

**MEMORANDUM
DEPARTMENT OF FACILITY SERVICES
COUNTY OF PLACER**

To: **BOARD OF SUPERVISORS**

Date: **JANUARY 7, 2013**

From: ^{MND} **MARY DIETRICH / ROB UNHOLZ** ^{RU}

Subject: **AUBURN ANIMAL SHELTER, PROJECT NO. 4639**
CONSTRUCTION MANAGEMENT SERVICES

ACTION REQUESTED / RECOMMENDATION:

1. Approve and authorize the Chair to execute the attached Consultant Services Agreement with Vanir Construction Management, Inc. (Vanir) to provide Construction Management (CM) services for the Auburn Animal Shelter, Project No. 4639, to be located at the Placer County Government Center (PCGC), in North Auburn in an amount not-to-exceed \$1,327,200 in previously budgeted net county cost.

BACKGROUND: Since Spring 2012, staff has proceeded with project planning for the Auburn Animal Shelter Project at the Placer County Government Center. Following completion of the needs assessment, project programming and cost estimates by the Project's Master Architect, INDIGO Hammond & Playle Architects, on February 5, 2013, your Board authorized staff to proceed with a Request for Proposal (RFP) process with the three (3) most qualified Design-Build (D-B) teams to initiate this Project. After completing the selection process for the three most qualified firms and performing a value engineering exercise, staff returned to your Board on December 10, 2013 and confirmed your direction to proceed with the process to select a D-B Team for this Project.

With your Board's confirmation to proceed with D-B team selection, staff is now requesting approval of a contract for construction management services with Vanir. Typically, a CM firm is secured early in a D-B project to support staff in evaluating the design, constructability and cost of each team's proposals as they are being developed during the confidential design phase of the RFP. Vanir will assist in the early evaluation of proposed structural, mechanical, electrical and plumbing systems. They will also work with the evaluation committee on determining compliance with the RFP and scoring each of the three D-B Team's formal and final proposals. These services represent a valuable contribution to the evaluation committee's ability to select the most responsive, highest quality proposal and, in turn, the best value for the County. Vanir will then continue to assist staff in reviewing the development of the construction documents and managing the construction phase. They will also provide quality assurance inspection and testing, storm water monitoring and compliance services, labor compliance and commissioning services through sub-consultants.

To be in a position to secure construction management services for this Project in a timely manner, Procurement Services issued a Request for Proposal, RFP No. 10250 on March 26, 2013. Proposals were received from six (6) firms. The Evaluation Committee reviewed the proposals and interviewed the top four (4) Construction Management firms on May 1, 2013. Vanir scored the highest of the four firms interviewed. Staff has negotiated the attached Consultant Services Agreement to provide construction management services and support to Capital Improvements' staff from the D-B RFP process through construction and commissioning. Vanir will also coordinate quality assurance and materials testing inspections, storm water compliance and labor compliance. In order to proceed, it is requested that your Board approve the attached Consultant Services Agreement with Vanir and authorize the Chair to execute the contract in an amount not-to-exceed \$1,327,200.

ENVIRONMENTAL IMPACT: The Department is currently proceeding with environmental review pursuant to the California Environmental Quality Act (CEQA) with the preparation of a Mitigated Negative Declaration. Upon the completion of environmental review, staff will return to your Board for approval of the CEQA document prior to award of the D-B contract.

FISCAL IMPACT: These services were anticipated and budgeted. There is sufficient funding appropriated in the Auburn Animal Shelter Project Account for these Construction Management services.

ATTACHMENTS: ATTACHMENT NO. 1 - RFP NO. 10250 PROPOSALS & EVALUATION
CONSULTANT SERVICES AGREEMENT FOR CM SERVICES

CC: COUNTY EXECUTIVE OFFICE
PROCUREMENT SERVICES

MD:RU:BL:SH

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ATTACHMENT NO. 1

RFP NO. 10250 PROPOSALS & EVALUATION

RESPONDING FIRMS	Location	Interviews	Final Recommendation
Vanir Construction Management, Inc.	Sacramento, CA	Yes	Yes
PSOMAS	Roseville, CA	Yes	
URS Corporation	Sacramento, CA	Yes	
TMCS Construction Management	Irvine, CA	Yes	
Anchor Engineering, Inc.	Lafayette, CA	No	
Porter Consulting, LLC	Paradise, CA	No	

Contract No.: _____

Administering Agency: County of Placer/Facilities Services/Capital Improvements Division

Contract Description: Construction Management (CM) Services for New Animal Shelter

CONSULTANT SERVICES AGREEMENT

THIS AGREEMENT is made at Auburn, California, as of _____, 2013, by and between the County of Placer, a political subdivision of the State of California ("County"), and VANIR Construction Management, Inc. ("Consultant") a California Corporation, who agree as follows:

