

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS  
ACTION AGENDA SUMMARY

DEPT: PUBLIC WORKS *P*  
Urgent \_\_\_\_\_ Routine   
CEO Concurs with Recommendation YES \_\_\_\_\_ NO \_\_\_\_\_  
(Information Attached)

BOARD AGENDA # \*C-3  
AGENDA DATE JUNE 12, 2001  
4/5 Vote Required YES \_\_\_\_\_ NO

SUBJECT: APPROVAL OF AN AGREEMENT FOR PROFESSIONAL SERVICES WITH NOLTE ASSOCIATES, INC., FOR ENGINEERING CONSTRUCTION MANAGEMENT SERVICES FOR CONSTRUCTION OF THE ANDERSON ROAD BRIDGE AT ORESTIMBA CREEK PROJECT

STAFF  
RECOMMEN-  
DATIONS:

1. APPROVE AN AGREEMENT FOR PROFESSIONAL SERVICES WITH NOLTE ASSOCIATES, INC., FOR ENGINEERING CONSTRUCTION MANAGEMENT SERVICES FOR CONSTRUCTION OF THE ANDERSON ROAD BRIDGE AT ORESTIMBA CREEK PROJECT FOR AN AMOUNT NOT TO EXCEED \$150,000;
2. AUTHORIZE THE CHAIR TO EXECUTE THE AGREEMENT FOR PROFESSIONAL SERVICES WITH NOLTE ASSOCIATES, INC., FOR THE ENGINEERING CONSTRUCTION MANAGEMENT FOR THE ANDERSON ROAD BRIDGE AT ORESTIMBA CREEK PROJECT; AND,

(CONTINUED ON PAGE 2)

FISCAL  
IMPACT:

This bridge replacement project is a federal and state funded HBRR project and is funded 80% federal and state and 20% local funds. All necessary local funds are accounted for within the Public Works budget.

BOARD ACTION AS FOLLOWS:

No. 2001-437

On motion of Supervisor Caruso , Seconded by Supervisor Simon  
and approved by the following vote,  
Ayes: Supervisors: Mayfield, Blom, Simon, Caruso, and Chair Paul  
Noes: Supervisors: None  
Excused or Absent: Supervisors: None  
Abstaining: Supervisor: None

- 1)  Approved as recommended
- 2) \_\_\_\_\_ Denied
- 3) \_\_\_\_\_ Approved as amended

MOTION:

*Christine Ferraro*

**SUBJECT:** APPROVAL OF AN AGREEMENT FOR PROFESSIONAL SERVICES WITH NOLTE ASSOCIATES, INC., FOR ENGINEERING CONSTRUCTION MANAGEMENT SERVICES FOR CONSTRUCTION OF THE ANDERSON ROAD BRIDGE AT ORESTIMBA CREEK PROJECT

**PAGE:** 2

**STAFF  
RECOMMEN  
DATIONS**

**(Continued):**

3. AUTHORIZE THE AUDITOR TO INCREASE APPROPRIATIONS AND ESTIMATED REVENUE PER THE ATTACHED BUDGET JOURNAL SHEET.

**DISCUSSION:**

The County Public Works Department selected the Anderson Road Bridge for replacement using the federal and state HBRR program, which uses federal and state monies for 80% of the cost of replacement. The selection was based on the deteriorated condition of the existing steel truss which is posted for less than legal loads and is too narrow to allow the crossing of some farm equipment. Nolte and Associates has been selected to provide professional services for Construction Management for the construction of the Anderson Road Bridge at Orestimba Creek project on a time and materials basis for an amount not to exceed \$150,000.

**POLICY**

**ISSUE:**

This action is consistent with the Board's policy of providing a safe, healthy community.

**STAFFING**



**IMPACT:**

There is no staffing impact associated with this action.

