

1. Contract Identification.

Department:

Subject: Interagency Agreement between Contra Costa County Flood Control and Water Conservation District and Agency named below for the Walnut Creek Watershed Opportunities Report

2. Parties. The County of Contra Costa, California (County), for its Department named above, and the following named Agency mutually agree and promise as follows:

Agency: The Regents of the University of California (hereinafter "Agency")

Capacity: A public agency

Address: 2150 Shattuck Avenue, Room 313, Berkeley, CA 94704-5940

3. Term. The effective date of this Agreement is January 1, 2016 and it terminates on November 30, 2017 unless sooner terminated as provided herein.

4. Payment Limit. County's total payments to Agency under this Agreement shall not exceed \$125,000.00.

5. County's Obligations. County shall pay Agency for its provision of the services as set forth in the attached Payment Provisions which are incorporated herein by reference, subject to all the terms and conditions contained or incorporated herein.

6. Agency's Obligations. Agency shall provide those services and carry out that work described in the Service Plan attached hereto which is incorporated herein by reference, subject to all the terms and conditions contained or incorporated herein.

7. General and Special Conditions. This Agreement is subject to the General Conditions and Special Conditions (if any) attached hereto, which are incorporated herein by reference.

8. Project. This Agreement implements in whole or in part the following described Project, the application and approval documents of which are incorporated herein by reference: Project is described in the Service Plan.

9. Legal Authority. This Agreement is entered into under and subject to the following legal authorities: CCCFCWCD Act, § 5 (8), (12).

10. Signatures. These signatures attest the parties' agreement hereto:

COUNTY OF CONTRA COSTA, CALIFORNIA

BOARD OF SUPERVISORS	ATTEST: Clerk of the Board of Supervisors
By _____	By _____
Chairman/Designee	Deputy

AGENCY

By _____	By _____
(Signature of authorized Agency representative)	(Signature of authorized Agency representative)
_____ (Print name and title A)	_____ (Print name and title B)

ACKNOWLEDGMENT/APPROVALS
(Purchase of Services - Long Form)

Number: _____

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
)
COUNTY OF CONTRA COSTA)

On _____ (Date),

before me, _____ (Name and Title of the Officer),
personally appeared, _____,

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 of Notary Public



Place Seal Above

ACKNOWLEDGMENT (by Corporation, Partnership, or Individual)
(Civil Code §1189)

APPROVALS

RECOMMENDED BY DEPARTMENT

FORM APPROVED BY COUNTY COUNSEL

By: _____
Designee

By: _____
Deputy County Counsel

APPROVED: COUNTY ADMINISTRATOR

By: _____
Designee

1. **Payment Amounts.** Subject to the Payment Limit of this Contract and subject to the following Payment Provisions, County will pay Contractor the following fee as full compensation for all services, work, expenses or costs provided or incurred by Contractor:

[Check one alternative only.]

- ☐ a. \$ _____ monthly, or
- ☐ b. \$ _____ per unit, as defined in the Service Plan, or
- ☐ c. \$ _____ after completion of all obligations and conditions herein.
- ☒ d. Other: As set forth in Exhibit A attached hereto.

2. **Payment Demands.** Contractor shall submit written demands for payment on County Demand Form D-15 in the manner and form prescribed by County. Contractor shall submit said demands for payment no later than 30 days from the end of the month in which the contract services upon which such demand is based were actually rendered. Upon approval of payment demands by the head of the County Department for which this Contract is made, or his designee, County will make payments as specified in Paragraph 1. (Payment Amounts) above.
3. **Penalty for Late Submission.** If County is unable to obtain reimbursement from the State of California as a result of Contractor's failure to submit to County a timely demand for payment as specified in Paragraph 2. (Payment Demands) above, County shall not pay Contractor for such services to the extent County's recovery of funding is prejudiced by the delay even though such services were fully provided.
4. **Right to Withhold.** County has the right to withhold payment to Contractor when, in the opinion of County expressed in writing to Contractor, (a) Contractor's performance, in whole or in part, either has not been carried out or is insufficiently documented, (b) Contractor has neglected, failed or refused to furnish information or to cooperate with any inspection, review or audit of its program, work or records, or (c) Contractor has failed to sufficiently itemize or document its demand(s) for payment.
5. **Audit Exceptions.** Contractor agrees to accept 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 Contract. Within 30 days of demand, Contractor shall pay County the full amount of County's obligation, if any, to the state and/or federal government resulting from any audit exceptions, to the extent such are attributable to Contractor's failure to perform properly any of its obligations under this Contract.

