

## CONSULTING SERVICES AGREEMENT

*(To be used only for Architectural, Engineering or Land Surveying Services.)*

This consulting services agreement ("Agreement") is dated March 4, 2013, and is between the agency and the consultant identified below. The parties agree to each of the terms set forth below (the "Basic Terms") and to each of the terms set forth in the Attachments (as defined below).

1. Parties.

(a) Agency: *(check one)*

- Contra Costa County for its Department named below
- Contra Costa County Flood Control and Water Conservation District
- Contra Costa County Fire Protection District
- Housing Authority of the County of Contra Costa
- Contra Costa County Redevelopment Agency

(i) Department *(if applicable):*

(ii) Department Head means the individual named below or his or her designee *(check one):*

- Director of General Services
- Public Works Director/Chief Engineer
- Fire Chief
- Housing Authority Executive Director
- Director of Department of Conservation and Development

(iii) Agency Mailing Address: Contra Costa County Flood Control and Water Conservation District  
255 Glacier Drive  
Martinez, CA 94553  
Attn: Julia R. Bueren

(b) Consultant's Name & Address: M. Avalon Consulting, a Professional Corporation  
1010 Brown Street  
Martinez, CA 94553  
Attn: R. Mitchell Avalon

(i) Type of Business Entity: Professional Corporation  
(e.g., individual, corporation, sole proprietorship, partnership, limited liability company)

If corporation, add State of incorporation: CA

(ii) Federal Taxpayer I.D. or SSN: 45-4090710

(iii) License Number: 31422

2. Project Name, Number, & Location: Project Mngmnt 2013

3. Term. The effective date of this Agreement is March 4, 2013. It terminates on March 3, 2015 unless sooner terminated as provided herein.

- 4. Payment Limit. Payments under this Agreement cannot exceed: \$225,000.
- 5. Legal Authority. This Agreement is entered into under and subject to Government Code Section 4525 or Section 31000, or:
  - Health and Safety Code Section 13861 (*Fire Protection District*)
  - Health and Safety Code Section 34314 (*Housing Authority*)
  - Health and Safety Code Section 33125 (*Redevelopment Agency*)
  - Other (Specify)
- 6. Attachments. The following documents are attached to this Agreement (the "Attachments") and are incorporated herein by reference. This Agreement includes the Basic Terms, the signature pages, and all of the Attachments.
  - General Conditions (*always attached*)
  - Special Conditions (*optional*)
  - Appendix A: Scope of Services (*always attached*)
  - Appendix B: Payment Provisions, Project Personnel and Billing Rates (*always attached*)
- 7. Signatures. The signatures set forth below attest the parties' agreement hereto:

**CONSULTANT**

**SIGNATURE A**

**SIGNATURE B**

Consultant's Name:  
M. Avalon Consulting ,  
a Professional Corporation

By R. Mitchell Avalon  
(Signature of individual or officer)  
R. Mitchell Avalon  
(Print name and title, if applicable)

By \_\_\_\_\_  
(Signature of individual or officer)  
(Print name and title, if applicable)

Note to Consultant: If Consultant is a corporation, two officers must sign the Agreement. The first signature (Signature A) must be that of the chairman of the board, president, or vice-president; the second signature (Signature B) must be that of the secretary, assistant secretary, chief financial officer, or assistant treasurer. (Civil Code Section 1190 and Corporations Code Section 313.) The acknowledgment below must be signed by a Notary Public.

**ACKNOWLEDGMENT**

State of California )  
 )  
County of \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_ (insert name(s) and title(s) of the officer(s) signing on behalf of the Consultant), who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS MY HAND AND OFFICIAL SEAL

\_\_\_\_\_  
Signature

(Notary's Seal)

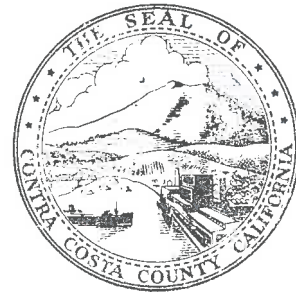
STATE OF CALIFORNIA  
COUNTY OF CONTRA COSTA

On January 10, 2013, before me, Jann Edmunds, Deputy Clerk of the Board of Supervisors, Contra Costa County, personally appeared Robert Mitchell Avalon, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature  (Seal)  
Deputy Clerk



AGENCY

(a) If Agreement is approved by Agency governing body (required if Payment Limit exceeds \$100,000):

AGENCY,

ATTEST: Clerk of the Board of Supervisors

By \_\_\_\_\_  
Board Chair/Designee

By \_\_\_\_\_  
Deputy


(b) If Agreement is approved by County Purchasing Agent:

AGENCY,

By \_\_\_\_\_  
County Purchasing Agent or Designee

COUNTY APPROVALS

RECOMMENDED BY DEPARTMENT

By   
Designee

FORM APPROVED BY COUNTY COUNSEL

By   
Deputy County Counsel

APPROVED: COUNTY ADMINISTRATOR

By \_\_\_\_\_  
Designee

## **Appendix A to Consulting Services Agreement Scope of Services**

### **A. Overview and General Requirements**

1. Agency intends to fill the position of Deputy Public Works Director within three months of the effective date of this Agreement. As a retired Deputy Public Works Director for Contra Costa County Public Works, Consultant is uniquely qualified to support the Department and continue taking the lead on various projects the Department is working on and provide assistance as the Department transitions a new Deputy Director. Consultant has the skills and experience essential to properly manage ongoing projects and to perform other related work as more fully described below. Professional civil engineering skills and services are essential for the proper and satisfactory execution of this project. For this reason, Agency is entering into this Agreement with Consultant.