JLG:dh

(L:\BRIDGES\32-016\admin\016NolteProfServAgreeCMBOS.wpd)


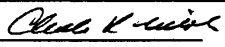
**AUDITOR-CONTROLLER  
BUDGET JOURNAL**

 <p><b>Stanislaus County</b> <i>Striving to be the Best</i></p>	<b>BUDGET JOURNAL SCREEN</b>		 <p><b>Public Works</b> STANISLAUS COUNTY</p>	
	Budget Organization	Stanislaus Budget Org		
	Budget	LEGAL BUDGET		
	Accounting Period From	Jul-00		To

<b>BATCH SCREEN</b>	
Journal Batch Category	PW DH
	Budget

Line	Coding Structure						Period	Description
	Fund	Org	Account	G/L Proj	Loc	Misc	May-01	
	4	7	5	7	6	6	AMOUNT	
1	1102	40310	63280	9250	0	0	150,000.00	Increase Appropriations
2	1102	40310	63280	0	0	0	(150,000.00)	Decrease Appropriations
3	1102	40310	27600	9250	0	0	120,000.00	Increase Est. Revenue (Federal)
4	1102	40310	27600	0	0	0	(120,000.00)	Decrease Est. Revenue (Federal)
5								
6								
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25								
<b>Totals</b>								

Explanation: Establish appropriations and estimated revenue for engineering construction management for Anderson Rd. Bridge @ Orestimba Creek.

Requesting Department	CEO	Auditors Office Only
Diane Haugh Signature  06-Jun-01 Date	_____ Signature _____ Date	 Approved By 6-6-01 Date
		Admin Approval (\$75K+) _____ Date

**AGREEMENT  
FOR  
PROFESSIONAL SERVICES**

This Agreement For Professional Services is made and entered into by and between the County of Stanislaus ("County") and Nolte Associates, Inc. ("Consultant"), on June 12, 2001, 2001 (the "Agreement").

**INTRODUCTION**

WHEREAS, the County has a need for services involving engineering services for Construction Management for the **Construction of Anderson Road Bridge at Orestimba Creek Project**; and

WHEREAS, the Consultant is specially trained, experienced and competent to perform and has agreed to provide such services;

NOW, THEREFORE, in consideration of the mutual promises, covenants, terms and conditions hereinafter contained, the parties hereby agree as follows:

**TERMS AND CONDITIONS**

1. SCOPE OF WORK

1.1 The Consultant shall furnish to the County upon execution of this Agreement or receipt of the County's written authorization to proceed, those services and work set forth in **Exhibit A**, which is attached hereto and, by this reference, made a part hereof.

1.2 All documents, drawings and written work product prepared or produced by the Consultant under this Agreement, including without limitation electronic data files, are the property of the Consultant; provided, however, the County shall have the right to reproduce, publish and use all such work, or any part thereof, in any reasonable manner and for any purposes whatsoever and to authorize others to do so. If any such work is copyrightable, the Consultant may copyright the same, except that, as to any work which is copyrighted by the Consultant, the County reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, and use such work, or any part thereof, and to authorize others to do so. County recognizes that all technical data, evaluations, reports and other work products are instruments of Consultant's

services and not designed for use other than what is intended by this Agreement. County will indemnify, defend and hold Consultant harmless from any claim, damage, or liability from County's reuse, misuse or distribution of those documents, unless Consultant has give written approval.

1.3 Services and work provided by the Consultant under this Agreement will be performed in a timely manner in accordance with a schedule of work set forth in Exhibit A. If there is no schedule, the hours and times for completion of said services and work are to be set by the Consultant; provided, however, that such schedule is subject to review by and concurrence of the County.

1.4 The Consultant shall provide services and work under this Agreement consistent with the requirements and standards established by applicable federal, state and County laws, ordinances, regulations and resolutions. The Consultant represents and warrants that it will perform its work in accordance with generally accepted industry standards and practices for the profession or professions that are used in performance of this Agreement and that are in effect at the time of performance of this Agreement. Except for that representation and any representations made or contained in any proposal submitted by the Consultant and any reports or opinions prepared or issued as part of the work performed by the Consultant under this Agreement, Consultant makes no other warranties, either express or implied, as part of this Agreement.