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SERVICE PLAN

Title: Walnut Creek Watershed Opportunities Report

I. Introduction: Opportunities Analysis for Implementing the Fifty-Year Plan

Engineered flood control channels (both concrete box culverts and earthen trapezoidal channels) are efficient ways to convey floodwaters from urban areas and were widely implemented in California and in Contra Costa County during the post-war boom years of the 20th century. However, with growing environmental awareness and concern for quality of life, there is increasing public demand for natural channels that provide ecological, open-space, recreational, and water quality benefits. As the 20th-century engineered channels age and approach the end of their service lives (typically 75 years), flood management authorities will face rising maintenance costs and increasing risks from these deteriorating structures. In many neighborhoods, there will likely be strong public opposition to reconstructing the same kind of channel, and in any event, obtaining the environmental permits for such structures would be challenging to say the least. In many cases the preferred alternative will be to replace existing concrete channels with natural channels.

In recognition of the impending need to address the future of concrete channels in the coming decades, in 2009 the Contra Costa County Flood Control and Water Conservation District (FC District) adopted the "Fifty-Year Plan" as policy, recognizing the long time frame needed to plan, acquire rights of way, and implement changes. The policy calls for concrete channels to be replaced wherever possible by natural channels in response to community preferences for the green space, recreational, ecological, and water-quality benefits of natural channels.

There are nearly 80 miles of engineered flood control channels throughout Contra Costa County, of varying age and condition, and in contexts ranging from dense urban to suburban. To successfully implement the Fifty-Year Plan will require beginning the process of community engagement now, developing alternatives, and assessing benefits and costs. The first step in the Fifty-Year Plan and engaging the community is to analyze Contra Costa County's flood protection systems for opportunity sites where conversion to a natural stream system would be feasible.

This Walnut Creek Watershed Opportunities Report, and the related services and work described herein, ("Project") is meant to provide information to the FC District to begin implementation of the Fifty-Year Plan. The report will provide locations where implementation of projects are most feasible, land use tools to assist in project planning, and a communication plan of the report results and outreach materials, maps, and diagrams to help explain the Fifty-Year Plan policy and concept.

Footnote: UC Berkeley is fully committed to this project and supportive of the Fifty-Year Plan concept and wishes to help with its implementation in as many ways as possible. Not officially part of this proposed project, but in a parallel effort, UC Berkeley will offer to use at least one opportunity site as the topic of one of three projects undertaken in the Environmental Planning Studio course in spring 2016 and/or 2017, with the aim of having a group of about 12 graduate students develop alternatives for future development of the site. The class will collect data on the opportunity site and surrounding region and consult with community leaders and other knowledgeable people, identify objectives for the site, and develop alternative plans, such as conversion to a natural stream corridor. If a second class, focused on site planning, also selects this opportunity site, there will

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be another set of students focused more on the local site scale. These design students would develop projects within the framework of the larger plans, similar to the work done recently on downtown Walnut Creek in the Ecological Factors Studio, taught by John Roberts. The studio projects are compelling by virtue of the excellent graphic presentation and other advanced tools for visualization of alternatives, including rendering of features on enlarged maps of creeks and the surrounding areas, and proposed new features that could be incorporated in a reconfigured, natural channel, such as new links between schools and streamside parks.

II. Agency's Obligation

- A. Agency will assign Ari Frink, a graduate student of the University of California at Berkeley (Graduate Student), and Jennifer Natali, a doctoral student of the University of California at Berkeley (Doctoral Student), under the supervision of G. Mathias Kondolf, Professor and Chair, Dept. of Landscape Architecture & Environmental Planning, University of California at Berkeley (Principal Investigator) to perform the work described in this Service Plan. The Graduate Student and Doctoral Student, and Principal Investigator will generally perform an opportunities analysis, as described below, first in a small watershed to develop the appropriate procedures and related outcomes, and then expand the analysis to other watersheds throughout the Walnut Creek watershed and prepare a report outlining the project's findings.
- B. Agency (sometimes referred to as "UC Berkeley") will conduct a GIS-based reconnaissance-level analysis ("Analysis") of engineered channels throughout the watershed, to assess consequences of failure, potential for ecological enhancement, potential to integrate recreational trails and parks as components of flood management solutions, and the potential to enhance hydrologic, ecological, and human connectivity along these channels. The engineered channels will be all publicly owned channels in the watershed, those owned by the FC District and those owned by the cities in the watershed. The FC District will assist UC Berkeley in identifying and gaining information on the channels owned by the cities. This watershed analysis will identify opportunity sites for implementing the Fifty-Year Plan.
- C. UC Berkeley will first conduct the Analysis at the scale of a single sub-basin, as a pilot/demonstration analysis on Grayson Creek, which has most of its course and watershed within a single jurisdiction, the City of Pleasant Hill. Working through the process on Grayson Creek will allow the method to be refined before applying it watershed-wide. It is recognized that the Grayson Creek effort will entail more work and provide a more detailed level of analysis than the watershed-wide effort. The additional work and analysis in the Grayson Creek watershed would be outlined in the Work Plan and include development of compelling arguments for community support to implement the Fifty-Year Plan. These arguments could include, for example, the impending need to modify the community's flood protection system due to changing hydrology brought on by climate change, the benefits of a natural stream system, and the potential positive impacts of a redesigned community.
- D. UC Berkeley will identify and analyze possible corridors for conversion to natural systems and identify land-uses affected. UC Berkeley will explore various mechanisms (such as municipal ordinances, through drafting a model ordinance) under which municipalities could 'flag' parcels for future acquisition when they come up for sale.
- E. UC Berkeley will explore and identify land use measures to insure no net loss of tax revenue to local jurisdictions when a wider right of way is acquired to convert a concrete channel to a natural system. (For example, identifying increased density and other zoning changes that could offset tax loss from parcels incorporated into and acquired for an expanded riparian corridor, and assess the potential for increased property values adjacent to restored stream channels. This is necessary as a natural channel often requires a larger 'footprint' than the existing rights of way and conversion to a natural channel can impact the community, structures, and tax base adjacent to the old flood protection channel.)
- F. UC Berkeley will make recommendations, based on the Project's reconnaissance-level analysis, to prioritize areas in which to work first, and to indicate which areas are likely to be most urgent in terms of safety, which