1. **Services.** Subject to the terms and conditions set forth in this Agreement, Consultant shall provide the services as described in Exhibit A in the manner therein specified.
2. **Payment.** County shall pay Consultant for services rendered pursuant to this Agreement at the time and in the amounts set forth in Exhibit B. Consultant shall submit all billings for said services to County in the manner specified in Exhibit B. The total amount payable for all services provided under this Agreement, including Additional Services, shall not exceed **One Million Three Hundred Twenty-Seven Thousand Two Hundred and no/100 Dollars (\$1,327,200.00)** without the prior written approval of County.
3. **Facilities, Equipment and Other Materials, and Obligations of County.** Except as set forth in Exhibit C, Consultant shall, at its sole cost and expense, furnish all facilities, equipment, and other materials which may be required for furnishing services pursuant to this Agreement. County shall furnish Consultant only those facilities, equipment, and other materials, if any, and shall perform those obligations, if any, listed in Exhibit C according to the terms and conditions set forth in Exhibit C.
4. **General Provisions.** The general provisions set forth in Exhibit D are part of this Agreement. Any inconsistency between said general provisions and any other terms or conditions of this Agreement shall be controlled by the other term or condition insofar as it is inconsistent with the general provisions.
5. **Exhibits.** All exhibits referred to herein are attached hereto and by this reference incorporated herein.
6. **Time for Performance.** Time is of the essence, and, subject to County's compliance with Exhibit C and to the provisions of paragraph 3 of Exhibit D, failure of Consultant to perform any services within the time limits set forth in Exhibit A, if any, shall constitute material breach of this contract.
7. **Notices.** Any notice or demand required to be given herein shall be made by certified or registered mail, return receipt requested, confirmed fax or reliable overnight mail to the address of the respective parties set forth below:

COUNTY: Placer County Department of Facility Services
Attn: Bill Lardner, Architect
Capital Improvements Division
11476 "C" Avenue
Auburn, CA 95603
Phone: (530) 886-4983
Fax: (530) 889-6863

CONSULTANT: VANIR Construction Management, Inc.
Attn: Mansour Aliabadi
4540 Duckhorn Drive, Suite 300
Sacramento, CA 95834
Phone: (916) 575-8888 office (916) 997-3285 mobile
Fax: (916) 575-8887

REMIT TO CONSULTANT:
VANIR Construction Management, Inc.
Attn: Alex Leon, PE
4540 Duckhorn Drive, Suite 300
Sacramento, CA 95834
Phone: (916) 575-8888 office (916) 997-3272 mobile
Fax: (916) 575-8887

County or Consultant may from time to time designate any other address for this purpose by written notice to the other party.

Executed as of the day first above stated:

COUNTY OF PLACER

By: _____
Chair, Board of Supervisors

Date: _____

VANIR Construction Management, Inc., CONSULTANT

By: _____
Name: Mansour Aliabadi, CCM
Title: President / CEO

Date: _____

By: _____
Name: Alex Leon
Title: Chief Financial Officer

Date: _____

Approved as to Form

Approved as to Funds

By: _____
Placer County Counsel

By _____
Placer County Auditor

- Exhibit A: Scope of Services
- Exhibit B: Payment for Services Rendered
- Exhibit B-1: Cost for Additional Services
- Exhibit C: Facilities, Equipment, and Other Materials and Obligations of County
- Exhibit D: General Provisions
- Exhibit E: Confidential Accounting Information

**EXHIBIT A
SCOPE OF SERVICES**

The scope of services shall consists of Construction Management (CM) Services required by the County for the New Animal Shelter Project – ‘B’ Avenue Site, Project No. 4639. VANIR Construction Management, Inc., (Consultant) shall provide staff, equipment, sub-consultants and supporting services and documentation as necessary to perform each task. All applicable prevailing wage requirements shall be required for the work performed by the Consultant for these services.

The Animal Shelter project will utilize a Design/Build project delivery method. This project’s proposed site of approximately four and one half (4½) acres is located west of the Placer County Juvenile Detention Facility at the Placer County Government Center. The site is bounded by ‘B’ Avenue to the north, Juvenile Detention Facility to the east, oak woodlands and a cultural resource area to the south and an existing material storage yard to the west. The construction management scope of services shall be based on one Animal Shelter Facility building of approximately 36,000 square feet and other separate small buildings along with on-site access roads, service area and parking areas, utilities and landscaping being located in an appropriate configuration and design provided by the Design-Build Team.

The Design Criteria, Program Document, Needs Assessment, initial site survey and site analysis for this project is provided by the County’s consulting Master Architect, INDIGO Architects of Davis, California. The Consultant shall provide services throughout the technical proposal portion of the Design/Build (D/B) Request for Proposal (RFP) process, and also the D/B design & construction documents, D/B construction, commissioning, occupancy, closeout and warranty phases of this project.