1.5 If the Consultant deems it appropriate to employ a consultant, expert or investigator in connection with the performance of the services under this Agreement, the Consultant will so advise the County and seek the County's prior approval of such employment. Any consultant, expert or investigator employed by the Consultant will be the agent of the Consultant not the County.

## 2. CONSIDERATION

2.1 The Consultant shall be compensated on a time and materials basis as provided in Exhibit A attached hereto. The County and Consultant shall negotiate in good faith a cost of living fee adjustment of any remaining services or additional services to be completed after the three year initial period of this Agreement.

2.2 Except as expressly provided in this Agreement, Consultant shall not be entitled to nor receive from County any additional consideration, compensation, salary, wages or other type of remuneration for services rendered under this Agreement, including, but not limited to, meals, lodging, transportation, drawings, renderings or mockups. Specifically, Consultant shall not be entitled by virtue of this Agreement to consideration in the form of overtime, health insurance benefits, retirement benefits, disability retirement benefits, sick leave, vacation time, paid holidays or other paid leaves of absence of any type or kind whatsoever.

2.3 The Consultant shall provide the County with a monthly or a quarterly statement, as services warrant, of fees earned and costs incurred for services provided

during the billing period, which the County shall pay in full within 30 days of the date each invoice is approved by the County. The statement will generally describe the services performed, the applicable rate or rates, the basis for the calculation of fees, and a reasonable itemization of costs. All invoices for services provided shall be forwarded in the same manner and to the same person and address that is provided for service of notices herein.

2.4 County will not withhold any Federal or State income taxes or Social Security tax from any payments made by County to Consultant under the terms and conditions of this Agreement. Payment of all taxes and other assessments on such sums is the sole responsibility of Consultant. County has no responsibility or liability for payment of Consultant's taxes or assessments.

### 3. TERM

3.1 The term of this Agreement shall be from the date of this Agreement until completion of the agreed upon services unless sooner terminated as provided below or unless some other method or time of termination is listed in Exhibit A.

3.2 Should either party default in the performance of this Agreement or materially breach any of its provisions, the other party, at that party's option, may terminate this Agreement by giving written notification to the other party.

3.3 The County may terminate this agreement upon 30 days prior written notice. Termination of this Agreement shall not affect the County's obligation to pay for all fees earned and reasonable costs necessarily incurred by the Consultant as provided in Paragraph 2 herein, subject to any applicable setoffs.

3.4 This Agreement shall terminate automatically on the occurrence of (a) bankruptcy or insolvency of either party, or (b) sale of Consultant's business.

### 4. REQUIRED LICENSES, CERTIFICATES AND PERMITS

Any licenses, certificates or permits required by the federal, state, county or municipal governments for Consultant to provide the services and work described in Exhibit A must be procured by Consultant and be valid at the time Consultant enters into this Agreement. Further, during the term of this Agreement, Consultant must maintain such licenses, certificates and permits in full force and effect. Licenses, certificates and permits may include but are not limited to driver's licenses, professional licenses or certificates and business licenses. Such licenses, certificates and permits will be procured and maintained in force by Consultant at no expense to the County.

### 5. OFFICE SPACE, SUPPLIES, EQUIPMENT, ETC.

Unless otherwise provided in this Agreement, Consultant shall provide such office space, supplies, equipment, vehicles, reference materials and telephone service

as is necessary for Consultant to provide the services under this Agreement. The Consultant--not the County--has the sole responsibility for payment of the costs and expenses incurred by Consultant in providing and maintaining such items.

## 6. INSURANCE

6.1 Consultant shall take out, and maintain during the life of this Agreement, insurance policies with coverage at least as broad as follows:

6.1.1 General Liability. Commercial general liability insurance covering bodily injury, personal injury, property damage, products and completed operations with limits of no less than One Million Dollars (\$1,000,000) per incident or occurrence. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to any act or omission by Consultant under this Agreement or the general aggregate limit shall be twice the required occurrence limit.