2. As provided in Section 26 of the Agreement, Project Personnel, subconsultants retained by Consultant must be authorized in advance, in writing, by Agency's Department Head. Consultant shall direct the tasks and activities of its authorized subconsultants and ensure that the tasks, activities and/or products required by this Agreement are completed in a timely manner and in accordance with the applicable standard of care for the given subconsultant. Notwithstanding the authorization for work to be performed by a particular subconsultant, Consultant is solely responsible for the performance of all services and delivery of all products under this Agreement.

3. Work shown or specified in reports, drawings, and specifications must comply with all requirements of the Contra Costa County Ordinance Code, applicable State and Federal codes and regulations, and the local fire district and utility companies or districts having jurisdiction over the project or area in which the project is located.

### **B. Project Description**

The project is described as follows: Project Management 2013

1. Strategic Planning
2. Project Documentation
3. Project Management
4. Transitional Assistance

### **C. Time**

Consultant understands and agrees that time is of the essence in this Agreement and that the services shall start immediately upon full execution of this Agreement. Consultant shall perform the services expeditiously and with adequate forces and shall complete the services within the time specified in Sections 3 and 13 of the Agreement.

D. Scope of Services

Consultant shall provide assistance to the Public Works Department, Flood Control District, Real Estate Division and Clean Water Program at the direction of and for the Public Works Director located at the Contra Costa County Public Works Department, Glacier Drive, Martinez.

Consultant's services shall include, without limitation,

1. Strategic Planning

Consultant will provide strategic planning for the Public Works Department, Flood Control District, and Clean Water Program, at the direction of the Public Works Director or Deputy Public Works Director. The intent is to complete the development of strategic planning efforts underway on key issues. For example, the update of the Flood Control District Business Plan is currently underway but is not complete. The Business Plan update will guide the Flood Control District business activities and customer service improvement goals for the next five years.

2. Project Documentation

Consultant will provide project documentation at the direction of the Public Works Director or Deputy Public Works Director. The intent is for contractor to document the history and background on key projects that have been going on for many years, particularly in the Flood Control and Clean Water programs, so staff can effectively and efficiently take over or move these projects forward. Consultant will review files and documents as needed to prepare a report that will provide project planning considerations and objectives during development, financial needs and funding sources, any permitting issues, partnerships and relations, roles, commitments, and expectations with the partners, any legislative or legal issues, and sequential development of the project through its phases. The report will include current project status and recommendations for next steps. An example of this work product is a report prepared for the Mt. Diablo Mercury Mine.

3. Project Management

Consultant will provide project management of certain projects at the direction of the Public Works Director or Deputy Public Works Director. The intent is for Consultant to manage or complete projects that are unique to the Public Works Department, Flood Control District, or Clean Water Program and that require a high level of institutional knowledge to effectively implement. An example is the North Richmond Stormwater Pump Station project. This project is required by the Clean Water Program stormwater (NPDES) permit and is a joint requirement for each city and the county. The pump station is located in North Richmond and is owned by the County in partnership with the City of Richmond. The County received a grant and is taking the lead to implement the project as one of five pilot projects in the Bay Area. The project will divert stormwater to a nearby sanitary district that would not volunteer to take the stormwater but feels pressure from regulatory agencies to do so. The political landscape is very sensitive, the technical issues are significant, and the regulatory permit timetable will be very difficult to meet.

4. Transitional Assistance

Consultant will provide transitional assistance to the newly selected Deputy Public Works Director at the direction of the Public Works Director, once the position is filled. The intent is to provide assistance to the Deputy Public Works Director assuming responsibility for the Flood Control District, Clean Water Program, Real Estate Division and Environmental Division for a period of time until the Deputy has the knowledge and background to provide effective leadership for these programs. Consultant will inform

the new Deputy of all current customer and business issues the position is working to resolve, the background on each issue, political implications, overall plan to resolve each issue, efforts done to date, and planned next steps. The budget and fiscal issues for the Flood Control District and Clean Water Program will specifically be reviewed with the new Deputy and the work programs for the Real Estate Division and Environmental Division. Consultant will review with the Deputy the agreements, relationships, and commitments with the cities, East Bay Regional Park District, and other key partners, the reason and purpose for having the agreement, any political implications, and potential liabilities moving forward. Management issues associated with the three programs will also be discussed, such as plans and needs for staffing, considerations due to the merger with General Services, and customer service and service delivery expectations and concerns. Consultant will go over the myriad of associations, boards, committees, and organizations the position participates in, the purpose/mission of the group, its benefit to the Public Works Department, Flood Control District, or Clean Water Program, and any commitments that have been made.

