

TERMS AND CONDITIONS-CONTRACT

Any Contract that may be developed as a result of this proposal will not become legally binding until it has been approved by the Merced County Board of Supervisors and signed by the Chairperson.

1. INDEMNIFICATION

Contractor has the contracted duty (hereinafter "the duty") to indemnify, defend and hold harmless, County, its Board of Supervisors, officers, employees, agents and assigns from and against any and all claims, demands, liability, judgments, awards, interest, attorney's fees, costs, experts' fees and expenses of whatsoever kind or nature, at any time arising out of or in any way connected with the performance of this Agreement, whether in tort, contract or otherwise. This duty shall include, but not be limited to, claims for bodily injury, property damage, personal injury, and contractual damages or otherwise alleged to be caused to any person or entity including, but not limited to employees, agents and officers of Contractor.

Contractor's liability for indemnity under this Agreement shall apply, regardless of fault, to any acts or omissions, willful misconduct or negligent conduct of any kind, on the part of the Contractor, its agents, subcontractors and employees. The duty shall extend to any allegation or claim of liability except in circumstances found by a jury or judge to be the sole and legal result of the willful misconduct of County. This duty shall arise at the first claim or allegation of liability against County. Contractor will on request and at its expense, defend any action suit or proceeding arising hereunder. This clause for indemnification shall be interpreted to the broadest extent permitted by law.

2. INDEMNIFICATION – PROFESSIONAL SERVICES

Note: The following language will be used for all contracts for design professional services resulting from RFP. Design professional includes all of the following: a) Licensed Architect; b) Licensed Landscape Architect; c) Professional Engineer; d) Licensed professional Land Surveyor. This shall only apply to a professional services contract, or any amendment thereto

INDEMNIFICATION: To the fullest extent allowed by law, CONTRACTOR shall defend, indemnify and hold harmless the County and its officers, agents, employees and representatives from and against any and all claims, actions, losses, injuries, damages or expenses of every name, kind, and description, including litigation costs and reasonable attorney's fees incurred, brought for or on account of, injury to or death of any person, including but not limited to workers, County employees, and the public, or damage to property, which arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of CONTRACTOR, its officers, agents, employee, volunteers, representatives, CONTRACTORS and sub-CONTRACTORS. This duty of CONTRACTOR includes the duty of defense, inclusive of that set forth in California Civil Code Section 2778. Each party shall notify the other party immediately in writing of any claim or damage related to activities performed under this Agreement. The parties shall cooperate with each other in the investigation and disposition of any claim arising out of the activities under this agreement. The CONTRACTOR shall reimburse the County for all costs, attorneys' fees, expenses and liabilities incurred with respect to any Litigation in which the CONTRACTOR is obligated to indemnify, defend and hold harmless the County under this Agreement. It is expressly agreed by the parties hereto, that this indemnity clause is in full compliance with the provision of CA Civil Code Section 2782.8.

3. INSURANCE AND TAXES

Prior to the commencement of work, and as a precondition to this contract, CONTRACTOR shall purchase and maintain the following types of insurance for the stated minimum limits indicated during the term of this Agreement. CONTRACTOR shall provide a certificate of insurance and endorsements naming COUNTY as an additional insured on each policy. The insurance carrier shall be required to give COUNTY notice of termination at least 10 days prior to the intended termination of any specified policy. Each certificate of insurance shall specify if CONTRACTOR has a SIR, and if so, CONTRACTOR shall be required to provide the entire policy of insurance with which it has a SIR and/or deductible.

3.1. Commercial General Liability: \$1,000,000.00 per occurrence and \$2,000,000.00 annual aggregate covering bodily injury, personal injury and property damage. The County and its officers, employees and agents shall be endorsed to above policies as additional insured for using ISO form CG2026, as to any liability arising from the performance of any contract resulting from this proposal.

3.2. Automotive Liability: \$1,000,000.00 per accident for bodily injury and property damage, or split limits of \$500,000.00 per person/\$1,000,000.00 per accident for bodily injury and \$250,000.00 per accident for property damage.