6.1.2 Professional Liability Insurance. Professional errors and omissions (malpractice) liability insurance with limits of no less than One Million Dollars (\$1,000,000) aggregate. Such professional liability insurance shall be continued for a period of no less than one year following completion of the Consultant's work under this Agreement.

6.1.3 Automobile Liability Insurance. If the Consultant or the Consultant's officers, employees, agents, representatives or subcontractors utilize a motor vehicle in performing any of the work or services under this Agreement, owned/non-owned automobile liability insurance providing combined single limits covering bodily injury, property damage and transportation related pollution liability with limits of no less than One Million Dollars (\$1,000,000) per incident or occurrence.

6.1.4 Workers' Compensation Insurance. Workers' Compensation insurance as required by the California Labor Code. In signing this contract, the Consultant certifies under section 1861 of the Labor Code that the Consultant is aware of the provisions of section 3700 of the Labor Code which requires every employer to be insured against liability for workmen's compensation or to undertake self-insurance in accordance with the provisions of that code, and that the Consultant will comply with such provisions before commencing the performance of the work of this Agreement.

6.2 Any deductibles, self-insured retentions or named insureds must be declared in writing and approved by County. At the option of the County, either: (a) the insurer shall reduce or eliminate such deductibles, self-insured retentions or named insureds, or (b) the Consultant shall provide a bond, cash, letter of credit, guaranty or

other security satisfactory to the County guaranteeing payment of the self-insured retention or deductible and payment of any and all costs, losses, related investigations, claim administration and defense expenses. The County, in its sole discretion, may waive the requirement to reduce or eliminate deductibles or self-insured retentions, in which case, the Consultant agrees that it will be responsible for and pay any self-insured retention or deductible and will pay any and all costs, losses, related investigations, claim administration and defense expenses related to or arising out of the Consultant's defense and indemnification obligations as set forth in this Agreement.

6.3 The Consultant shall obtain a specific endorsement to all required insurance policies, except Workers' Compensation insurance and Professional Liability insurance, naming the County and its officers, officials and employees as additional insureds regarding: (a) liability arising from or in connection with the performance or omission to perform any term or condition of this Agreement by or on behalf of the Consultant, including the insured's general supervision of the Consultant; (b) services, products and completed operations of the Consultant; (c) premises owned, occupied or used by the Consultant; and (d) automobiles owned, leased, hired or borrowed by the Consultant. For Workers' Compensation insurance, the insurance carrier shall agree to waive all rights of subrogation against the County its officers, officials and employees for losses arising from the performance of or the omission to perform any term or condition of this Agreement by the Consultant.

6.4 The Consultant's insurance coverage shall be primary insurance regarding the County and County's officers, officials and employees. Any insurance or self-insurance maintained by the County or County's officers, officials and employees shall be excess of the Consultant's insurance and shall not contribute with Consultant's insurance.

6.5 Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the County or its officers, officials and employees.

6.6 The Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

6.7 Each insurance policy required by this section shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party except after thirty (30) days' prior written notice has been given to County. The Consultant shall promptly notify, or cause the insurance carrier to promptly notify, the County of any change in the insurance policy or policies required under this Agreement, including, without limitation, any reduction in coverage or in limits of the required policy or policies.

6.8 Insurance shall be placed with California admitted insurers (licensed to do business in California) with a current rating by Best's Key Rating Guide of no less than A:-VII; provided, however, that if no California admitted insurance company provides



the required insurance, it is acceptable to provide the required insurance through a United States domiciled carrier that meets the required Best's rating and that is listed on the current List of Eligible Surplus Line Insurers maintained by the California Department of Insurance.

6.9 Consultant shall require that all of its subcontractors are subject to the insurance and indemnity requirements stated herein, or shall include all subcontractors as additional insureds under its insurance policies.