## **Appendix B to Consulting Services Agreement Payment Provisions, Project Personnel and Billing Rates**

### **I. PAYMENT PROVISIONS**

A. Payment for services will not exceed the billing rates set forth in this Appendix B and will be based on the actual hours worked (by Consultant and authorized subconsultants) and actual approved Other Direct Costs (described below) subject to the Payment Limit specified in Section 4 of this Agreement, Payment Limit. In addition, payments for services (including payments to Consultant for authorized subconsultants) and Other Direct Costs will not exceed the following amounts for each phase or period indicated below unless approved in advance in writing by the Department Head:

1. Not Applicable: \$ ( % of Payment Limit)
2. Not Applicable: \$ ( % of Payment Limit)
3. Not Applicable: \$ ( % of Payment Limit)
4. Not Applicable: \$ ( % of Payment Limit)

B. Payment to Consultant for subconsultants authorized in advance by Agency in accordance with Section 21 of this Agreement, Assignment, will be the amount equal to Consultant's direct costs, without handling mark ups. Consultant shall submit Subconsultant invoices as part of Consultant's bill for services.

C. Payments for the extra work specified in Section 12 of this Agreement, Extra Work, shall be computed separately and shall not exceed any limits specified in Agency's written amendment describing the extra work and payment terms for the extra work.

D. Subject to the Payment Limit in Section 4 of this Agreement, Payment Limit, Agency will reimburse the actual cost (without mark up) of documented expenditures by Consultant and its employees and authorized subconsultants for the Other Direct Costs listed below to the extent such Other Direct Costs were incurred to perform the services described in this Agreement:

See Section II for allowable Other Direct Costs.

E. All other expenses (*i.e.*, those not listed under Paragraph D above) are not reimbursable and are deemed covered by the hourly billing rates set forth in Section II of this Appendix B. When any of the items listed under Paragraph D above are provided for Consultant's own use and not at Agency's request, expenses therefor are not reimbursable and are deemed covered by the hourly billing rates set forth in Section II of this Appendix B. Agency will not pay for Consultant's and its subconsultants' time and expenses for transportation between Consultant's and its subconsultants' various offices. Costs for such transportation are deemed covered by the hourly billing rates set forth in Section II of this Appendix B.



- F. Notwithstanding anything to the contrary in Section 11 of this Agreement, Payment, these Payment Provisions, including billing rates, are subject to a post award audit by the state and/or federal government. After any post award audit cost adjustments are ordered by the state and/or federal government, these Payment Provisions and the billing rates shall be adjusted by Consultant and approved by Agency's Department Head to conform to the audit cost adjustments. Consultant agrees that the individual items of cost identified in the audit report may be incorporated into the Agreement at Agency's sole discretion. Refusal by Consultant to incorporate the post award audit cost adjustments will be considered a breach of the Agreement terms and cause for termination of the Agreement by Agency. Consultant agrees that all invoices after the post award audit will be based on the adjusted Payment Provisions. Any invoices paid prior to the post award audit will be recalculated by Agency in accordance with the post award audit. Any difference in moneys due Consultant as a result of the post award audit cost adjustments will be added to, or deducted from, moneys due the Consultant on subsequent invoices.

## II. PROJECT PERSONNEL AND BILLING RATES

In accordance with Section 26 of this Agreement, Project Personnel, Consultant's personnel assigned to this project and their roles and billing rates are as follows:

Consultant's Rate Schedule:

This rate schedule is based on the work outlined in Appendix A, Scope of Services.

The only employee of Consultant performing the work pursuant to this Agreement is Robert Mitchell Avalon, President of Consultant.

Rates shown here shall remain in effect for the duration of this Agreement.

For the tasks outlined in the Scope of Services (Appendix A), Consultant will work within Agency's offices. During this time Consultant will have available and will utilize Agency resources, such as office space, computers, office equipment, and clerical support.

Consultant's rate per hour: \$110

Reimbursables:

Mileage:	at current IRS rate
Parking/Tolls:	at cost (attach receipt/documentation)
Travel/Hotel/Food:	at cost with advance approval by County (attach receipt/documentation)
Photocopies/Printing:	at cost (attach receipt/documentation)
Postage/Express Mail:	at cost (attach receipt/documentation)

## **Special Conditions (Consulting Services Agreement)**

1. The method of payment for this Agreement is specified hourly rate not to exceed the Payment Limit specified in Section 4 (Payment Limit) of the Basic Terms without Agency's prior approval.

2. No payment will be made prior to Agency's approval of any work, nor will Consultant perform any work prior to Agency's approval of this Agreement.

3. Section 10(a)(iii) (Types and Amount of Insurance) of the General Conditions is hereby deleted in its entirety and replaced with the following:

"(iii) liability insurance with a minimum coverage limit of \$4,000,000 for claims made in the aggregate annually for all personal injury and property damage, to include liability assumed under this Agreement, the use of any licensed motor vehicle by Consultant or subconsultants, and naming Agency, its governing body, officers and employees as additional insureds."