Proposed Shelter Facility Summary:

Approximate Sizes

Building Construction:

Main Shelter (Animals, Public, Administration & Veterinary):	30,000 sf
Covered Exterior Kennels & Porches (outdoor portions only):	2,400 sf
Sallyport:	1,300 sf
Barn:	2,200 sf
Feral Cats (outdoor):	900 sf
Covered Exercise Yard:	800 sf
Storage Shed:	400 sf
Walk In Cooler:	260 sf

Site Construction:

Exercise Yards for Dogs (5 separate yards of 10'x10' up to 30'x80'):	3,150 sf
Agility Yard (100' x 200' Fenced field):	20,000 sf
Barn Paddocks	1,500 sf
Pasture:	10,000 sf
Parking, Driveways, Gates, Access Roads & Service Yard:	As Required
Utilities, Drainage, Landscaping & Irrigation:	As Required

General Requirements:

During this project, the Consultant will assist the County in the implementation and processing of the design-build project delivery method and shall advise the County regarding issues that arise during the course of this project. The Consultant will attend a number of client meetings with the County which will include reviews of the project needs, goals, programming, design criteria and design-build general specifications and the design-build contract. The Consultant will participate with the County during the D-B/ RFP process including meetings, evaluations and related activities during the competitive design-build proposal process and assistance in the selection of the Design-Build Team for the project. The County will purchase seat licenses and Consultant shall utilize the Autodesk Constructware project management system and will support and assist the County in its implementation of Constructware. The D/B contract will provide on-site construction trailer facilities for the private use of the Consultant (and County) during the construction phase. The Consultant shall provide monthly project updates and shall create and manage a dedicated FTP site as necessary for the transmission of various project documentation to all project participants. The Consultant shall assist the County in reviewing, evaluating and processing the Building Information Modeling (BIM) submitted by the D/B Team using the Consultant's own BIM specialists or a sub-consultant to perform these services.

Sub-consultant Services:

A number of specialty sub-consultants shall be used by the Consultant for this project. These services will be fully coordinated and scheduled by the Consultant and may include but not necessarily be limited to the following: Site survey engineering confirmation, storm water pollution prevention plan and inspection by a Qualified SWPPP Developer and Qualified SWPPP Practitioner with Risk Level 2 being anticipated for this project. The Consultant shall also provide construction materials testing and inspection services, LEED New Construction building commissioning, and Prevailing Wage compliance monitoring using an approved and acceptable method. Sub-consultant line item costs are based on a lump sum total, each of which include a 10% prime Consultant mark-up, with the understanding that potential future project design decisions and construction type selections implemented by the D/B Team may affect various sub-consultant task durations and scope, in which case appropriate contract modifications will be negotiated by the County and Consultant. As an additional service task which may be requested by the County, a specialty Animal Shelter Review sub-consultant will provide periodic analysis and review reports on animal shelter equipment, fixtures and related shelter design, casework and furnishings and on veterinary medical specialties, equipment and fixtures for purposes of D/B design and construction compliance verification with the Design Criteria, Space Program and animal shelter best practices.

Request For Proposals (RFP) Phase Services:

The initial Prequalification of D/B Entities will be completed by the County prior to the start of the Consultant's scope of services. Prior to beginning the Technical Phase of the RFP, the Consultant will review the Architectural Space Program, Design Criteria, Cost Estimates and all other pertinent project documentation. The Consultant will review the various Proposal and Contract requirements, Design Guidelines, Performance Criteria, and relevant concept diagrams for the Project RFP. The Consultant will attend the following meetings with the County and D/B Entities:

One (1) kick-off meeting, Six (6) Confidential Reviews consisting of two full-day meetings to be held separately with each of the three D/B Entities.

Three (3) Final Presentation meetings to be held separately with each D/B Entity.

The Consultant will also attend various weekly meetings during the course of RFP and proposal evaluations process. The Consultant shall fully participate with the County during evaluations of the three D/B Proposal submittals and will provide input including scoring, recommendations and final selection of the D/B Firm. The Consultant will also support the County during negotiation of the D/B Contract with the selected D/B Firm throughout this contracting process up to the date of Award of the D/B Contract.

Design Development and Construction Document Phase Services:

This section includes but is not necessarily limited to consulting services for weekly project meetings with the D/B Firm for the review of the building design development and construction documents along with animal shelter functions, evaluation of alternative methods and materials, monitoring and evaluation of design and construction scheduling, cost estimates, HVAC design and systems analysis, LEED and proposed building commissioning documentation.

Construction Phase Construction Management Services:

This section includes complete services normal and customary to construction management services for D/B project delivery and also anticipates a two part project construction approach by the D/B consisting of a "Site Package" followed by a "Building Package." Services will include but not necessarily be limited to providing support during the construction document plan review permitting processes, providing construction management documents, D/B contract administration, project record keeping including, monthly update reports, weekly meetings, logs and other process tracking methods, review and processing of construction submittals, HVAC systems submittals analysis and evaluations, review of RFI's, Payment Applications, and Proposed Change Orders including cost proposal estimate evaluations. Services shall also include construction observations, inspection and testing services, quality assurance and control, project cost evaluation, schedule evaluation, Prevailing Wage compliance monitoring, Storm Water Pollution prevention inspection, and LEED commissioning including enhanced commissioning coordination and the scheduling of all final testing of equipment. Consultant shall also provide construction closeout services including punch list preparation and inspections, punch list corrections and completion verification, Notices of Nonconformance and follow-up, closeout coordination, training meetings, Substantial Completion, recommendations for release of Retention and Final Payment, assure transfer of Record Documents and O&M Manuals, final completion and assistance with the Certificate of Final Completion. During the construction phase, Consultant shall also develop and provide an Occupancy Plan including a schedule which identifies critical interfaces for the movement of new furniture, new equipment and some existing equipment along with the relocation of the County's existing Animal Shelter operations, and staff. Animals will be relocated into the new facility by the County's shelter staff.