6.10 At least ten (10) days prior to the date the Contractor begins performance of its obligations under this Agreement, Contractor shall furnish County with certificates of insurance, and with original endorsements, showing coverage required by this Agreement, including, without limitation, those that verify coverage for subcontractors of the Contractor. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements shall be received and, in County's sole and absolute discretion, approved by County. County reserves the right to require complete copies of all required insurance policies and endorsements, at any time.

6.11 The limits of insurance described herein shall not limit the liability of the Consultant and Consultant's officers, employees, agents, representatives or subcontractors.

## 7. DEFENSE AND INDEMNIFICATION

7.1 Consultant shall indemnify, hold harmless and defend the County and its officers and employees from and against all claims, damages, losses, judgments, liabilities, expenses and other costs, including litigation costs and reasonable attorneys' fees, arising out of, resulting from, or in connection with the performance of services under this Agreement by the Consultant or Consultant's officers, employees, representatives or subcontractors and resulting in or attributable to personal injury, death, or damage or destruction to tangible or intangible property, including the loss of use. Notwithstanding the foregoing, Consultant's obligation to indemnify the County and its officers and employees for any judgment, decree or arbitration award shall extend only to the percentage of negligence or responsibility of the Consultant in contributing to such claim, damage, loss and expense.

7.2 Consultant's obligation to defend, indemnify and hold the County and its agents, officers and employees harmless under the provisions of this paragraph is not limited to or restricted by any requirement in this Agreement for Consultant to procure and maintain a policy of insurance.

7.3 To the fullest extent permitted by law, the County shall indemnify, hold harmless and defend the Consultant and its officers, employees, agents, representatives or subcontractors from and against all claims, damages, losses, judgments, liabilities, expenses and other costs, including litigation costs and attorney's

fees, arising out of or resulting from the negligence or wrongful acts of County and its officers or employees.

7.4 Subject to the limitations in 42 United States Code section 9607 (e), and unless otherwise provided in a Scope of Services approved by the parties:

(a) Consultant shall not be responsible for liability caused by the presence or release of hazardous substances or contaminants at the site, unless the release results from the negligence of Consultant or its subcontractors;

(b) No provision of this Agreement shall be interpreted to permit or obligate Consultant to assume the status of "generator," "owner," "operator," "arranger," or "transporter" under state or federal law; and

(c) At no time, shall title to hazardous substances, solid wastes, petroleum contaminated soils or other regulated substances pass to Consultant.

## 8. STATUS OF CONSULTANT

8.1 All acts of Consultant and its officers, employees, agents, representatives, subcontractors and all others acting on behalf of Consultant relating to the performance of this Agreement, shall be performed as independent contractors and not as agents, officers or employees of County. Consultant, by virtue of this Agreement, has no authority to bind or incur any obligation on behalf of County. Except as expressly provided in Exhibit A, Consultant has no authority or responsibility to exercise any rights or power vested in the County. No agent, officer or employee of the County is to be considered an employee of Consultant. It is understood by both Consultant and County that this Agreement shall not be construed or considered under any circumstances to create an employer-employee relationship or a joint venture.

8.2 At all times during the term of this Agreement, the Consultant and its officers, employees, agents, representatives or subcontractors are, and shall represent and conduct themselves as, independent contractors and not employees of County.

8.3 Consultant shall determine the method, details and means of performing the work and services to be provided by Consultant under this Agreement. Consultant shall be responsible to County only for the requirements and results specified in this Agreement and, except as expressly provided in this Agreement, shall not be subjected to County's control with respect to the physical action or activities of Consultant in fulfillment of this Agreement. Consultant has control over the manner and means of performing the services under this Agreement. If necessary, Consultant has the responsibility for employing other persons or firms to assist Consultant in fulfilling the terms and obligations under this Agreement.

8.4 Consultant is permitted to provide services to others during the same period service is provided to County under this Agreement; provided, however, such

services do not conflict directly or indirectly with the performance of the Consultant's obligations under this Agreement.

