herein contained, nor of the strict and prompt performance thereof.

29. MODIFICATION OF AGREEMENT

Notwithstanding any of the provisions of the Agreement, the parties hereafter, by mutual consent, may agree to modifications hereof or additions hereto, in writing, which are not forbidden by law. County shall have the right to grant reasonable extensions of time to the Consultant for any purpose of performance of any obligation hereunder.

30. BREACH OF CONTRACT

Upon breach of the Agreement by Consultant, the County shall have all remedies, both in equity and/or at law, necessary to recover and satisfy Consultant's obligation, which it failed to provide as prescribed under the Agreement.

31. SUCCESSORS IN INTEREST

All the terms, covenant, and conditions of the Agreement shall be binding and in full force and effect and inure to the benefit of the successors in interest and assigns of the parties hereto. This paragraph shall not be deemed as a waiver of any of the conditions against assignment hereinabove set forth.

32. CONFLICT OF INTEREST

Consultant warrants and covenants that no official or employee of the County, nor any business entity in which an official of the County has an interest has been employed or retained to solicit or aid in the procuring of the Agreement, nor that any such person will be employed in the performance of such Agreement without immediate divulgence or such fact to the County.

33. EQUAL EMPLOYMENT OPPORTUNITY

During the performance of this contract, the Consultant agrees as follows:

1. The Consultant will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Consultant will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of

compensation; and selection for training, including apprenticeship. The Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this nondiscrimination clause.

2. The Consultant will, in all solicitation or advertisements for employees placed by or on behalf of the Consultant, state that all qualified applicants will receive consideration for employments without regard to race, color, religion, sex or national origin.
3. The Consultant will send to each labor union or representative of workers which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or worker's representative of the Consultant's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965 and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. The Consultant will comply with all provisions of Executive Order No. 11246 of September 24, 1965 and of the rules, regulations and relevant orders of the Secretary of Labor.
5. The Consultant will furnish all information and reports required by Executive Order No. 11246 for September 24, 1965 and by the rules and regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the contracting agency and the Secretary of Labor for purposes to investigate to ascertain compliance with such rules, regulations, and orders.
6. In the event of the Consultant's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Consultant may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies involved as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
7. The Consultant will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subConsultant or vendor. The Consultant will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event the Consultant becomes involved in, or threatened with, litigation with a subConsultant or vendor as a result of such

direction or by the contracting agency, the Consultant may request the United States to enter into such litigation to protect the interests of United States.

34. CAPTIONS

The captions of each paragraph in the Agreement are inserted as a matter of convenience and reference only, and in no way define, limit, or describe the scope or intent of the Agreement or in any way affect it.

35. ASSIGNMENT

Consultant shall not subcontract or consign this Agreement, or any part thereof, or interest therein, directly or indirectly, voluntarily or involuntarily, to any person without obtaining the prior written consent by County.

36. ATTORNEY'S FEES

In the event that either party commences legal action of any kind or character to either to enforce the provisions of this Agreement or to obtain damages for breach thereof, the prevailing party in such litigation shall be entitled to all costs and reasonable attorney's fees incurred in connection with such action.

37. COPIES OF AGREEMENT

This Agreement is executed in counterparts, each of which shall be deemed a duplicate original.

COUNTY OF MERCED

CONSULTANT

By _____
Paul A. Fillebrown, Director
Merced County Public Works

By _____
Signature

Date

Date

**APPROVED AS TO FORM
MERCED COUNTY COUNSEL**

By _____
Deputy

Date

EXHIBIT B

PROJECT SUPPLEMENT NO. _____
CONTRACT NO. _____

Consultant:

Project:

Job No.:

THIS PROJECT SUPPLEMENT to Contract No. _____ for the Annual Retainer Agreement for Transportation Engineering Services is executed this _____ day of _____, 2003, by and between the **COUNTY OF MERCED**, a political subdivision of the State of California, (hereinafter referred to as "**COUNTY**"), and _____ (hereinafter referred to as "**CONSULTANT**"), WITNESSETH THAT:

WHEREAS, the County and Consultant entered into an Annual Retainer Agreement for _____ Consulting Services on July 1, 2009; and,

WHEREAS, upon execution, this Project Supplement shall be considered to be a part of Contract No. _____; and,

WHEREAS, this Project Supplement establishes the Scope of Work and compensation amounts for specific _____ Consulting Services and authorizes the Consultant to proceed with the project.

NOW, THEREFORE, the following items are mutually agreed between the County and Consultant.

1. SCOPE OF WORK

2. County agrees to compensate Consultant in accordance with the Terms of Payment stipulated in Contract No. _____ for the required work. An itemized list of tasks and a detailed cost for the completion of the required work is attached hereto. **(Exhibit A)** The cost for completion of the items of work shall not exceed \$_____. This amount may be amended by mutual agreement between the County and Consultant if, during the progress of work, the project must be modified as a result of unanticipated conditions.

3. All work associated with this Project Supplement shall conform to the requirements of Contract No. _____ and shall be completed to the satisfaction of the County within _____ of Notice to Proceed.

4. Except as herein modified, and as modified by any previous Amendments, all terms and conditions in Contract No. _____, remain unchanged and in full force and effect.

PROJECT SUPPLEMENT NO. _____
Merced County Contract No. _____

Date
Page 2

COUNTY OF MERCED

CONSULTANT

By _____
Paul A. Fillebrown
Director of Public Works

By _____

Date: _____

Date:

APPROVED AS TO FORM:
MERCED COUNTY COUNSEL

By _____
Deputy