

MADERA COUNTY MASTER CONTRACT NO. 160
(Professional Services)

RECITALS

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

B. COUNTY has determined the Project involves the performance of professional services of a temporary nature.

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

D. CONTRACTOR has the experience and expertise necessary for the performance of the professional services required for the Project.

AGREEMENT

1. **SCOPE.** CONTRACTOR'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 Contract Cover Sheet, and incorporated herein by reference. CONTRACTOR shall determine the methods, details, and means of performing the scope of work. CONTRACTOR shall identify, at the earliest feasible time, any factors that could severely inhibit or prohibit the ultimate completion or implementation of the Project. CONTRACTOR shall promptly notify COUNTY's representative of CONTRACTOR'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 CONTRACTOR for its services, in the amount(s) as provided in the Master Contract Cover Sheet. Payments shall be made within thirty (30) days after CONTRACTOR'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 COUNTY. In the event the Project is terminated, CONTRACTOR shall be paid for the work completed, in accordance with the provisions of Section 10 below.

3. **ADDITIONAL WORK.** CONTRACTOR 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 Contract Cover Sheet.

5. **INDEPENDENT CONTRACTOR**. All services performed pursuant to this Agreement by CONTRACTOR shall be performed as an independent contractor. Under no circumstances shall CONTRACTOR, its officers, employees, or agents, look to COUNTY as its employer, or as a partner, agent, or principal. CONTRACTOR shall not be entitled to any benefits accorded to COUNTY's employees. CONTRACTOR 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. CONTRACTOR shall pay, when and as due, any and all taxes incurred as a result of CONTRACTOR's compensation hereunder.

6. **LICENSES**. CONTRACTOR shall, at all times during the term of this Agreement, maintain all necessary valid licenses to practice in the State of California and shall conform to accepted professional standards in the delivery of services.

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

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

9. **NON-DISCRIMINATION**. During the performance of this Agreement, CONTRACTOR 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.

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10. **TERMINATION**. COUNTY or CONTRACTOR 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 CONTRACTOR, CONTRACTOR 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, CONTRACTOR 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 CONTRACTOR's proposal.

10.01 **Suspension/Termination for Cause**. COUNTY may immediately suspend or terminate this Agreement, in whole or in part, where, in the determination of COUNTY, any of the following occur:

- 10.01.1 CONTRACTOR commits any material breach of this Agreement;
- 10.01.2 CONTRACTOR fails to maintain all necessary licenses in the State of California in good standing;
- 10.01.3 CONTRACTOR fails to obtain and maintain all necessary insurance policies and endorsements;
- 10.01.4 It is found that consideration, in any form, was offered or given by CONTRACTOR, either directly or through an intermediary, to any COUNTY officer, employee, or agent with the intent of securing this Agreement or securing favorable treatment with respect to the award, amendment, or extension of this Agreement or the making of any determinations with respect to CONTRACTOR's performance pursuant to this Agreement;
- 10.01.5 CONTRACTOR becomes insolvent, files for bankruptcy, or has a receiver appointed for its assets;
- 10.01.6 Improperly performed service;
- 10.01.7 An illegal or improper use of funds.

10.02 **Waiver of Breach.** No waiver by COUNTY of any breach of any provision of this Agreement shall constitute a waiver of any other breach or of such provision. Failure of COUNTY to enforce at any time, or from time to time, any provision of this Agreement shall not be construed as a waiver thereof. The rights and remedies set forth in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement. In no event shall any payment by COUNTY constitute a waiver by COUNTY of any breach of this Agreement or any default which may then exist on the part of CONTRACTOR. Neither shall such payment impair or prejudice any remedy available to COUNTY with respect to the breach or default.

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

11.01 Immediately terminate the Agreement with CONTRACTOR;

11.02 Retain the reports and other documents prepared by CONTRACTOR;

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

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

12. **SUCCESSION AND ASSIGNMENT.** This Agreement is binding upon COUNTY and CONTRACTOR and their successors. Except as otherwise provided herein, neither party 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 party.

13. **REPRESENTATIVES.** COUNTY and CONTRACTOR 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 Contract Cover Sheet.

14. **ENTIRE AGREEMENT; AMENDMENT.** 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 CONTRACTOR 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. No part of this Agreement may be modified without the written consent of both parties, and unilateral amendment by CONTRACTOR shall be a material breach of this Agreement.