8.5 If in the performance of this Agreement any third persons are employed by Consultant, such persons shall be entirely and exclusively under the direction, supervision and control of Consultant. All terms of employment including hours, wages, working conditions, discipline, hiring and discharging or any other term of employment or requirements of law shall be determined by the Consultant.

8.6 It is understood and agreed that as an independent contractor and not an employee of County, the Consultant and the Consultant's officers, employees, agents, representatives or subcontractors do not have any entitlement as a County employee, and, except as expressly provided for in any Scope of Services made a part hereof, do not have the right to act on behalf of the County in any capacity whatsoever as an agent, or to bind the County to any obligation whatsoever.

8.7 It is further understood and agreed that Consultant must issue W-2 forms or other forms as required by law for income and employment tax purposes for all of Consultant's assigned personnel under the terms and conditions of this Agreement.

8.8 As an independent contractor, Consultant hereby indemnifies and holds County harmless from any and all claims that may be made against County based upon any contention by any third party that an employer-employee relationship exists by reason of this Agreement.

## 9. RECORDS AND AUDIT

9.1 Consultant shall prepare and maintain all writings, documents and records prepared or compiled in connection with the performance of this Agreement for a minimum of four (4) years from the termination or completion of this Agreement. This includes any handwriting, typewriting, printing, photostatic, 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 any combination thereof.

9.2 Any authorized representative of County shall have access to any writings as defined above for the purposes of making audit, evaluation, examination, excerpts and transcripts during the period such records are to be maintained by Consultant. Further, County has the right at all reasonable times to audit, inspect or otherwise evaluate the work performed or being performed under this Agreement.

## 10. CONFIDENTIALITY

The Consultant agrees to keep confidential all information obtained or learned during the course of furnishing services under this Agreement and to not disclose or reveal such information for any purpose not directly connected with the matter for which

services are provided.

11. NONDISCRIMINATION

During the performance of this Agreement, Consultant and its officers, employees, agents, representatives or subcontractors shall not unlawfully discriminate in violation of any federal, state or local law, rule or regulation against any employee, applicant for employment or person receiving services under this Agreement because of race, religion, color, national origin, ancestry, physical or mental handicap, medical condition (including genetic characteristics), marital status, age, political affiliation or sex. Consultant and its officers, employees, agents, representatives or subcontractors shall comply with all applicable Federal, State and local laws and regulations related to non-discrimination and equal opportunity, including without limitation the County's nondiscrimination policy; the Fair Employment and Housing Act (Government Code sections 12900 et seq.); California Labor Code sections 1101, 1102 and 1102.1; the Federal Civil Rights Act of 1964 (P.L. 88-352), as amended; and all applicable regulations promulgated in the California Code of Regulations or the Code of Federal Regulations.

12. ASSIGNMENT

This is an agreement for the services of Consultant. County has relied upon the skills, knowledge, experience and training of Consultant and the Consultant's firm, associates and employees as an inducement to enter into this Agreement. Consultant shall not assign or subcontract this Agreement without the express written consent of County. Further, Consultant shall not assign any monies due or to become due under this Agreement without the prior written consent of County.

13. WAIVER OF DEFAULT

Waiver of any default by either party to this Agreement shall not be deemed to be waiver of any subsequent default. Waiver or breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach, and shall not be construed to be a modification of the terms of this Agreement unless this Agreement is modified as provided below.

14. NOTICE

Any notice, communication, amendment, addition or deletion to this Agreement, including change of address of either party during the term of this Agreement, which Consultant or County shall be required or may desire to make shall be in writing and may be personally served or, alternatively, sent by prepaid first class mail to the respective parties as follows:

To County:                      County of Stanislaus  
   Department of Public Works

Attention: James L. Gregg  
1010 Tenth Street, Suite 3500  
Modesto, CA 95354

To Consultant: Nolte Associates, Inc.  
Attention: Steve Hiatt, SE  
1750 Creekside Oaks Drive, Suite 200  
Sacramento, CA 95833

15. CONFLICTS

Consultant agrees that it has no interest and shall not acquire any interest direct or indirect which would conflict in any manner or degree with the performance of the work and services under this Agreement.