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have greatest potential for ecological enhancement, and which can be implemented first at least cost and with fewest permitting challenges, to serve as demonstration projects. These recommendations will provide the FC District with a wide range of alternatives to consider when implementing its Fifty-Year Plan.

- G. UC Berkeley will identify which opportunity sites could also qualify as green infrastructure. As the conversion of hardened engineered channels to natural channels will serve to slow, infiltrate, and filter storm runoff, the conversion to natural channels qualifies as a component of 'green infrastructure'. Thus, this analysis will identify which FC District owned parcels could be included in the development of the County's Green Infrastructure Plan, which is a new requirement of the Regional Water Quality Control Board.
- H. UC Berkeley will base Project analysis on prior mapping of channels and watersheds by the FC District, analysis of satellite imagery and other available data layers such as land-use maps, field data collection, and field observation and experience of FC District staff. UC Berkeley shall ensure that field data collection includes observations of the condition of concrete channels, mapping of vegetation and land uses surrounding the channels, ground-truthing of imagery and data layers, and testing specific hypotheses developed from interviews with knowledgeable County staff. The data compiled from diverse sources will be integrated into a GIS platform, in a format compatible with existing County GIS resources.

III. Agency's Deliverables

Agency (UC Berkeley) will provide the FC District the following deliverables:

1. Grayson Creek Work Plan. UC Berkeley will prepare a detailed work plan for review and comment by FC District that outlines the procedures and steps UC Berkeley will take to perform the Grayson Creek opportunities analysis.
2. Draft Grayson Creek Report. UC Berkeley will prepare a draft report for the initial work on Grayson Creek, to include summary of methods used to analyze remotely-sensed imagery and other data layers, field observations, assessment of channel condition and constraints, results of interviews with knowledgeable experts, testing hypotheses developed from expert interview results, and list of opportunity locations to implement the Fifty-Year Plan. The draft report will also include an analysis of the potential benefits to a community if the Fifty-Year Plan was implemented, such as changing hydrology, natural stream system benefits, and potential benefits from a redesigned community.
3. Grayson Creek Communication Plan. UC Berkeley will prepare a plan to communicate out the results of the opportunities analysis performed for Grayson Creek. The plan will include who at the City of Pleasant Hill this information should be presented to, how it should be presented, and what materials are needed.
4. Walnut Creek Watershed-wide Work Plan. UC Berkeley will prepare a detailed work plan for review, and comment by FC District that outlines the procedures and steps planned to be taken to perform the balance of the project's opportunities analysis, utilizing the lessons learned from the Grayson Creek analysis.
5. Final Project Report. UC Berkeley will prepare a final project report to include summary of methods used to analyze remotely-sensed imagery and other data layers, field observations, assessment of channel condition and constraints, results of interviews with knowledgeable experts, testing hypotheses developed from expert interview results, and list of opportunity locations to implement the 50-Year Plan.
6. Walnut Creek Watershed-wide Communication Plan. UC Berkeley will prepare a plan to communicate out the results of the opportunities analysis performed for the County's flood protection system. The plan may include who at the County and other organizations this information should be presented to, how it should be presented, and what materials would be needed.
7. GIS Data. UC Berkeley will provide a GIS layer to the County in a format compatible with existing county GIS resources.