Post Construction Phase Services:

Consultant scope of work includes warranty period services and technical and administrative support, inspection services and coordination. Consultant shall provide a listing and tracking system of all warranty items from contractors, manufacturers and

suppliers for the work performed and for materials furnished. Consultant shall also assist the County with establishing procedures for proper operational and maintenance requirements to be performed to preclude invalidation of warranties. Consultant shall also assist the County during the ending of the warranty periods, including warranty site reviews and inspections and providing the necessary correspondence and warranty period documentation.

Project Expenses:

This Contract includes a not-to-exceed amount for all reimbursable expenses such as postage, out of town mileage, reproduction, printing and data and telecommunication costs. These costs consist of all project related expenses of the Consultant and sub-consultants for the contracted scope of work and are inclusive of all mark-ups, escalations, fees, per diem, overhead and all other cost factors. Any additional service task expenses are not included in this amount. Additional services shall be determined pursuant to Exhibit B-1.

Said Scope of Work may be amended only with the prior written approval of the Consultant and the Placer County Director of Facility Services however, in no event shall such amendment create any additional liability to the County.

In addition to the services described above, County may request Additional Services on an as needed basis subject to the County's approval of a written scope of work and approval of a cost proposal. In no event shall said Additional Services exceed the cost allocated in Exhibit B. Work on any Additional Services may not proceed until authorized in writing by the Placer County Director of Facility Services. Any approved Additional Services and costs shall be appended to this Agreement and such work shall be subject to all of the provisions of this Agreement.

Consultant agrees to perform and complete all work of this contract in coordination with the schedule of all necessary project activities including the specific D/B design and construction schedule which has not yet been determined. The County is anticipating the following milestone dates for this project:

RFP Phase:	September to December, 2013
Award of D/B Contract:	January, 2014
D/B Design Documents:	January to May, 2014
Construction (site):	April to August, 2014
Construction (buildings):	August, 2014 through October, 2015
Post Construction:	November, 2015 to January, 2016
1-year Warranty Period Ends:	February, 2017

Consultant's Project Team:

Included along with all of the Consultant's and Sub-consultant personnel that will be necessary for this project, the following personnel are designated as specific persons for the Consultant's project team:

Steve Whitehead, Project Director, VANIR Construction Management, Inc.

Chris Horvath, Construction Manager, VANIR Construction Management, Inc.

**EXHIBIT B
PAYMENT FOR SERVICES RENDERED**

Consultant shall be paid by County monthly as work progresses, not to exceed the amount below for the identified tasks.

Consultant shall submit invoices monthly for work performed. Provided the work has been satisfactorily performed, County shall pay invoices within thirty (30) days after approval of the invoice. Consultant shall provide such additional information as the County may request to verify any of the amounts claimed for payment in any invoice.

The invoices shall also include a spreadsheet that shows task budgets, charges by task for the current invoice, cumulative charges to date by task, and percent of budget remaining by task.

The total amount payable for each task shall not exceed the amount set forth below/on Exhibit B-1; provided, however, upon written request of the Consultant and with written approval of the Placer County Director of Facility Services, the County may adjust the amount to be paid for any task if the County deems it necessary and appropriate. However, the total amount payable for all services provided under this Agreement, including additional services, shall not exceed **One Million Three Hundred Twenty-Seven Thousand Two Hundred and no/100 Dollars (\$1,327,200.00)**.

TASKS:	COST
<u>Construction Management:</u>	
1. RFP Phase Services	\$ 88,400.00
2. D/B Design Document Review Services	\$ 103,550.00
3. Construction Services	\$ 684,900.00
4. Post Construction Services	\$ 40,400.00
Sub Total:	\$ 917,250.00
<u>Sub-consultants:</u>	
5. Testing & Inspection Services	\$ 132,000.00
6. LEED Commissioning Services	\$ 53,700.00
7. Storm Water QSD/QSP Services, Inspections & Reports	\$ 54,800.00
8. Allowance for Survey Verification & SWPPP Review	\$ 10,000.00
9. Labor Compliance Services	\$ 32,450.00
<u>Project Expenses:</u>	
The amount for expenses of meetings, travel, printing, and all project related expenses for all of the above contract tasks are included in the following amount:	\$ 27,000.00
Total Basic Fee:	\$ 1,227,200.00
<u>Additional Services:</u>	
Defined Additional Services Specialty Animal Shelter Review:	\$ 25,000.00
This contract allows for additional work as necessary on the prior written approval from the Placer County Director of Facility Services in the maximum amount of:	
	\$ 75,000.00
TOTAL FEE:	\$ 1,327,200.00

**EXHIBIT B-1
COSTS FOR ADDITIONAL SERVICES**

Consultant shall submit a proposal for any additional services work to be performed. Prior to any additional work being performed by Consultant, the County shall review and approve the Consultant's proposed scope of work in accordance with the hourly rate schedule and project expenses attached hereto as Exhibit B -1.