3.3. Workers' Compensation Statutory coverage, if and as required according to the California Labor Code, including Employers' Liability limits of \$1,000,000.00 per accident. The policy shall be endorsed to waive the insurer's subrogation rights against the County.

3.4. If the successful bidder elects to deliver products to the County using a common carrier that is not related to the bidders business entity. The bidder may request waiver of the automobile and workers compensation insurance requirements.

(Professional Liability) will be inserted when Contracting for professional services (e.g. clinical, medical, health, accounting, legal, insurance, advertising, architectural, engineering or computer programming services).

3.5. Professional Liability: \$1,000,000 limit per occurrence and \$5,000,000 annual aggregate limit covering Bidder's wrongful acts, errors, and omissions. Any aggregate limit for professional liability must be separate and in addition to any CGL aggregate limit.

3.6. Deductibles: All deductibles and self-insured retentions shall be fully disclosed in the Certificates of Insurance and may not exceed \$10,000 without the express written permission of the County.

4. INSURANCE CONDITIONS

4.1. The County requires insurance carriers to maintain during the contract term, a Best Key Rating of A-VII or higher, which shall be fully disclosed and entered on the Certificate of Insurance.

4.2. Each of the required policies, noted above, shall be endorsed to provide the County with thirty (30) days prior written notice of cancellation. The County is not liable for the payment of premiums or assessments on the policy. No cancellation provisions in the insurance policy shall be construed in derogation of the continuing duty of successful Bidder to furnish insurance during the term of any contract resulting from this proposal.

4.3. These requirements assume that standard insurance policy forms, terms, and conditions will apply to cover the expected risk exposures for the intended "Scope of Work". Additional qualifying policy conditions or special endorsements may be specified in the negotiated Contract depending on the final "Scope of Work" agreed on by County and successful Bidder. Insurance questions may be directed to the Department of Administrative Services-Purchasing Division for response from the County's Risk Manager.

4.4. Failure to Maintain Coverage: If the Contractor fails to maintain any of the insurance coverage required herein, County may withhold payment, order the Contractor to stop the work, declare the Contractor in breach, suspend or terminate the Contract, assess liquidated damages as defined herein, or may purchase replacement insurance or pay premiums due on existing policies. County may collect any replacement insurance costs or premium payments made from the contract or deduct the amount paid from any sums due the County under this Contract.

5. EXTENSION OF CONTRACT

In the event the successful Bidder offers to supply their service to the County for the same price as awarded from the result of this proposal for any succeeding period, or in the event the successful Bidder is willing to negotiate any justifiable price increase at the time of the succeeding Contract renewal period, and it would be economical and in the best interest of the County, and provided the services have been to the satisfaction of the County, the County reserves the right to extend any Contract resulting from this proposal on a term-by-term basis to the successful Bidder awarded the Contract.

6. CANCELLATION DUE TO LACK OF FUNDING SOURCE

The compensation paid to Bidder pursuant to this Agreement is based on County's continued appropriation of funding for the purpose of this Agreement, as well as the receipt of local, county, state and/or federal funding for this purpose. The parties acknowledge that the nature of government finance is unpredictable, and that the rights and obligations set forth in this Agreement are necessarily contingent upon the receipt and/or appropriation of the necessary funds. In the event that funding is terminated, in whole or in part, for any reason, at any time, this Agreement and all obligations of the County arising from this Agreement shall be immediately discharged. County agrees to inform Bidder no later than ten (10) calendar days after the County determines, in its sole judgment, that funding will be terminated and the final date for which funding will be available. Under these circumstances, all billing or other claims for compensation or reimbursement by Bidder arising out of performance of this Agreement must be submitted to County prior to the final date for which funding is available. In the alternative, County and Bidder may agree, in such circumstance, to a suspension or modification of either party's rights and obligations under this Agreement. Such a modification, if the parties agree thereto, may permit a restoration of previous contract terms in the event funding is reinstated. Also in the alternative, the County may, if funding is provided to the County in the form of promises to pay at a later date

7. FEDERAL AND STATE RULES RELATED TO EMPLOYMENT PRACTICES AND NONDISCRIMINATION

During the performance of the Contract, the Contractor and its Subcontractors shall not discriminate unlawfully against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, mental disability, sexual preference, medical condition, marital status, age or sex. Contractor shall insure that the evaluation and treatment of employees and applicants for employment are free of such discrimination.