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8. Diagrams. UC Berkeley will provide diagrams explaining processes in and showing impacts and benefits of engineered vs natural channels, renderings showing possible future states for selected channels (at least some identified as potential priority conversion sites), and maps at both county-wide and individual watershed-wide (Grayson Creek) scale showing the constraints and opportunities for conversion of engineered channels. As these products will be used in an ongoing public outreach effort, UC Berkeley will prepare relevant diagrams/renderings/maps as needed for FC District to communicate concepts and alternatives to the public.
9. Outreach Materials. UC Berkeley will develop outreach materials as specified in the communication plans and to be used later by the FC District to increase awareness and explain the concept of the Fifty-Year Plan. These outreach materials will include a narrative or "brochure" to be used for outreach to communities interested in learning about the Fifty-Year Plan possibilities and potential application to the creek channel within their community.
10. Model Ordinance. UC Berkeley will develop a model ordinance that the FC District can distribute to cities to preserve the right-of-way needed to convert engineered channels to natural systems.

IV. FC District's Obligations

For the duration and purposes of this Contract, FC District will:

1. Provide access to the lands the FC District owns and assist Agency (UC Berkeley) to obtain access on other public lands deemed necessary for the project.
2. Provide contact information for and introduction to other organizations that may be interviewed.
3. Provide a conference room for interviews or meetings and a work space at FC District offices, upon request of UC Berkeley, for UC Berkeley's research purposes.
4. Provide information from and access to FC District files and maps as needed to complete the opportunities analysis.
5. Provide existing geographic information system (GIS) layers for mapping tasks.

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Table 1**A. Payment Schedule**

Date	Services, Supplies and Travel	Deliverables
March 1, 2016	\$11,204.84	<ul style="list-style-type: none"> · Overall Project Summary. · Kickoff field meeting. · Draft Grayson Creek Watershed Work Plan.
April 15, 2016	\$6,652.16	<ul style="list-style-type: none"> · Grayson Creek Watershed Work Plan. · Draft summary of methods remote sensing. · Draft summary of expert interview results, hypotheses for remote sensing analysis.
July 15, 2016	\$11,974.67	<ul style="list-style-type: none"> · Generalized project update meeting with FC District to present interviews, list opportunity locations. · Draft literature review of measures to insure no net loss of taxes. · Draft summary of benefits from 50-Year Plan in Grayson Creek watershed.
September 1, 2016	\$5,882.33	<ul style="list-style-type: none"> · Draft Land Use Measures Work Plan.
October 15, 2016	\$11,974.66	<ul style="list-style-type: none"> · Draft Grayson Creek report, Grayson Creek Communication Plan. · Progress report on initial field work & remote-sensing analysis.
November 1, 2016	\$5,882.34	<ul style="list-style-type: none"> · Draft Walnut Creek Watershed-wide Work Plan.
January 15, 2017	\$15,020.00	<ul style="list-style-type: none"> · Walnut Creek Watershed-wide Work Plan. · Draft summary of expert interviews & hypotheses. · Compilation of prior channel mapping by County, from remote sensing, & field observation. · Progress report on channel mapping, testing hypotheses, and analysis.
February 1, 2017	\$2,837.00	<ul style="list-style-type: none"> · Draft Walnut Creek Watershed Communication Plan.
March 1, 2017	\$2,837.00	<ul style="list-style-type: none"> · Draft Model Land Use Ordinance
April 15, 2017	\$15,020.00	<ul style="list-style-type: none"> · Draft list of opportunity locations for green infrastructure. · Generalized project update meeting with FC District to present hypotheses and results, review initial list of opportunity locations for green infrastructure.

EXHIBIT A

May 15, 2017	\$17,857.50	· Draft Final Report · Walnut Creek Watershed Communication Plan with diagrams and outreach materials.
July 15, 2017	\$17,857.50	· Meet with FC District to finalize findings and strategies. · Final Report
Totals	\$125,000.00	

B. Payment Provisions

1. Payment for services rendered will be made upon satisfactory completion of the deliverable(s) listed for each payment date and submittal of an invoice.
2. Invoices for payment shall be submitted to:
Contra Costa County Flood Control and Water Conservation District
Attn: Mitch Avalon
255 Glacier Drive
Martinez, CA 94553-4825

SPECIAL CONDITIONS
(Purchase of Services - Long Form)

Contractor and Agency agree that the following Special Conditions are part of this Contract.