<u>Title</u>	<u>Hourly Rates</u>
Project Principal In Charge (PIC).....	\$210.00/Hour
Project Director	\$210.00/Hour
Senior Construction Manager	\$170.00/Hour
Administrative Support	\$60.00/Hour
Cost Estimating.....	\$150.00/Hour
Scheduling Support.....	\$150.00/Hour
BIM Support Services Staff.....	\$180.00/Hour
Field Engineering Support	\$115.00/Hour
Mechanical, Plumbing & Electrical Reviewer.....	\$170.00/Hour
Warranty Services.....	\$170.00/Hour
Specialty Equipment Reviewer.....	\$170.00/Hour

Sub-consultant Additional Service Items

Testing and Inspections:

Principal Engineer.....	\$250.00/Hour
Geotechnical Engineer.....	\$200.00/Hour
Consulting Engineer (Civil-Structural).....	\$160.00/Hour
Associate Engineer, Licensed.....	\$150.00/Hour
Staff Engineer/Project Manager.....	\$130.00/Hour
Field Supervision.....	\$120.00/Hour
ASNT Level III	\$150.00/Hour
Drafting.....	\$110.00/Hour
Additional materials, soils, mechanical testing/inspection costs.....	To be quoted on request

LEED Commissioning:

Principal Cx Agent.....	\$205.00/Hour
Commissioning Project Manager.....	\$185.00/Hour
Commissioning Agent.....	\$175.00/Hour
Commissioning Technician.....	\$135.00/Hour
Administrative Support.....	\$65.00/Hour

Storm Water QSD/QSP Services/Survey Verification & SWPPP Review:

Civil Engineering Project Manager.....	\$180.00/Hour
Project Engineer (QSD/QSP).....	\$135.00/Hour
Assistant Engineer	\$93.00/Hour
2-Person Survey Crew	\$250.00/Hour
1-Person Survey Crew	\$165.00/Hour
Licensed Surveyor	\$175.00/Hour
Field Supervisor	\$175.00/Hour
Survey Technician.....	\$130.00/Hour
Office Support / Clerical	\$63.00/Hour

Labor Compliance Services:

Labor Compliance Officer (LCO)	\$125.00/Hour
Labor Compliance Admin (LCA)	\$65.00/Hour
Labor Compliance Field Auditor (LFA).....	\$99.00/Hour

Notes:

- Mileage expenses will be charged portal to portal. Mileage will be billed at \$0.65 per mile.
- Sub-consultant services expenses will be billed at consultant costs plus ten percent (10%).
- Overtime rates for Saturday, Sunday, holiday or over 8 hours/day: Hourly Rate plus \$30.00/Hour.
- Prevailing wage rates for applicable tasks on applicable project activities will be required.

**EXHIBIT C
FACILITIES, EQUIPMENT, AND OTHER
MATERIALS, AND OBLIGATIONS OF COUNTY**

To permit the Consultant to render the services required herein, the County shall, at its expense and in a timely manner provide the following facilities, equipment, services or other materials:

1. Appoint a staff member to act as Project Manager.
2. Provide Consultant with authorized access to the proposed site for their performance of the contracted scope of work.
3. Documents including Program, Design Criteria, Needs Assessment, Cost Estimates, Preliminary Project Schedule, and Value Engineering Log and related Information.
4. Geotechnical Engineering Report prepared for the County by Holdrege & Kull, Project No. 4140-01 dated June 19, 2013 and Revised July 1, 2013.
5. Draft Initial Study of Environmental Analysis prepared for the County by Dudek environmental consultants.
6. County shall promptly review any and all documents and materials submitted by the Consultant.

All other information, facilities, and equipment required to complete the services described in Exhibit A of this Agreement shall be provided by the Consultant.

**EXHIBIT D
GENERAL PROVISIONS**

1. **Independent Contractor.** At all times during the term of this Agreement, Consultant shall be an independent contractor and shall not be an employee of the County. All persons performing services for the Consultant under this Contract shall be employees of the Consultant and not the County.

2. **Licenses, Permits.** Consultant represents and warrants to County that it has all licenses, permits, qualifications, and approvals of whatsoever nature, which are legally required for Consultant to practice its profession and shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement, any licenses, permits, and approvals which are legally required for Consultant to practice its profession at the time the services are performed.