4. Section 10(b) (Certificate of Insurance) of the General Conditions is hereby deleted in its entirety and replaced with the following:

"(b) Certificate of Insurance: Prior to the effective date of this Agreement, Consultant shall furnish to the Contra Costa County Public Works Department (Department) certificates of insurance evidencing the coverage required herein. Additionally, no later than five days after Consultant's receipt of (i) a notice of cancellation or a notice of an intention to cancel any of Consultant's insurance coverage required by this Agreement, or (ii) a notice of a material change to Consultant's insurance coverage required by this Agreement, Consultant will provide Agency a copy of such notice of cancellation, or notice of intention to cancel, or notice of material change. Consultant's failure to provide Department the notice as required by the preceding sentence is a default under this Agreement. If Consultant renews any of the insurance policies or acquires any new insurance policies or amends the coverage through an endorsement to any policy at any time during the term of this Agreement, then Consultant shall provide current certificates to Department."

5. Section 11(f) (Payment Retention) of the General Conditions is hereby deleted in its entirety and replaced with the following: Payment Retention: "Agency will not retain any funds."

6. Section 21 (Assignment) of the General Conditions is hereby deleted in its entirety and replaced with the following:

"Consultant may not assign or transfer this Agreement, in whole or in part, whether voluntarily, by operation of law or otherwise. Any purported assignment, transfer or subcontract is void."

7. Section 26 (Project Personnel) of the General Conditions is hereby amended by deleting the last two sentences of the section in their entirety.

8. Section A(2) of Appendix A (Scope of Services) is hereby deleted in its entirety.

**GENERAL CONDITIONS**  
(Consulting Services Agreement)

8. Employment/Scope of Service. Agency hereby employs Consultant, and Consultant accepts such employment, to perform the professional services as described in Appendix A (Scope of Services), upon the terms and in consideration of the payments stated herein.
9. Report Disclosure Section. Pursuant to Government Code Section 7550, Consultant shall include in all documents or written reports completed and submitted to Agency in accordance with this Agreement, a separate section listing the numbers and dollar amounts of all contracts and subcontracts relating to the preparation of each such document or written report. This section only applies if the Payment Limit of this Agreement exceeds \$5,000. If multiple documents or written reports are the subject or product of this Agreement, the disclosure section may also contain a statement indicating that the total Agreement amount represents compensation for multiple documents or written reports.
10. Insurance. Consultant may not commence work under this Agreement until it has furnished evidence of the insurance required herein to the Department Head, and the Department Head has approved it, and may not continue to perform any work under this Agreement if the insurance required herein is no longer in effect.
- (a) Types and Amount of Insurance: Consultant, at no cost to Agency, shall obtain and maintain during the term hereof: (i) Workers' Compensation Insurance pursuant to state law, including, without limitation, California Labor Code section 3700; (ii) Professional Liability Insurance with a minimum coverage limit of \$1,000,000 for claims made in the aggregate annually and a maximum self-insured retention or self-insured retained limit of liability of \$25,000, for all damages or losses because of errors, omissions or malpractice arising out of the provision of professional services by Consultant and Consultant's subconsultants under this Agreement; and (iii) liability insurance with a minimum coverage limit of \$5,000,000 for claims made in the aggregate annually for all personal injury and property damage, to include liability assumed under this Agreement, the use of any licensed motor vehicle by Consultant or subconsultants, and naming Agency, its governing body, officers and employees as additional insureds. The policies will constitute primary insurance as to Agency and its governing body, officers and employees such that other insurance policies held by them or their self-insurance program(s) are not required to contribute to any loss covered under Consultant's insurance policy or policies.
- (b) Certificate of Insurance: Prior to the effective date of this Agreement, Consultant shall furnish to the Department Head certificates of insurance evidencing the coverage required herein and requiring 30 days' written notice to Agency of policy lapse, cancellation or material change in coverage. If Consultant renews the insurance policy(ies) or acquires a new insurance policy(ies) or amends the coverage through an endorsement to the policy(ies) at any time during the term of this Agreement, then Consultant shall provide current certificate(s) to the Department Head.
- (c) Warranty: Consultant represents and warrants that, as of the effective date of this Agreement, Consultant is not aware of any situation that has occurred that could reduce the limits of liability set forth above for claims made under this Agreement.
- (d) Labor Code Section 1861 Certification: In executing this Agreement, Consultant certifies as follows: "I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract."
11. Payment. Agency shall pay Consultant for professional services performed as described in Appendix A at the rates shown in Appendix B, which include all overhead and incidental expenses, for which no additional compensation will be allowed. Notwithstanding the foregoing, Agency shall reimburse those incidental expenses specifically itemized in Appendix B, provided that Consultant submits copies of receipts and, if applicable, a detailed mileage log to the Department Head. In no event may the total amount paid to Consultant exceed the Payment Limit specified in Section 4, Payment Limit, without Agency's prior written approval.
- (a) Billing Statements: Consultant shall submit billing statements in the manner and form prescribed by the Department Head detailing the work performed and listing, for each item of services, the employee categories, hours and rates. Except as otherwise provided in the Scope of Services, Consultant shall submit the billing statements no later than 30 days from the end of the month in which the services described in the billing statement were actually rendered. Except as provided in subsections (b) – (d) below, Agency will endeavor to pay Consultant within 30 days after receipt of each statement.