1. Terms. A. As used in this Agreement, the terms "Agency", "Contractor", and "UC Berkeley" each means the Regents of the University of California. As used in this Agreement, the term "Contract" has the same meaning as Agreement (as defined in the first paragraph of this Agreement). As used in this Agreement, the terms "District" or "FC District" mean Contra Costa County Flood Control and Water Conservation District. As used in this Agreement, the term "Contractor's Principal Investigator" means any Agency personnel directly working on the Project.
B. Wherever the word "County" appears in this Agreement, that word is hereby replaced with "District".
2. Employment Status of Contractor's Researchers. Persons performing work under this Agreement are not Contra Costa County or FC District employees. Agency shall be responsible for complying with all laws, regulations and Agency policies concerning employment of graduate student researchers, academic employees, and other persons that perform the Project-related work under this Agreement.
3. Copyrights. General Conditions, paragraph 25, Copyrights, Rights in Data, and Works Made for Hire is deleted in its entirety and replaced with the following paragraph.

"25. Copyrights, Rights in Data, and Works Made for Hire. Agency may assert copyright on materials that it produces in the performance of services under this Agreement. Agency shall grant FC District an irrevocable, worldwide, royalty-free, non-exclusive license to use, reproduce, publish or republish, or otherwise disseminate such copyrighted materials for its non-commercial purposes."

4. Mutual Indemnification. General Conditions, paragraph 18, Indemnification, is deleted in its entirety and replaced with the following paragraph.

"18. Mutual Indemnification

- A. Agency shall defend, indemnify and hold harmless FC District, its officers, employees and agents, from and against any and all liability, loss, expense (including reasonable attorneys' fees), or claims for injury or damages arising out of the performance of this agreement but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of Agency, its officers, agents, or employees.
- B. FC District shall defend, indemnify and hold harmless Agency, its officers, employees and agents, from and against any and all liability, loss, expense (including reasonable attorneys' fees), or claims for injury or damages arising out of the performance of this Agreement but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of FC District, its officers, agents, or employees."

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5. Conflicts of Interest. General Conditions, paragraph 15, Conflicts of Interest., is deleted in its entirety and replaced with the following paragraph.

“15. Conflicts of Interest. The Contractor shall comply with all applicable federal, state and local conflict of interest laws, including, without limitation, the Political Reform Act (Cal. Gov. Code, § 81000 et seq.) and California Government Code Section 1090. The parties understand that UC Berkeley shall comply with this section through its compliance with its own UC Conflict of Interest Policy.”

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GENERAL CONDITIONS
(Purchase of Services - Long Form)

1. **Compliance with Law.** Contractor is subject to and must comply with all applicable federal, state, and local laws and regulations with respect to its performance under this Contract, including but not limited to, licensing, employment, and purchasing practices; and wages, hours, and conditions of employment, including nondiscrimination.
2. **Inspection.** Contractor's performance, place of business, and records pertaining to this Contract are subject to monitoring, inspection, review and audit by authorized representatives of the County, the State of California, and the United States Government.
3. **Records.** Contractor must keep and make available for inspection and copying by authorized representatives of the County, the State of California, and the United States Government, the Contractor's regular business records and such additional records pertaining to this Contract as may be required by the County.
 - a. **Retention of Records.** Contractor must retain all documents pertaining to this Contract for five years from the date of submission of Contractor's final payment demand or final Cost Report; for any further period that is required by law; and until all federal/state audits are complete and exceptions resolved for this Contract's funding period. Upon request, Contractor must make these records available to authorized representatives of the County, the State of California, and the United States Government.
 - b. **Access to Books and Records of Contractor, Subcontractor.** Pursuant to Section 1861(v)(1) of the Social Security Act, and any regulations promulgated thereunder, Contractor must, upon written request and until the expiration of five years after the furnishing of services pursuant to this Contract, make available to the County, the Secretary of Health and Human Services, or the Comptroller General, or any of their duly authorized representatives, this Contract and books, documents, and records of Contractor necessary to certify the nature and extent of all costs and charges hereunder.

Further, if Contractor carries out any of the duties of this Contract through a subcontract with a value or cost of \$10,000 or more over a twelve-month period, such subcontract must contain a clause to the effect that upon written request and until the expiration of five years after the furnishing of services pursuant to such subcontract, the subcontractor must make available to the County, the Secretary, the Comptroller General, or any of their duly authorized representatives, the subcontract and books, documents, and records of the subcontractor necessary to verify the nature and extent of all costs and charges thereunder.

This provision is in addition to any and all other terms regarding the maintenance or retention of records under this Contract and is binding on the heirs, successors, assigns and representatives of Contractor.

4. **Reporting Requirements.** Pursuant to Government Code Section 7550, Contractor must include in all documents and written reports completed and submitted to County in accordance with this Contract, 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 applies only if the Payment Limit of this Contract exceeds \$5,000.