3. **Time.** Consultant shall devote such attention to the performance of services pursuant to this Agreement as may be necessary for the satisfactory and timely performance of Consultant's obligations pursuant to this Agreement. Neither party shall be considered in default of this Agreement to the extent performance is prevented or delayed by any cause, present or future, which is beyond the reasonable control of the party.

4. **Hold Harmless and Indemnification Agreement**

The CONSULTANT hereby agrees to protect, defend, indemnify, and hold PLACER COUNTY free and harmless from any and all losses, claims, liens, demands and causes of action of every kind and character including, but not limited to, the amounts of judgments, penalties, interest, court costs, legal fees, and all other expenses incurred by PLACER COUNTY arising in favor of any party, including claims, liens, debts, personal injuries, death, or damages to property (including employees or property of PLACER COUNTY) and without limitation by enumeration, all other claims or demands of every character occurring or in any way incident to, in connection with or arising directly or indirectly out of this contract or agreement to the extent that the above arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct (all whether by act, error and/or omission) of the CONSULTANT. CONSULTANT'S obligation shall include the duty to defend PLACER COUNTY as set forth in California Civil Code, Sections 2778 and 2782.8. This provision is not intended to create any cause of action in favor of any third party against CONSULTANT or PLACER COUNTY or to enlarge in any way the CONSULTANT'S liability but is intended solely to provide for indemnification of PLACER COUNTY from liability for damages or injuries to third persons or property arising from CONSULTANT'S performance pursuant to this contract or agreement.

As used above, the term PLACER COUNTY means County of Placer, its officers, agents, employees, and volunteers.

5. **Insurance.** Consultant shall file with County concurrently herewith a Certificate of Insurance, in companies acceptable to County, with a Best's Rating of no less than A:VII showing:

Workers' Compensation and Employers' Liability Insurance

Workers' Compensation Insurance shall be provided as required by any applicable law or regulation. Employers' liability insurance shall be provided in amounts not less than one million dollars (\$1,000,000) each accident for bodily injury by accident, one million dollars (\$1,000,000) policy limit for bodily injury by disease, and one million dollars (\$1,000,000) each employee for bodily injury by disease.

If there is an exposure of injury to Consultant's employees under the U.S. Longshoremen and Harbor Workers' Compensation Act, the Jones Act, or under laws, regulations, or statutes applicable to maritime employees, coverage shall be included for such injuries or claims.

Each Workers' Compensation policy shall be endorsed with the following specific language:

Cancellation Notice - "This policy shall not be changed without first giving thirty (30) days prior written notice and ten (10) days prior written notice of cancellation for non-payment of premium to the County of Placer."

Waiver of Subrogation - The workers' compensation policy shall be endorsed to state that the workers' compensation carrier waives its right of subrogation against the County, its officers, directors, officials, employees, agents or volunteers, which might arise by reason of payment under such policy in connection with performance under this agreement by the Consultant.

Consultant shall require all Subcontractors to maintain adequate Workers' Compensation Insurance. Certificates of Workers Compensation shall be filed forthwith with the County upon demand.

General Liability Insurance

- 1) Comprehensive General Liability or Commercial General Liability insurance covering all operations by or on behalf of Consultant, providing insurance for bodily injury liability and property damage liability for the limits of liability indicated below and including coverage for:
 - a) Contractual liability insuring the obligations assumed by Consultant in this Agreement.
- 2) One of the following forms is required:
 - a) Comprehensive General Liability;
 - b) Commercial General Liability (Occurrence); or
 - c) Commercial General Liability (Claims Made).
- 3) If Consultant carries a Comprehensive General Liability policy, the limits of liability shall not be less than a Combined Single Limit for bodily injury, property damage, and Personal Injury Liability of:
 - a) One million dollars (\$1,000,000) each occurrence

- b) Two million dollars (\$2,000,000) aggregate
- 4) If Consultant carries a Commercial General Liability (Occurrence) policy:
- a) The limits of liability shall not be less than:
 - i) One million dollars (\$1,000,000) each occurrence (combined single limit for bodily injury and property damage)
 - ii) One million dollars (\$1,000,000) for Products-Completed Operations
 - iii) Two million dollars (\$2,000,000) General Aggregate
 - b) If the policy does not have an endorsement providing that the General Aggregate Limit applies separately to this contract, or if defense costs are included in the aggregate limits, then the required aggregate limits shall be two million dollars (\$2,000,000).
- 5) Special Claims Made Policy Form Provisions: Consultant shall not provide a Commercial General Liability (Claims Made) policy without the express prior written consent of County, which consent, if given, shall be subject to the following conditions:
- a) The limits of liability shall not be less than:
 - i) One million dollars (\$1,000,000) each occurrence (combined single limit for bodily injury and property damage);
 - ii) One million dollars (\$1,000,000) aggregate for Products-Completed Operations;
 - iii) Two million dollars (\$2,000,000) General Aggregate.
 - b) The insurance coverage provided by Consultant shall contain language providing coverage up to one (1) year following the completion of the contract in order to provide insurance coverage for the hold harmless provisions herein if the policy is a claims made policy.