16. SEVERABILITY

If any portion of this Agreement or application thereof to any person or circumstance shall be declared invalid by a court of competent jurisdiction or if it is found in contravention of any federal, state or county statute, ordinance or regulation the remaining provisions of this Agreement or the application thereof shall not be invalidated thereby and shall remain in full force and effect to the extent that the provisions of this Agreement are severable.

17. AMENDMENT

This Agreement may be modified, amended, changed, added to or subtracted from by the mutual consent of the parties hereto if such amendment or change is in written form and executed with the same formalities as this Agreement and attached to the original Agreement to maintain continuity.

18. ENTIRE AGREEMENT

This Agreement supersedes any and all other agreements, either oral or in writing, between any of the parties herein with respect to the subject matter hereof and contains all the agreements between the parties with respect to such matter. Each party acknowledges that no representations, inducements, promises or agreements, oral or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement, statement or promise not contained in this Agreement shall be valid or binding.

19. ADVICE OF ATTORNEY

Each party warrants and represents that in executing this Agreement, it has

received independent legal advice from its attorneys or the opportunity to seek such advice.

20. CONSTRUCTION

Headings or captions to the provisions of this Agreement are solely for the convenience of the parties, are not part of this Agreement, and shall not be used to interpret or determine the validity of this Agreement. Any ambiguity in this Agreement shall not be construed against the drafter, but rather the terms and provisions hereof shall be given a reasonable interpretation as if both parties had in fact drafted this Agreement.


21. GOVERNING LAW AND VENUE

This Agreement shall be deemed to be made under, and shall be governed by and construed in accordance with, the laws of the State of California. Any action brought to enforce the terms or provisions of this Agreement shall have venue in the County of Stanislaus, State of California.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first hereinabove written.

COUNTY OF STANISLAUS

NOLTE ASSOCIATES, INC.

By:   
Pat Paul  
Chair of the Board of Supervisors

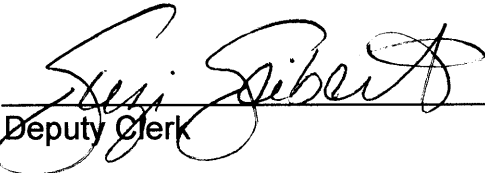
By:   
Michael L. Capik  
Vice President

"County"

"Consultant"

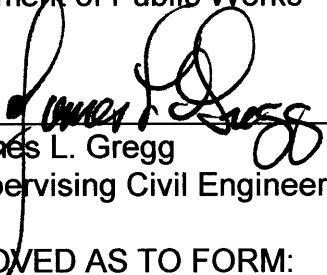
ATTEST: CHRISTINE FERRARO TALLMAN  
Clerk of the Board of Supervisors of the  
County of Stanislaus, State of California

Taxpayer Identification No. \_\_\_\_\_

By:   
Deputy Clerk

APPROVED AS TO CONTENT:  
George Stillman, Director  
Department of Public Works

By: \_\_\_\_\_

  
James L. Gregg  
Supervising Civil Engineer

APPROVED AS TO FORM:  
Michael H. Krausnick  
County Counsel

By: \_\_\_\_\_

  
John P. Doering  
Deputy County Counsel

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## **EXHIBIT A**

### **A. SCOPE OF WORK**

The Consultant shall provide services under this Agreement for construction management for the **Anderson Road Bridge at Orestimba Creek PROJECT** in accordance with the County's Request for Proposals dated February 15, 2001, and the Consultant's Proposal for Construction Management for Anderson Road Bridge at Orestimba Creek dated March 12, 2001 (the "Proposal") , and Exhibit B Changes to and Clarification of the Consultants proposal dated March 12, 2001 all of which are incorporated and made a part of this agreement. The Consultant shall verify and record that the construction of this project is in accordance with the plans, specifications, and Engineers Estimate. The Consultant shall perform its work in accordance with the current edition of the State of California, Department of Transportation, Construction Manual, Design and Local Programs Manual, Office of Local Program's, "Local Assistance Procedures Manual," Processing Procedures for Implementing Federal and/or State Funded Local Public Transportation Projects.