The Contractor and its Subcontractors shall further comply with the Civil Rights Act of 1964 (and any amendments thereto and the rules and regulations thereunder) and Section 504 of Title V of the Vocational Rehabilitation Act of 1973 as amended.

Contractor shall also comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 1200 et seq.), the regulations promulgated, thereunder (California Administrative Code, Title 2, Section 7285.0 et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Government Code, Sections 11135 - 11139.5) and the regulations or standards adopted by the State of California to carry out such articles.

The Contractor shall include the non-discrimination and compliance provisions of this clause in all Sub-Contracts to perform work or services performed under the Contract.

8. PATENT INDEMNITY

The awarded Bidder shall hold the County, its officers, agents, and employees, harmless from liability of any nature in kind, including costs and expenses, from infringement or use of any copyrighted or un-copyrighted composition, secret process, patented or unpatented invention, article, or appliance furnished or used in connection with this proposal. The Bidder may also be required to furnish a bond or other indemnification to the County against any and all loss, damage, costs, expenses, claims, and liability for patent or copyright infringement.

9. PAYMENT CONDITIONS

NO PAYMENT FOR SERVICE PROVIDED FOLLOWING EXPIRATION/TERMINATION OF AGREEMENT.

CONTRACTOR shall have no claim against COUNTY for payment of any kind whatsoever for any services provided by CONTRACTOR which were provided after the expiration or termination of this Agreement.

10. CONDITION SUBSEQUENT/NON-APPROPRIATION OF FUNDING

The compensation paid to CONTRACTOR pursuant to this Agreement is based on COUNTY'S continued appropriation of funding for the purpose of this Agreement, as well as the receipt of local, county, state and/or federal funding for this purpose. The parties acknowledge that the nature of government finance is unpredictable, and that the rights and obligations set forth in this Agreement are therefore contingent upon the receipt and/or appropriation of the necessary funds. In the event that funding is terminated, in whole or in part, for any reason, at any time, this Agreement and all obligations of the COUNTY arising from this Agreement shall be immediately discharged. COUNTY agrees to inform CONTRACTOR no later than ten (10) calendar days after the COUNTY determines, in its sole judgment, that funding will be terminated and the final date for which funding will be available. Under these circumstances, all billing or other claims for compensation or reimbursement by CONTRACTOR arising out of performance of this Agreement must be submitted to COUNTY prior to the final date for which funding is available. In the alternative, COUNTY and CONTRACTOR may agree, in such circumstance, to a suspension or modification of either party's rights and obligations under this Agreement. Such a modification, if the parties agree thereto, may permit a restoration of previous contract terms in the event funding is reinstated. Also in the alternative, the COUNTY may, if funding is provided to the COUNTY in the form of promises to pay at a later date, whether referred to as "government warrants," "IOUs," or by any other name, the COUNTY may, in its sole discretion, provide similar promises to pay to the CONTRACTOR, which the CONTRACTOR hereby agrees to accept as sufficient payment until cash funding becomes available.

11. TERMINATION FOR CONVENIENCE

This Agreement, notwithstanding anything to the contrary herein above or hereinafter set forth, may be terminated by COUNTY at any time without cause or legal excuse by providing the other party with thirty (30) calendar days written notice of such termination.

Upon effective date of termination, COUNTY shall have no further liability to CONTRACTOR except for payment for actual services incurred during the performance hereunder. Such liability is limited to the time specified in said notice and for services not previously reimbursed by COUNTY. Such liability is further limited to the extent such costs are actual, necessary, reasonable, and verifiable

costs and have been incurred by CONTRACTOR prior to, and in connection with, discontinuing the work hereunder.