Conformity of Coverages - If more than one policy is used to meet the required coverages, such as a separate umbrella policy, such policies shall be consistent with all other applicable policies used to meet these minimum requirements. For example, all policies shall be Occurance Liability policies or all shall be Claims Made Liability policies, if approved by the County as noted above. In no cases shall the types of policies be different.

Endorsements:

Each Comprehensive or Commercial General Liability policy shall be endorsed with the following specific language:

- 1) "The County of Placer, its officers, agents, employees and volunteers, are to be covered as insured for all liability arising out of operations by or on behalf of the named insured in the performance of this Agreement."
- 2) "The insurance provided by the Consultant, including any excess liability or umbrella form coverage, is primary coverage to the County of Placer with respect

to any insurance or self-insurance programs maintained by the County of Placer and no insurance held or owned by the County of Placer shall be called upon to contribute to a loss."

- 3) "This policy shall not be changed without first giving thirty (30) days prior written notice and ten (10) days prior written of cancellation for non-payment of premium to the County of Placer."

Automobile Liability Insurance

Automobile Liability insurance covering bodily injury and property damage in an amount no less than one million dollars (\$1,000,000) combined single limit for each occurrence.

Covered vehicles shall include owned, non-owned, and hired automobiles/trucks.

Professional Liability Insurance (Errors & Omissions)

Professional Liability Insurance for Errors and Omissions coverage in the amount of not less than one million dollars (\$1,000,000) combined single limit for each occurrence and two million dollars (\$2,000,000) aggregate.

If Consultant sub-contracts in support of Consultants work provided for in the agreement, Professional Liability Insurance for Errors shall be provided by the sub contractor in an amount not less than one million dollars \$1,000,000 in aggregate.

The insurance coverage provided by the consultant shall contain language providing coverage up to one (1) year following completion of the contract in order to provide insurance coverage for the hold harmless provisions herein if the policy is a claims made policy.

Additional Requirements:

Premium Payments – The insurance companies shall have no recourse against the COUNTY and funding agencies, its officers and employees or any of them for payment of any premiums or assessments under any policy issued by a mutual insurance company.

Policy Deductibles – The CONSULTANT shall be responsible for all deductibles in all of the CONSULTANT's insurance policies. The maximum amount of allowable deductible for insurance coverage required herein shall be \$25,000.

CONSULTANT's Obligations - CONSULTANT's indemnity and other obligations shall not be limited by the foregoing insurance requirements and shall survive the expiration of this agreement.

Verification of Coverage – CONSULTANT shall furnish the County with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the County before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the CONSULTANT's obligation to provide them. The County reserves the right to require complete, certified copies of all

required insurance policies, including endorsements required by these specifications, at any time.

Material Breach – Failure of the CONSULTANT to maintain the insurance required by this agreement, or to comply with any of the requirements of this section, shall constitute a material breach of the entire agreement.

6. **Consultant Not Agent.** Except as County may specify in writing Consultant shall have no authority, express or implied, to act on behalf of County in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind County to any obligation whatsoever.

7. **Assignment/ Subcontracting Prohibited.** Consultant may assign its rights and obligations under this Agreement only upon the prior written approval of County, said approval to be in the sole discretion of County. Consultant shall not subcontract any portion of the work except as approved in advance and in writing by County or as set forth in Exhibit A, Scope of Services.

8. **Personnel.**

- A. Consultant warrants that all personnel assigned by Consultant to perform the services are duly trained and qualified to perform the work. Consultant shall assign only competent personnel to perform services pursuant to this Agreement. In the event that County, in its sole discretion, at any time during the term of this Agreement, request the replacement of any person assigned by Consultant to perform services pursuant to this Agreement, Consultant shall remove and replace any such person immediately upon receiving notice from County.
- B. Notwithstanding the foregoing, if specific persons are designated as part of a project team in Exhibit A, Scope of Services, Consultant agrees to perform the work under this agreement with those individuals identified. Reassignment or substitution of individuals or sub-consultants named in the project team by Consultant without the prior written consent of County shall be grounds for cancellation of the agreement by County, and payment shall be made pursuant to Paragraph 10 Termination only for that work performed by project team members.

9. **Standard of Performance.** Consultant shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which Consultant is engaged in the geographical area in which Consultant practices its profession. All products of whatsoever nature which Consultant delivers to County pursuant to this Agreement shall be prepared in a workmanlike manner and conform to the standards or quality normally observed by a person practicing in Consultant's profession.