**GENERAL CONDITIONS**  
(Consulting Services Agreement)

- (b) Documentation: Consultant shall furnish progress reports with each billing statement at no additional charge. Consultant shall include sufficient detail in each progress report, and shall furnish to the Department Head whatever additional information is necessary, to enable the Department Head to determine whether Consultant is performing all tasks described in the Scope of Services pursuant to the schedule set forth in the Scope of Services.
- (c) Penalty for Late Submission: If Agency is unable to obtain reimbursement from the state or federal government as a result of Consultant's failure to submit to Agency a timely billing statement as set forth above, Agency will not be obligated to pay Consultant for the services included in the late billing statement.
- (d) Right to Withhold: Agency may withhold payment to Consultant following written notice to Consultant that: (i) Consultant has failed to fully perform its obligations under this Agreement (including, without limitation, any failure to submit required deliverable items according to the schedule set forth in the Scope of Services); (ii) Consultant has neglected, failed, or refused to furnish information or cooperate with any inspection, review, or audit of its work or records; or (iii) Consultant has failed to sufficiently itemize or document its billing statement.
- (e) Audit Exceptions: Consultant accepts responsibility for receiving, replying to, and/or complying with any audit exceptions by appropriate county, state or federal audit agencies resulting from its performance of this Agreement. Within 30 days of demand, Consultant shall pay Agency the full amount of Agency's obligation to the state and/or federal government resulting from any audit exceptions that are attributable to Consultant's failure to properly perform any of its obligations under this Agreement.
- (f) Payment Retention: Agency may retain 10% of each billing statement as security for the fulfillment of this Agreement. After Consultant has completed all services as required under this Agreement, submitted final billing, and if the Department Head has determined that the services have been completed in accordance with this Agreement, Agency will release all withheld funds.
- (g) Penalties for False Claims: Any person who commits any of the following acts shall be liable to Agency for three times the amount of damages which Agency sustains because of the act of that person. A person who commits any of the following acts shall also be liable to Agency for the costs of a civil action brought to recover any of those penalties or damages, and may be liable to Agency for a civil penalty of not less than \$5,000 and not more than \$10,000 for each false claim: (a) Knowingly presents or causes to be presented to an officer or employee of Agency a false claim for payment or approval. (b) Knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by Agency. (c) Conspires to defraud Agency by getting a false claim allowed or paid by Agency. (d) Knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to Agency. (e) Is a beneficiary of an inadvertent submission of a false claim to Agency, subsequently discovers the falsity of the claim, and fails to disclose the false claim to Agency within a reasonable time after discovery of the false claim. Liability under this section shall be joint and several for any act committed by two or more persons.
12. Extra Work. Any work or services in addition to the work or services described in the Scope of Services that Agency deems necessary to properly complete the work or services described in Scope of Services shall be performed by Consultant at the direction of Agency according to the rates or charges listed in Appendix B. In the event that no rate or charge is listed for a particular type of extra work, Consultant will be paid for the extra work at a rate to be mutually agreed on prior to the commencement of the extra work. In no event will Consultant be entitled to compensation for extra work unless, prior to commencement of the extra work, Agency has executed a written amendment describing the extra work and payment terms in accordance with Section 32, Amendments.
13. Time for Completion. Consultant shall complete all services covered by this Agreement no later than the end of the term as set forth above. Notwithstanding the foregoing, to the extent the Scope of Services provides for the phasing of services, Consultant shall complete all services for each phase of the project by the deadlines stated in the Scope of Services.
14. Termination by Agency. At its option, Agency may terminate this Agreement at any time by written notice to Consultant, whether or not Consultant is then in default. Upon such termination, Consultant shall, without delay, deliver to Agency all materials and records prepared or obtained in the performance of this Agreement, and Agency shall pay Consultant, without duplication, all amounts due for the services rendered up to the date of termination.