### **B. COMPENSATION**

The Consultant shall be compensated for the services provided under this Agreement as follows:

1. Consultant will be compensated on a time and materials basis, based on the hours worked by the Consultant's employees or subcontractors at the hourly rates specified in the consultant's Proposal. The specified hourly rates shall include direct salary costs, employee benefits, and overhead. These rates are not adjustable for the performance period set forth in this Agreement. In addition to the aforementioned fees, Consultant will be reimbursed for the following items, plus any expenses agreed by the parties as set forth in the Fee Schedule Consultant Cost Proposal attached hereto, that are reasonable, necessary and actually incurred by the Consultant in connection with the services:

- (a) Any filing fees, permit fees, or other fees paid or advanced by the Consultant.
- (b) Expenses, fees or charges for printing, reproduction or binding of documents at actual costs.

2. The parties hereto acknowledge the maximum amount to be paid by the County for services provided shall not exceed \$150,000.00, including, without limitation, the cost of any subcontractors, consultants, experts or investigators retained by the Consultant to perform or to assist in the performance of its work under this Agreement.



### **C. FEDERAL OR STATE PROJECTS**

The following provisions shall apply to projects funded entirely or in part by the State or federal government, and the Consultant agrees to perform services under this Agreement in accordance with such provisions, which shall take precedence over any different or inconsistent provisions of this Agreement.

1. Allowable cost items shall be determined in accordance with the Contract Cost Principals and Procedures (48 CFR Chapter 1, Part 31) and shall comply with the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments (49 CFR Part 18) (collectively referred to hereafter as the "Regulations").

2. The Consultant shall comply with all requirements and procedures set forth in the Regulations.

3. Any costs for which payments have been made to the Consultant, which are determined by subsequent audit to be unallowable under the Regulations, shall be promptly repaid to the County after demand.

4. Any subcontract entered into by the Consultant for performance of the Consultant's obligations under this Agreement, shall be subject to all of the provisions of this Agreement, and shall incorporate by reference all of the terms and conditions of this Agreement, and shall contain all of the provisions for State or federally funded projects set forth in Section "C" herein.

5. The Consultant shall perform the work under this Agreement with resources available within its own organization and no portion of the work pertinent to this Agreement shall be subcontracted without the prior written consent or approval by the State's or the County's Contract Manager, except that which is expressly identified in the Consultant's proposal. Any substitution of subcontractors must be approved in writing by the State's or the County's Contract Manager.

6. Representatives of the State and FHWA shall have access to review all project records and documents for the purposes of making audit, evaluation, examination, excerpts and transcripts during the the period such records are maintained by the Consultant.

## **EXHIBIT B**

### **Changes to and Clarifications of Consultant's Proposal dated March 12, 2001**

#### **A. TASK 2 - CLARIFICATION**

The KICK-OFF meeting shall be attended by the County and Nolte's Resident Engineer and Construction inspector.

The PRECONSTRUCTION meeting shall be attended by the County and Nolte's Resident Engineer, Construction Inspector, Materials Testing, and Construction staking staff, and other parties as determined by the County and Nolte.

The KICK-OFF AND PRECONSTRUCTION meetings will be held the same day.

#### **B. TASK 4 - ADDITION**

Restaking survey services are to be paid as contract modification additions to the original contract amount and need to be authorized by County's Construction Manager.

#### **C. TASK 5 - CLARIFICATION**

The fee for the services provided by Nolte are predicated upon the fact that the construction duration is to go only through December 31, 2001 , excluding environmental work.