GENERAL CONDITIONS
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5. **Termination and Cancellation.**

- a. **Written Notice.** This Contract may be terminated by either party, in its sole discretion, upon thirty-day advance written notice thereof to the other, and may be cancelled immediately by written mutual consent.
- b. **Failure to Perform.** County, upon written notice to Contractor, may immediately terminate this Contract should Contractor fail to perform properly any of its obligations hereunder. In the event of such termination, County may proceed with the work in any reasonable manner it chooses. The cost to County of completing Contractor's performance will be deducted from any sum due Contractor under this Contract, without prejudice to County's rights to recover damages.
- c. **Cessation of Funding.** Notwithstanding any contrary language in Paragraphs 5 and 11, in the event that federal, state, or other non-County funding for this Contract ceases, this Contract is terminated without notice.

6. **Entire Agreement.** This Contract contains all the terms and conditions agreed upon by the parties. Except as expressly provided herein, no other understanding, oral or otherwise, regarding the subject matter of this Contract will be deemed to exist or to bind any of the parties hereto.

7. **Further Specifications for Operating Procedures.** Detailed specifications of operating procedures and budgets required by this Contract, including but not limited to, monitoring, evaluating, auditing, billing, or regulatory changes, may be clarified in a written letter signed by Contractor and the department head, or designee, of the county department on whose behalf this Contract is made. No written clarification prepared pursuant to this Section will operate as an amendment to, or be considered to be a part of, this Contract.

8. **Modifications and Amendments.**

- a. **General Amendments.** In the event that the total Payment Limit of this Contract is less than \$100,000 and this Contract was executed by the County's Purchasing Agent, this Contract may be modified or amended by a written document executed by Contractor and the County's Purchasing Agent or the Contra Costa County Board of Supervisors, subject to any required state or federal approval. In the event that the total Payment Limit of this Contract exceeds \$100,000 or this Contract was initially approved by the Board of Supervisors, this Contract may be modified or amended only by a written document executed by Contractor and the Contra Costa County Board of Supervisors or, after Board approval, by its designee, subject to any required state or federal approval.
 - b. **Minor Amendments.** The Payment Provisions and the Service Plan may be amended by a written administrative amendment executed by Contractor and the County Administrator (or designee), subject to any required state or federal approval, provided that such administrative amendment may not increase the Payment Limit of this Contract or reduce the services Contractor is obligated to provide pursuant to this Contract.
9. **Disputes.** Disagreements between County and Contractor concerning the meaning, requirements, or performance of this Contract shall be subject to final written determination by the head of the county department for which this Contract is made, or his designee, or in accordance with the applicable procedures (if any) required by the state or federal government.

GENERAL CONDITIONS
(Purchase of Services - Long Form)

10. **Choice of Law and Personal Jurisdiction.**

- a. This Contract is made in Contra Costa County and is governed by, and must be construed in accordance with, the laws of the State of California.
- b. Any action relating to this Contract must be instituted and prosecuted in the courts of Contra Costa County, State of California.

11. **Conformance with Federal and State Regulations and Laws.** Should federal or state regulations or laws touching upon the subject of this Contract be adopted or revised during the term hereof, this Contract will be deemed amended to assure conformance with such federal or state requirements.

12. **No Waiver by County.** Subject to Paragraph 9. (Disputes) of these General Conditions, inspections or approvals, or statements by any officer, agent or employee of County indicating Contractor's performance or any part thereof complies with the requirements of this Contract, or acceptance of the whole or any part of said performance, or payments therefor, or any combination of these acts, do not relieve Contractor's obligation to fulfill this Contract as prescribed; nor is the County thereby prevented from bringing any action for damages or enforcement arising from any failure to comply with any of the terms and conditions of this Contract.

13. **Subcontract and Assignment.** This Contract binds the heirs, successors, assigns and representatives of Contractor. Prior written consent of the County Administrator or his designee, subject to any required state or federal approval, is required before the Contractor may enter into subcontracts for any work contemplated under this Contract, or before the Contractor may assign this Contract or monies due or to become due, by operation of law or otherwise.

14. **Independent Contractor Status.** The parties intend that Contractor, in performing the services specified herein, is acting as an independent contractor and that Contractor will control the work and the manner in which it is performed. This Contract is not to be construed to create the relationship between the parties of agent, servant, employee, partnership, joint venture, or association. Contractor is not a County employee. This Contract does not give Contractor any right to participate in any pension plan, workers' compensation plan, insurance, bonus, or similar benefits County provides to its employees. In the event that County exercises its right to terminate this Contract, Contractor expressly agrees that it will have no recourse or right of appeal under any rules, regulations, ordinances, or laws applicable to employees.