**GENERAL CONDITIONS**  
(Consulting Services Agreement)

15. Abandonment by Consultant. If Consultant ceases performing services under this Agreement or otherwise abandons the project prior to completing all of the services described in this Agreement, Consultant shall deliver to Agency, without delay, all materials and records prepared or obtained in the performance of this Agreement. Agency shall pay Consultant the amount it determines to be the reasonable value of the services performed up to the time of cessation or abandonment, less a deduction for any damages or additional expenses which Agency incurs as a result of such cessation or abandonment.
16. Ownership of Documents. All materials and records of a finished nature, such as final plans, specifications, reports, and maps, prepared or obtained in the performance of this Agreement, shall be delivered to and become the property of Agency. Consultant shall retain, and make available to Agency in accordance with Section 17, Record Retention and Auditing, all materials of a preliminary nature, such as survey notes, sketches, preliminary plans, computations and other data, prepared or obtained in the performance of this Agreement.
17. Record Retention and Auditing. Except for materials and records delivered to Agency, Consultant shall retain all materials and records prepared or obtained in the performance of this Agreement, including financial records, for a period of at least five years after Consultant's receipt of the final payment under this Agreement. Upon request by Agency, Consultant shall promptly make such materials and records available to Agency, or to authorized representatives of the state and federal governments, at a convenient location within Contra Costa County designated by the Department Head, at no additional charge and without restriction or limitation on their use.
18. Independent Contractor Status. The parties intend that Consultant, in performing the services specified herein, is acting as an independent contractor and that Consultant will control the work and the manner in which it is performed. This Agreement is not intended and may not be construed to create the relationship between the parties of agent, servant, employee, partnership, joint venture or association. Additionally, Consultant is not entitled to participate in any pension plan, workers' compensation plan, health plan, insurance, bonus or similar benefits Agency provides to its employees. In the event that Agency exercises its right to terminate the Agreement, Consultant expressly agrees that it will have no recourse or right of appeal under any rules, regulations, ordinances or laws applicable to employees.
19. Breach. If Consultant fails to perform any of the services described in this Agreement in the manner and timeframe set forth in the Scope of Services or otherwise breaches this Agreement, Agency may pursue all remedies provided by law or equity. Disputes relating to the performance of this Agreement are not subject to non-judicial arbitration.
20. Compliance with Laws. In performing this Agreement, Consultant shall comply with all applicable laws, statutes, ordinances, rules and regulations, whether federal, state, or local in origin, including, but not limited to, licensing and purchasing practices, and wages, hours and conditions of employment, including nondiscrimination and prevailing wage rates and their payment in accordance with California Labor Code Section 1775. If any federal or state regulations or laws touching upon the subject of this Agreement are adopted or revised during the term hereof, this Agreement will be deemed amended and Consultant will comply with such federal or state requirements.
21. Assignment. Consultant may not assign or transfer this Agreement, in whole or in part, whether voluntarily, by operation of law or otherwise; provided, however, Consultant may, subject to any required state or federal approval, enter into subcontracts for the portion of the services for which Consultant does not have the facilities to perform so long as Consultant obtains the Department Head's written consent to such subcontracting prior to execution of this Agreement. The Department Head may withhold consent to any proposed subcontract in his or her sole and absolute discretion. Any purported assignment, transfer or subcontract that does not comply with the terms hereof is void.
22. Endorsement on Plans. Consultant shall endorse all plans, specifications, estimates, reports and other items described in Scope of Services prior to delivering them to Agency, and, where appropriate, indicate his or her registration number.
23. Works Made for Hire; Confidentiality. All reports, original drawings, graphics, plans, studies, and other data and documents, in whatever form or format, assembled or prepared by Consultant or Consultant's subcontractors, consultants, and other agents in connection with this Agreement are "works made for hire" (as defined in the Copyright Act, 17 U.S.C.A., Sections 101 *et seq.*, as amended) for Agency, and Consultant unconditionally and irrevocably transfers and assigns to Agency all right, title, and interest, including all copyrights and other intellectual property rights, in or to the works made for hire. If any of the works made for hire is subject to copyright protection, Agency reserves the right to copyright such works and Consultant agrees not to copyright such works. If any works made for hire are copyrighted, Agency reserves a royalty-free, irrevocable license to reproduce, publish, and

**GENERAL CONDITIONS**  
(Consulting Services Agreement)

use the works made for hire, in whole or in part, without restriction or limitation, and to authorize others to do so. Unless required by law, Consultant shall not publish, transfer, discuss, or disclose any of the above-described works made for hire, or any financial, statistical, personal, technical, or other data or information relative to Agency's operations, which are designated confidential by Agency and made available to Consultant in order to carry out Consultant's work under this Agreement, or any information gathered, discovered, or generated in any way through this Agreement, without Agency's prior express written consent. Permission to disclose information on one occasion or public hearing does not constitute authorization to further disclose such information on any other occasion.