10. **Termination.**

- A. In the event County, in its sole discretion, deems it in the best interests of the public, County shall have the right to terminate this Agreement at any time without cause by giving notice in writing of such termination to Consultant. In the event County shall give notice of termination, Consultant shall immediately cease

rendering service upon receipt of such written notice, pursuant to this Agreement. In the event County shall terminate this Agreement:

- 1) Consultant shall deliver copies of all writings prepared by it pursuant to this Agreement. The term "writings" shall be construed to mean and include: handwriting, typewriting, printing, photostating, photographing, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof.
- 2) County shall have full ownership and control of all such writings delivered by Consultant pursuant to this Agreement.
- 3) County shall pay Consultant the reasonable value of services rendered by Consultant to the date of termination pursuant to this Agreement not to exceed the amount documented by Consultant and approved by County as work accomplished to date; provided, however, that in no event shall any payment hereunder exceed the amount of the agreement specified in Exhibit B, and further provided, however, County shall not in any manner be liable for lost profits which might have been made by Consultant had Consultant completed the services required by this Agreement. In this regard, Consultant shall furnish to County such financial information as in the judgment of the County is necessary to determine the reasonable value of the services rendered by Consultant. The foregoing is cumulative and does not affect any right or remedy that County may have in law or equity.

- B. Consultant may terminate its services under this Agreement only upon good cause or upon the mutual agreement of the County, and shall provide thirty (30) working days advance written notice to the County of any such intent to terminate.

11. Non-Discrimination. Consultant shall not discriminate in its employment practices because of race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, or sex in contravention of the California Fair Employment and Housing Act, Government Code §12900 et seq.

12. Records. Consultant shall maintain, at all times, complete detailed records with regard to work performed under this agreement in a form acceptable to County, and County shall have the right to inspect such records at any reasonable time. Notwithstanding any other terms of this agreement, no payments shall be made to Consultant until County is satisfied that work of such value has been rendered pursuant to this agreement. However, County shall not unreasonably withhold payment and, if a dispute exists, the withheld payment shall be proportional only to the item in dispute.

13. Ownership of Information. All professional and technical information developed under this Agreement and all worksheets, reports, and related data shall become the property of County, and Consultant agrees to deliver reproducible copies of such documents to County on completion of the services hereunder. The County agrees to indemnify and hold Consultant harmless from any claim arising out of reuse of the information for other than this project.

14. **Waiver**. One or more waivers by one party of any major or minor breach or default of any provision, term, condition, or covenant of this Agreement shall not operate as a waiver of any subsequent breach or default by the other party.

15. **Conflict of Interest**. Consultant certifies that no official or employee of the County, nor any business entity in which an official of the County has, an interest, has been employed or retained to solicit or aid in the procuring of this agreement. In addition, Consultant agrees that no such person will be employed in the performance of this agreement without immediately notifying the County.

16. **Entirety of Agreement**. This Agreement contains the entire agreement of County and Consultant with respect to the subject matter hereof, and no other agreement, statement, or promise made by any party, or to any employee, officer or agent of any party, which is not contained in this Agreement, shall be binding or valid.

17. **Governing Law**. This Agreement is executed and intended to be performed in the State of California, and the laws of that State shall govern its interpretation and effect. Any legal proceedings on this agreement shall be brought under the jurisdiction of the Superior Court of the County of Placer, State of California. Each party waives any Federal court removal and/or original jurisdiction rights it may have.

18. **General Compliance With Laws**. The Consultant shall exercise usual and customary care to comply with applicable Federal, State and local laws, statutes, rules, orders and regulations which are in effect as of the date of this Agreement, or which may later be enacted. Consultant shall comply with all laws regarding payment of prevailing wage, including, without limitation, California Labor Code section 1720, as such laws may be amended or modified. Consultant agrees to comply with any directives or regulations issued by the California State Department of Industrial Relations or any other regulatory body of competent jurisdiction. Copies of applicable prevailing wage rates are on file with and available upon request from the Department of Facility Services or at <http://www.dir.ca.gov/dlsr/DPreWageDetermination.htm>. Consultant agrees and acknowledges that the services provided under this Agreement may be subject to DIR Compliance Monitoring Unit requirements, and that further information on Compliance Monitoring Unit requirements can be found at <https://www.dir.ca.gov/dlse/cmu/cmu.html>.

Consultant further agrees to comply with all other related provisions of the California Labor Code, including but not limited to, the provisions of Labor Code Section 1775 relating to the payment of prevailing wages, Section 1777.5 relating to the employment of apprentices and Section 1811-1813 relating to the payment of Overtime, as such provisions may be amended or modified.. Consultant agrees and acknowledges that, 1) failure to comply with the proper prevailing wage requirements may result in a penalty of up to \$200 per day per worker; 2) failure to comply with apprenticeship requirements may result in a penalty of \$100-\$300 for each calendar day of violation; and, 3) failure to pay proper overtime rate may result in a penalty of \$25 per day per worker.

19. **Construction and Interpretation**. It is agreed and acknowledged by Consultant that the provisions of this Agreement have been arrived at through negotiation, and that each of the parties has had a full and fair opportunity to review the provisions of this Agreement and to have such provisions reviewed by legal counsel. Therefore, the normal rule of construction that any ambiguities are to be resolved against the drafting party shall not apply in construing or interpreting this Agreement.