15. **RECORD KEEPING.** Where the payment terms provide for compensation on a time and materials basis, CONTRACTOR shall maintain adequate records to permit inspection and audit of its time and material charges under this Agreement by CONTRACTOR 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. **OWNERSHIP AND RETENTION OF DOCUMENTS; PUBLIC RECORDS ACT.** All reports and other documents prepared by CONTRACTOR 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. CONTRACTOR shall not apply for copyrights or patents on all or any part of the work performed under this Agreement. Any documents submitted by CONTRACTOR, all information obtained in connection with COUNTY's right to audit and inspect CONTRACTOR's documents, books, and accounting records pursuant to Section 15 of this Agreement, and those documents which were required to be submitted in response to the solicitation process for this Agreement, shall become the exclusive property of COUNTY, and shall be regarded as public records under the California Public Records Act, Government Code section 6250 et seq. (hereinafter "CPRA"). Exceptions to disclosure will be those provided in the CPRA and which are marked "trade secret," "confidential," or "proprietary." COUNTY shall not in any way be liable or responsible for the disclosure of any such records including, without limitation, those so marked, if disclosure is required by law, or by an order issued by a court of competent jurisdiction. In the event COUNTY is required to

defend an action on a CPRA request for any of the aforementioned documents, information, books, records, and/or contents of a proposal marked "trade secret," "confidential," or "proprietary," CONTRACTOR agrees to defend and indemnify COUNTY from all costs and expenses, including reasonable attorney's fees, in action or liability arising under the CPRA.

17. **CONFLICT OF INTEREST.** CONTRACTOR 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. CONTRACTOR represents that CONTRACTOR 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, CONTRACTOR, 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 in 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.** CONTRACTOR 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 CONTRACTOR, its officers, employees, or agents, regardless of the negligence of COUNTY, its officers, employees, or agents, except where such loss, cost, expense, damage, claim or liability results solely from the active negligence or willful misconduct of COUNTY, its officers, employees, or agents. COUNTY will not be liable for any accident, loss or damage to the work prior to its completion and acceptance. Upon request of COUNTY, CONTRACTOR 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 CONTRACTOR's negligence, and CONTRACTOR 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 COUNTY's right to obtain indemnification from CONTRACTOR or any third parties, CONTRACTOR, at its sole expense, shall obtain and maintain in full force and effect the insurance coverage specified on the Master Contract Cover Sheet throughout the term of this Agreement. In the event CONTRACTOR fails to keep in effect at all times insurance coverage as herein required, COUNTY may, in addition to other remedies it may have, suspend or terminate this Agreement upon the occurrence of such event. At the time of entering into this Agreement, CONTRACTOR shall provide certification or other sufficient proof of the required insurance to COUNTY. Upon expiration of the certification or other proof of insurance for any of the foregoing policies, CONTRACTOR shall provide to COUNTY a new certification or other proof of insurance which contains the new expiration date for the insurance policy. All insurance policies shall be furnished by an insurer approved by COUNTY 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 or change 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.

22. **DUTY OF LOYALTY**. CONTRACTOR acknowledges that the work to be performed under this Agreement will be solely for the benefit of COUNTY and that CONTRACTOR owes its duties of performance and loyalty to COUNTY and not to any other person or entity. CONTRACTOR 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.

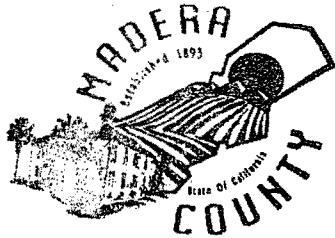
24. **SEGREGATION.** In the event that one or more provisions of this Agreement may be deemed unenforceable, the remainder of the Agreement shall continue in full force and effect.

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.

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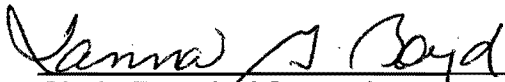
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above-written.



COUNTY OF MADERA


Chairman, Board of Supervisors

ATTEST:


Clerk, Board of Supervisors

DATED: 05-12-09

Approved as to Form:
RISK MANAGEMENT

By: 

Approved as to Legal Form:
COUNTY COUNSEL

By: 

ACCOUNT NUMBER(S)