24. **Indemnification.** Consistent with California Civil Code section 2782.8, Consultant shall, to the fullest extent permitted by law, indemnify, protect, defend and hold harmless Agency, and its employees, officials, and agents, from any and all demands, losses, claims, costs, liabilities, and expenses for any damage, injury, or death, including any and all administrative fines, penalties or costs imposed as a result of an administrative proceeding, that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Consultant, its officers, employees, agents, contractors, subconsultants, or any persons under its direction or control. If requested by Agency, Consultant shall defend any such suits at its sole cost and expense. If Agency elects to provide its own defense, Consultant shall reimburse Agency for any expenditures, including reasonable attorneys' fees and costs. Consultant's obligations under this section exist regardless of concurrent negligence or willful misconduct on the part of Agency or any other person; provided, however, that Consultant will not be required to indemnify, including the cost to defend, Agency for the proportion of liability a court determines does not arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Consultant, its officers, employees, agents, contractors, subconsultants, or any persons under its direction or control. This indemnification clause will survive the termination or expiration of this Agreement.
25. **Endorsements.** Consultant may not, in its capacity as a Consultant with Agency, (a) publicly endorse or oppose the use of any particular brand name or commercial product without the prior approval of Agency's governing body, (b) publicly attribute qualities or lack of qualities to a particular brand name or commercial product in the absence of a well-established and widely accepted scientific basis for such claims or without the prior approval of Agency's governing body or (c) participate or appear in any commercially-produced advertisements designed to promote a particular brand name or commercial product, even if Consultant is not publicly endorsing a product, as long as Consultant's presence in the advertisement can reasonably be interpreted as an endorsement of the product by or on behalf of Agency. Notwithstanding the foregoing, Consultant may express its views on products to other consultants, to Agency's governing body or its officers, or to others who may be authorized by Agency's governing body or by law to receive such views.
26. **Project Personnel.** In performing the services authorized under this Agreement, Consultant shall use the personnel listed in Appendix B. Consultant may only make changes in project personnel and authorized subconsultants with the Department Head's prior written consent, and Consultant shall notify the Department Head in writing at least thirty (30) days in advance of any proposed change. Any person proposed as a replacement shall possess training, experience, and credentials comparable to those of the person being replaced.
27. **Inspection.** Authorized representatives of Agency, the State of California and the United States Government may monitor, inspect, review and audit Consultant's performance, place of business and records pertaining to this Agreement. Consultant shall make these items available for inspection upon request.
28. **Conflicts of Interest.** Consultant covenants that it presently has no interest and that it will not acquire any interest, direct or indirect, that represents a financial conflict of interest under state law or that would otherwise conflict in any manner or degree with the performance of its services hereunder. Consultant further covenants that in the performance of this Agreement, Consultant will employ no person having any such interest. If requested to do so by Agency, Consultant shall complete a "Statement of Economic Interest" form and deliver it to the Department Head and shall require any other person doing work under this Agreement to complete a "Statement of Economic Interest" form and deliver it to the Department Head. Consultant covenants that Consultant, its employees and officials, are not now employed by Agency and have not been so employed by Agency within 12 months immediately preceding this Agreement; or, if so employed, did not then and do not now occupy a position that would create a conflict of interest under Government Code Section 1090. In addition to any indemnity provided by Consultant in this Agreement, Consultant shall indemnify, defend and hold Agency harmless from any and all claims, investigations, liabilities or damages resulting from or related to any and all alleged conflicts interest.
29. **Nonrenewal.** Consultant understands and agrees that there is no representation, implication, or understanding that the services provided by Consultant under this Agreement will be purchased by Agency under a new contract following expiration or

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termination of this Agreement, and Consultant waives all rights or claims to notice or hearing respecting any failure to continue purchasing all or any such services from Consultant.

30. Professional Competence; Licensure. Consultant represents and warrants that it is (i) professionally competent and able to provide the professional services described in this Agreement by reason of Consultant's personal knowledge and skill, and (ii) currently licensed by the State of California, and will remain licensed in good standing at all times during the term of this Agreement, as one or more of the following: (a) an architect pursuant to Chapter 3 (commencing with Section 5500) of Division 3 of the California Business and Professions Code; (b) a landscape architect pursuant to Chapter 3.5 (commencing with Section 5615) of Division 3 of the California Business and Professions Code; (c) a professional engineer pursuant to Chapter 7 (commencing with Section 6700) of Division 3 of the California Business and Professions Code; or (d) a professional land surveyor pursuant to Chapter 15 (commencing with Section 8700) of Division 3 of the California Business and Professions Code.
31. Notices. All notices under this Agreement must be in writing, and, except as otherwise provided in the Scope of Services, sent by personal delivery (including overnight courier service) or by certified United States Mail, postage prepaid, to the parties at the addresses designated above, unless changed by written notice to the other party. Consultant shall address all notices to Agency to the Department Head. The effective date of the notice is the date of deposit in the mail or of other delivery, except that the effective date of notice to Agency is the date of receipt by the Department Head.
32. Amendments. This Agreement may be amended only by written agreement signed by both of the parties.
33. Disputes. Disagreements between Agency and Consultant concerning the meaning, requirements or performance of this Agreement are subject to final written determination of the Department Head or in accordance with the applicable procedures (if any) required by state or federal government.
34. Choice of Law and Personal Jurisdiction. This Agreement is made in Contra Costa County and is governed by, and will be construed in accordance with, the laws of the State of California. The parties, to the fullest extent permitted by law, knowingly, intentionally, and voluntarily, with and upon the advice of competent counsel, submit to personal jurisdiction in the State of California over any suit, action or proceeding arising from or relating to the terms of this Agreement.
35. No Implied Waiver. No waiver of any provision of this Agreement by Agency is valid unless it is in writing and signed by Agency. Waiver by Agency at any time of any breach of this Agreement may not be deemed a waiver of or consent to a subsequent breach of the same or any other provision of this Agreement. If Consultant's action requires the consent or approval of Agency, that consent or approval on one occasion may not be deemed a consent to or approval of that action on any later occasion or a consent to or approval of any other action. Subject to Section 33, Disputes, inspections, approvals or statements by any officer, agent or employee of Agency indicating Consultant's performance or any part thereof complies with the requirements of this Agreement, or acceptance of the whole or any part of Consultant's performance, or payments therefor, or any combination of these acts, does not relieve Consultant of its obligation to fulfill this Agreement as prescribed or prevent Agency from bringing an action for damages or enforcement arising from any failure to comply with any of the terms and conditions of this Agreement.
36. Successors and Assigns. Subject to Section 21, Assignment, this Agreement binds Consultant's successors, assigns, heirs, executors and personal representatives.
37. No Third-Party Beneficiaries. This Agreement is intended solely for the benefit of the parties hereto, and no third party has any right or interest in any provision of this Agreement or as a result of any action or inaction of any party in connection therewith.
38. Construction. The section headings and captions of this Agreement are, and the arrangement of this instrument is, for the sole convenience of the parties to this Agreement. The section headings, captions and arrangement of this instrument do not in any way affect, limit, amplify or modify the terms and provisions of this Agreement. This Agreement may not be construed as if it had been prepared by one of the parties, but rather as if both parties have prepared it. The parties to this Agreement and their counsel have read and reviewed this Agreement and agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party does not apply to the interpretation of this Agreement.
39. Severability. If any term or provision of this Agreement is, to any extent, held invalid or unenforceable, the remainder of this Agreement will not be affected thereby.