12. TERMINATION FOR CAUSE

The COUNTY may terminate this Agreement for and be relieved of any making any payments to CONTRACTOR, and all duties to CONTRACTOR should the CONTRACTOR fail to perform any material duty or obligation of the Agreement. Notice shall be given as otherwise provided herein. In the event of such termination the COUNTY may proceed with the work in any manner deemed proper by the COUNTY. All costs to the COUNTY shall be deducted from any sum otherwise due the CONTRACTOR and the balance, if any, shall be paid to the CONTRACTOR upon demand. Such remedy is in addition to such other remedies as may be available to the COUNTY provided by law.

13. MODIFICATION OF THE AGREEMENT

Notwithstanding any of the provisions of this Agreement, the parties may agree to amend this Agreement. No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto. No oral understanding or agreement not incorporated herein shall be binding on any of the parties hereto

14. RECORDS, INFORMATION AND REPORTS

CONTRACTOR shall maintain full and accurate records with respect to all matters covered under this Agreement. To the extent permitted by law, 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.

To the extent permitted by law, CONTRACTOR shall furnish COUNTY such periodic reports as COUNTY may request pertaining to the work or services undertaken pursuant to this Agreement. The costs and obligations incurred or to be incurred in connection shall be borne by the CONTRACTOR.

15. OWNERSHIP OF DOCUMENTS

To the extent permitted by law, all technical data, evaluations, plans, specifications, reports, documents, or other work products developed by Contractor hereunder are the exclusive property of COUNTY and upon request of COUNTY shall be delivered to COUNTY upon completion of the services authorized hereunder. In the event of termination, all finished or unfinished documents and other materials, if any, at the option of COUNTY, and to the extent permitted by law, shall become the property of the COUNTY. CONTRACTOR may retain copies thereof for its files and internal use.

Any publication of information directly derived from work performed or data obtained in connection with services rendered under this Agreement must be first approved by COUNTY.

16. QUALITY OF SERVICE

CONTRACTOR 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/or other items and services furnished under this Agreement.

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

17. PERSONAL SATISFACTION AS A CONDITION PRECEDENT

The obligations of the COUNTY as provided in this Agreement are expressly conditioned upon CONTRACTOR'S compliance with the provisions of the contract to the personal satisfaction of the COUNTY. COUNTY shall determine compliance in good faith as a reasonable person would under the circumstances.

18. ENTIRE 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 contracts, oral or otherwise, regarding the subject matter of this Agreement or any part thereof shall have any validity or bind any of the parties hereto.

19. COUNTY NOT OBLIGATED TO THIRD PARTIES

The COUNTY shall not be obligated or liable hereunder to any party other than CONTRACTOR.

20. LAWS, LICENSE, PERMITS AND REGULATIONS

The CONTRACTOR 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 CONTRACTOR and COUNTY, their subgrantees, contractors, or subcontractor, and their work.

CONTRACTOR shall possess and maintain all necessary licenses, permits, certificates and credentials required by the laws of the United States, the State of California, County of Merced and all other appropriate governmental agencies, including any certification and credentials required by COUNTY. Failure to maintain the licenses, permits, certificates, and credentials shall be deemed a breach of this Agreement and constitutes grounds for the termination of this Agreement by COUNTY.

21. LIMITED EFFECT OF WAIVER OR PAYMENTS

In no event shall the making, by the COUNTY, of any payment to CONTRACTOR 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 CONTRACTOR. The making of any such payment by the COUNTY while any such breach or default shall exist, shall not be construed as acceptance of substandard or careless work or as relieving CONTRACTOR from its full responsibility under this Agreement.

No waiver by either party of any default, breach or condition precedent shall be valid unless made in writing and signed by the parties hereto. No oral waiver of any default, breach or condition precedent shall be binding on any of the parties hereto. Waiver by either party of any default, breach or condition precedent shall not be construed as a waiver of any other default, breach or condition precedent, or any other right hereunder.

22. PERSONNEL

CONTRACTOR 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 CONTRACTOR or under its supervision, and all personnel engaged in the work shall be qualified to perform such services.