15. **Conflicts of Interest.** Contractor 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. Contractor further covenants that in the performance of this Contract, no person having any such interests will be employed by Contractor. If requested to do so by County, Contractor will complete a "Statement of Economic Interest" form and file it with County and will require any other person doing work under this Contract to complete a "Statement of Economic Interest" form and file it with County. Contractor covenants that Contractor, its employees and officials, are not now employed by County and have not been so employed by County within twelve months immediately preceding this Contract; or, if so employed, did not then and do not now occupy a position that would create a conflict of interest under Government

GENERAL CONDITIONS
(Purchase of Services - Long Form)

Code section 1090. In addition to any indemnity provided by Contractor in this Contract, Contractor will indemnify, defend, and hold the County harmless from any and all claims, investigations, liabilities, or damages resulting from or related to any and all alleged conflicts of interest. Contractor warrants that it has not provided, attempted to provide, or offered to provide any money, gift, gratuity, thing of value, or compensation of any kind to obtain this Contract.

16. **Confidentiality.** To the extent allowed under the California Public Records Act, Contractor agrees to comply and to require its officers, partners, associates, agents and employees to comply with all applicable state or federal statutes or regulations respecting confidentiality, including but not limited to, the identity of persons served under this Contract, their records, or services provided them, and assures that no person will publish or disclose or permit or cause to be published or disclosed, any list of persons receiving services, except as may be required in the administration of such service. Contractor agrees to inform all employees, agents and partners of the above provisions, and that any person knowingly and intentionally disclosing such information other than as authorized by law may be guilty of a misdemeanor.
17. **Nondiscriminatory Services.** Contractor agrees that all goods and services under this Contract will be available to all qualified persons regardless of age, gender, race, religion, color, national origin, ethnic background, disability, or sexual orientation, and that none will be used, in whole or in part, for religious worship.
18. **Indemnification.** Contractor will defend, indemnify, save, and hold harmless County and its officers and employees from any and all claims, demands, losses, costs, expenses, and liabilities for any damages, fines, sickness, death, or injury to person(s) or property, including any and all administrative fines, penalties or costs imposed as a result of an administrative or quasi-judicial proceeding, arising directly or indirectly from or connected with the services provided hereunder that are caused, or claimed or alleged to be caused, in whole or in part, by the negligence or willful misconduct of Contractor, its officers, employees, agents, contractors, subcontractors, or any persons under its direction or control. If requested by County, Contractor will defend any such suits at its sole cost and expense. If County elects to provide its own defense, Contractor will reimburse County for any expenditures, including reasonable attorney's fees and costs. Contractor's obligations under this section exist regardless of concurrent negligence or willful misconduct on the part of the County or any other person; provided, however, that Contractor is not required to indemnify County for the proportion of liability a court determines is attributable to the sole negligence or willful misconduct of the County, its officers and employees. This provision will survive the expiration or termination of this Contract.
19. **Insurance.** During the entire term of this Contract and any extension or modification thereof, Contractor shall keep in effect insurance policies meeting the following insurance requirements unless otherwise expressed in the Special Conditions:
 - a. **Commercial General Liability Insurance.** For all contracts where the total payment limit of the contract is \$500,000 or less, Contractor will provide commercial general liability insurance, including coverage for business losses and for owned and non-owned automobiles, with a minimum combined single limit coverage of \$500,000 for all damages, including consequential damages, due to bodily injury, sickness or disease, or death to any person or damage to or destruction of property, including the loss of use thereof, arising from each occurrence. Such insurance must be endorsed to include County and its officers and employees as additional insureds as to all services performed by Contractor under this Contract. Said policies must constitute primary insurance as to

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County, the state and federal governments, and their officers, agents, and employees, so that other insurance policies held by them or their self-insurance program(s) will not be required to contribute to any loss covered under Contractor's insurance policy or policies. Contractor must provide County with a copy of the endorsement making the County an additional insured on all commercial general liability policies as required herein no later than the effective date of this Contract. For all contracts where the total payment limit is greater than \$500,000, the aforementioned insurance coverage to be provided by Contractor must have a minimum combined single limit coverage of \$1,000,000.