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40. Entire Agreement. This Agreement, together with all of the attachments listed in Section 6, Attachments, contains all of the terms and conditions agreed upon by the parties regarding the subject matter of this Agreement, and supercedes all previous communications, representations, understandings and agreements, whether verbal, written, express or implied, between the parties.
41. Authorization. Consultant, or the representative(s) signing this Agreement on behalf of Consultant, represents and warrants that Consultant has full power and authority to enter into this Agreement and to perform the obligations set forth herein, and that the representatives signing this Agreement have the authority to execute this Agreement on behalf of Consultant and to bind Consultant to its contractual obligations hereunder.

**The following provisions apply only to projects using US Department of Transportation funds.**

42. Disadvantaged Business Enterprise (DBE) Requirements (Federal aid projects only). Consultant shall comply with all applicable provisions of 49 CFR, Parts 23 and 26, and the Contra Costa County's Disadvantaged Business Enterprise (DBE) Program, which are incorporated into this Agreement by reference. In addition, in performing services under this Agreement, Consultant shall utilize all DBEs listed in Consultant's written response to Agency's request for qualifications or request for proposal and shall pay to the listed DBEs the estimated amounts listed in Appendix B attached to this Agreement. Consultant shall not substitute a listed DBE at any time or decrease the amount to be paid to a listed DBE without the advance, written consent of Agency. If a listed DBE is proposed to be replaced, Consultant shall make a good faith effort to replace the original DBE with another DBE and shall submit to Agency written documentation of such effort.
43. Federal Cost Principles and Procedures (Federal aid projects only). Consultant shall comply with the following provisions, which are incorporated into this Agreement by reference: (a) the cost principles for allowability of individual items of costs set forth in 48 CFR, Chapter 1, Part 31; (b) the administrative procedures set forth in 49 CFR, Part 18; and (c) the administrative procedures for non-profit organizations set forth in OMB Circular A-110, if applicable to Consultant. In the event that payment is made to Consultant for any costs that are determined by subsequent audit to be unallowable under 48 CFR, Chapter 1, Part 31, Consultant shall refund the payment to Agency within 30 days of written request from Agency. Should Consultant fail to do so, and should Agency file legal action to recover the refund, Consultant shall reimburse Agency for all attorneys' fees, costs, and other expenses incurred by Agency in connection with such action.
44. Prohibition of Expending Local Agency State or Federal Funds for Lobbying (Federal aid in excess of \$100,000 only). In executing this Agreement, Consultant makes the following certification, which certification is a material representation of fact relied upon by Agency in entering into this Agreement:
- (a) Certification. To the best of Consultant's knowledge and belief:
- (i) No state, federal or local agency appropriated funds have been paid, or will be paid by or on behalf of Consultant to any person for influencing or attempting to influence an officer or employee of any state or federal agency, a member of the State Legislature or United States Congress, an officer or employee of the Legislature or Congress, or any employee of a member of the Legislature or Congress, in connection with the awarding of any state or federal contract, the making of any state or federal grant, the making of any state or federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any state or federal contract, grant, loan, or cooperative agreement.
- (ii) If any funds other than federal appropriated funds have been paid, or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress, in connection with this federal contract, grant, loan, or cooperative agreement, Consultant shall complete and submit Form – LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.
- (b) Penalty for Failure to File Disclosure Form. Submission of the disclosure form is a prerequisite for making or entering into this Agreement imposed by Title 31 U.S.C. Section 1352. Any person who fails to file the required disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
- (c) Applicability to Subconsultants. In executing this Agreement, Consultant also agrees to require that the language of this



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Section 44 be included in all contracts with subconsultants that exceed \$100,000, and that all such subconsultants shall certify and disclose accordingly.

45. Compliance with American Recovery and Reinvestment Act ("Recovery Act"). Consultant shall comply with the following provisions, which are incorporated into this Agreement by reference: (a) the statutory provisions contained in Chapter 1 of Title 23 of the United States Code; and (b) the reporting requirements, terms and conditions set forth in Sections 1201 and 1512 of the Recovery Act, and as designated by the State of California. Consultant's failure to comply with these provisions will result in retentions from progress payments due and/or other sanctions.