23. APPLICABLE LAW; VENUE

All parties agree that this Agreement and all documents issued or executed pursuant to this Agreement as well as the rights and obligations of the parties hereunder are subject to and governed by the laws of the State of California in all respects as to interpretation, construction, operation, effect and performance. No interpretation of any provision of this Agreement shall be binding upon COUNTY unless agreed in writing by COUNTY and counsel for COUNTY

Notwithstanding any other provision of this Agreement, any dispute concerning any question of fact or law arising under this Agreement or any litigation or arbitration arising out of this Agreement, shall be tried in Merced County, unless the parties agree otherwise or are otherwise required by law.

24. BREACH OF CONTRACT

Upon breach of this Agreement by Contractor, COUNTY shall have all remedies available to it both in equity and/or at law.

25. REMEDY FOR BREACH AND RIGHT TO CURE

Notwithstanding anything else in this Agreement to the contrary, if CONTRACTOR fails to perform any obligation of this Agreement, the COUNTY may itself perform, or cause the performance of, such agreement or obligation. In that event, CONTRACTOR will, on demand, fully reimburse the COUNTY for all such expenditures. Alternatively, the COUNTY, at its option, may deduct from any funds owed to CONTRACTOR the amount necessary to cover any expenditures under this provision. This is in addition to any other remedies available to the COUNTY by law or as otherwise stated in this Agreement.

26. NONDISCRIMINATION IN EMPLOYMENT, SERVICES, BENEFITS AND FACILITIES

CONTRACTOR and any subcontractors shall comply with all applicable federal, state, and local Anti-discrimination laws, regulations, and ordinances and shall not unlawfully discriminate, deny family care leave, harass, or allow harassment against any employee, applicant for employment, employee or agent of COUNTY, or recipient of services contemplated to be provided or provided under this Agreement, because of race, ancestry, marital status, color, religious creed, political belief, national origin, ethnic group identification, sex, sexual orientation, age (over 40), medical condition (including HIV and AIDS), or physical or mental disability. CONTRACTOR shall ensure that the evaluation and treatment of its employees and applicants for employment, the treatment of COUNTY employees and agents, and recipients of services are free from such discrimination and harassment.

CONTRACTOR represents that it is in compliance with and agrees that it will continue to comply with the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.), the Fair Employment and Housing Act (Government Code §§ 12900 et seq.), and regulations and guidelines issued pursuant thereto.

CONTRACTOR agrees to compile data, maintain records and submit reports to permit effective enforcement of all applicable antidiscrimination laws and this provision.

CONTRACTOR shall include this nondiscrimination provision in all subcontracts related to this Agreement and when applicable give notice of these obligations to labor organizations with which they have Agreements.

27. CAPTIONS

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

28. SUBCONTRACTS - ASSIGNMENT

CONTRACTOR shall not subcontract or assign 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. CONTRACTOR remains legally responsible for the performance of all contract terms including work performed by third parties under subcontracts. Any subcontracting will be subject to all applicable provisions of this Agreement. CONTRACTOR shall be held responsible by COUNTY for the performance of any subcontractor whether approved by COUNTY or not.

CONTRACTOR hereby assigns to the COUNTY all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from the purchase of goods, materials, or services by the CONTRACTOR for sale to the COUNTY pursuant to this Agreement.

29. SEVERABILITY

If a court of competent jurisdiction holds any provision of this Agreement to be illegal, unenforceable or invalid, in whole or in part, for any reason, the validity and enforceability of the remaining provisions, or portion of them, will not be affected. Compensation due to CONTRACTOR from the COUNTY may, however, be adjusted in proportion to the benefit received despite the removal of the effected provision.

30. DUPLICATE COUNTERPARTS

This Agreement is executed in counterparts, each of which shall be deemed a duplicate original. The Agreement shall be deemed executed when it has been signed by both parties.

31. DEATH AND DISABILITY

This section is used when the contract is with an individual or with a company that is a sole proprietorship)

It is understood and agreed that because this Agreement is entered into for the unique personal services of CONTRACTOR, in the event of his/her death, this Agreement is forthwith terminated. In the event CONTRACTOR is disabled permanently or for an extended period, COUNTY may, at its option, terminate this Agreement forthwith. Permanent or extended disability means that CONTRACTOR is unable to perform the services of this 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.