- b. **Workers' Compensation.** Contractor must provide workers' compensation insurance coverage for its employees.
 - c. **Certificate of Insurance.** The Contractor must provide County with (a) certificate(s) of insurance evidencing liability and worker's compensation insurance as required herein no later than the effective date of this Contract. If Contractor should renew the insurance policy(ies) or acquire either a new insurance policy(ies) or amend the coverage afforded through an endorsement to the policy at any time during the term of this Contract, then Contractor must provide (a) current certificate(s) of insurance.
 - d. **Additional Insurance Provisions.** No later than five days after Contractor's receipt of: (i) a notice of cancellation, a notice of an intention to cancel, or a notice of a lapse in any of Contractor's insurance coverage required by this Contract; or (ii) a notice of a material change to Contractor's insurance coverage required by this Contract, Contractor will provide Department a copy of such notice of cancellation, notice of intention to cancel, notice of lapse of coverage, or notice of material change. Contractor's failure to provide Department the notice as required by the preceding sentence is a default under this Contract
20. **Notices.** All notices provided for by this Contract must be in writing and may be delivered by deposit in the United States mail, postage prepaid. Notices to County must be addressed to the head of the county department for which this Contract is made. Notices to Contractor must be addressed to the Contractor's address designated herein. The effective date of notice is the date of deposit in the mails or of other delivery, except that the effective date of notice to County is the date of receipt by the head of the county department for which this Contract is made.
21. **Primacy of General Conditions.** In the event of a conflict between the General Conditions and the Special Conditions, the General Conditions govern unless the Special Conditions or Service Plan expressly provide otherwise.
22. **Nonrenewal.** Contractor understands and agrees that there is no representation, implication, or understanding that the services provided by Contractor under this Contract will be purchased by County under a new contract following expiration or termination of this Contract, and Contractor waives all rights or claims to notice or hearing respecting any failure to continue purchasing all or any such services from Contractor.
23. **Possessory Interest.** If this Contract results in Contractor having possession of, claim or right to the possession of land or improvements, but does not vest ownership of the land or improvements in the same person, or if this Contract results in the placement of taxable improvements on tax exempt land (Revenue & Taxation Code Section 107), such interest or improvements may represent a possessory interest subject to property tax, and Contractor may be subject to the payment of property taxes levied on such interest. Contractor agrees that this provision complies with the notice

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requirements of Revenue & Taxation Code Section 107.6, and waives all rights to further notice or to damages under that or any comparable statute.

24. **No Third-Party Beneficiaries.** Nothing in this Contract may be construed to create, and the parties do not intend to create, any rights in third parties.
25. **Copyrights, Rights in Data, and Works Made for Hire.** Contractor will not publish or transfer any materials produced or resulting from activities supported by this Contract without the express written consent of the County Administrator. All reports, original drawings, graphics, plans, studies and other data and documents, in whatever form or format, assembled or prepared by Contractor or Contractor's subcontractors, consultants, and other agents in connection with this Contract are "works made for hire" (as defined in the Copyright Act, 17 U.S.C. Section 101 et seq., as amended) for County, and Contractor 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. Unless required by law, Contractor shall not publish, transfer, discuss, or disclose any of the above-described works made for hire or any information gathered, discovered, or generated in any way through this Agreement, without County's prior express written consent. If any of the works made for hire is subject to copyright protection, County reserves the right to copyright such works and Contractor agrees not to copyright such works. If any works made for hire are copyrighted, County reserves a royalty-free, irrevocable license to reproduce, publish, and use the works made for hire, in whole or in part, without restriction or limitation, and to authorize others to do so.
26. **Endorsements.** In its capacity as a contractor with Contra Costa County, Contractor will not publicly endorse or oppose the use of any particular brand name or commercial product without the prior written approval of the Board of Supervisors. In its County-contractor capacity, Contractor will not 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 written approval of the Board of Supervisors. In its County-contractor capacity, Contractor will not participate or appear in any commercially produced advertisements designed to promote a particular brand name or commercial product, even if Contractor is not publicly endorsing a product, as long as the Contractor's presence in the advertisement can reasonably be interpreted as an endorsement of the product by or on behalf of Contra Costa County. Notwithstanding the foregoing, Contractor may express its views on products to other contractors, the Board of Supervisors, County officers, or others who may be authorized by the Board of Supervisors or by law to receive such views.
27. **Required Audit.** (A) If Contractor is funded by \$500,000 or more in federal grant funds in any fiscal year from any source, Contractor must provide to County, at Contractor's expense, an audit conforming to the requirements set forth in the most current version of Office of Management and Budget Circular A-133. (B) If Contractor is funded by less than \$500,000 in federal grant funds in any fiscal year from any source, but such grant imposes specific audit requirements, Contractor must provide County with an audit conforming to those requirements. (C) If Contractor is funded by less than \$500,000 in federal grant funds in any fiscal year from any source, Contractor is exempt from federal audit requirements for that year; however, Contractor's records must be available for and an audit may be required by, appropriate officials of the federal awarding agency, the General Accounting Office (GAO), the pass-through entity and/or the County. If any such audit is required, Contractor must provide County with such audit. With respect to the audits specified in (A), (B) and (C) above, Contractor is solely responsible for arranging for the conduct of the audit, and for its cost. County may withhold the estimated cost of the audit or 10 percent of the

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contract amount, whichever is greater, or the final payment, from Contractor until County receives the audit from Contractor.

28. **Authorization**. Contractor, or the representative(s) signing this Contract on behalf of Contractor, represents and warrants that it has full power and authority to enter into this Contract and to perform the obligations set forth herein.
29. **No Implied Waiver**. The waiver by County of any breach of any term or provision of this Contract will not be deemed to be a waiver of such term or provision or of any subsequent breach of the same or any other term or provision contained herein.