

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

DEPT: Chief Executive Office

BOARD AGENDA # *B-5

Urgent Routine

AGENDA DATE March 31, 2009

CEO Concurs with Recommendation YES NO
(Information Attached)

4/5 Vote Required YES NO

SUBJECT:

Approval to Enter into Contracts with lomlan Construction Services, Inc. and Stewart and Stewart, Inc. for On-Call Inspection Services-Chief Executive Office

STAFF RECOMMENDATIONS:

1. Approve to enter into contracts with lomlan Construction Services, Inc. and Stewart and Stewart, Inc. for on-call inspection services.
2. Authorize the Chief Executive Office to execute and sign agreements, purchase orders and work authorizations for professional on-call inspection services for multiple capital projects.

FISCAL IMPACT:

On November 25, 2008, the Board of Supervisors authorized staff to issue a Request for Qualifications (RFQ) for on call inspections services. Staff advertised in newspapers and trade journals. On December 10, 2008, 9 proposals were received and opened, from Harris & Associates from Tracy, California, CSG Consultants, Inc from San Mateo, California, TRS Consultants from San Ramon, California, Consulting & Inspection Services from Sacramento, California, Bureau Veritas from Citrus Heights, California, Stewart and Stewart, Inc. from Denair, California,

Continued on Page 2

BOARD ACTION AS FOLLOWS:

No. 2009-191

On motion of Supervisor Monteith, Seconded by Supervisor Grover
and approved by the following vote,

Ayes: Supervisors: O'Brien, Chiesa, Grover, Monteith, and Chairman DeMartini

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

1) X Approved as recommended

2) _____ Denied

3) _____ Approved as amended

4) _____ Other:

MOTION:



ATTEST: CHRISTINE FERRARO TALLMAN, Clerk

File No.

FISCAL IMPACT: (Continued)

4LEAF Inc. from Pleasanton, California, Wildan Engineering from Sacramento, California, and Iomlan Construction Services, Inc from Oakdale, California. A review team comprised of staff from the Chief Executive Office and the Capital Projects team evaluated the proposals. The review team determined that the proposals and qualifications of Iomlan Construction Services from Oakdale, California and Stewart and Stewart, Inc from Denair, California best meet the needs and requirements for on-call inspection services.

At this time, the Chief Executive Office is returning to the Board to approve on-call contracts with Iomlan Construction Services, Inc. and Stewart and Stewart, Inc to provide on-call inspection services for the County's upcoming capital projects. The contracts will be used to supplement the use of County Building Inspection staff as needed.

As is the current process, individual work authorizations will be negotiated and contracted for in advance for each project to ensure that such services are available if and when any of the individual projects reaches the stage when inspector of record services are required. The cost of the work authorizations will be funded through existing appropriations in the project budget and there is no additional impact to the General Fund. Each individual capital project requires approval by the Board of Supervisors at each major milestone of its development and delivery. No funds will be expended until the project budgets are adopted by the Board of Supervisors.

DISCUSSION:

An integral part of the planning and design as well as construction of any capital project is the professional services needed to support each project. Quality control is critically needed to support efforts for each capital project. Over the next year, the County anticipates a continued need for on-call inspection services during the construction of several projects including but not limited to the following:

- Animal Shelter Project
- Upgrades for the Electronic Security and Fire Alarm Systems at The Juvenile Justice Center
- Public Safety Center Expansion Project
- Juvenile Commitment Facility Project
- Regional Water Safety Training Center – Empire Community Pool Project

On November 25, 2008, the Board of Supervisors authorized staff to issue a Request for Qualifications (RFQ) for on call inspections services. Staff advertised in newspapers and trade journals. On December 10, 2008, 9

proposals were received and opened. A total of 9 responses were received from Harris & Associates from Tracy, California, CSG Consultants, Inc from San Mateo, California, TRS Consultants from San Ramon, California, Consulting & Inspection Services from Sacramento, California, Bureau Veritas from Citrus Heights, California, Stewart and Stewart, Inc. from Denair, California, 4LEAF Inc. from Pleasanton, California, Wildan Engineering from Sacramento, California, and Iomlan Construction Services from Oakdale, California.

In December 2008, the Chief Executive Office Chief Operations Officer requested Capital Projects staff to meet with the Department of Planning and Community Development Building Permits Division staff to explore the feasibility of partnering to provide on call inspection services prior to returning to the Board of Supervisors to request approval to award contracts with outside contractors.

The Department of Planning and Community Development Building Permits Division provides plan checking, building permit issuance, and construction inspection services for residential, commercial and industrial projects and for the Building and Code Enforcement Unit in the unincorporated area of Stanislaus County. As a result of the slow down in the building industry and a decrease in construction industry over prior years, this has created capacity within the Division to provide on-call inspection services for the Capital Projects.

Following several meetings, staff identified a partnership opportunity for the Building Permits Division to provide on-call inspections services for upcoming capital projects. A service level agreement (SLA) has been executed between the Chief Executive Office Capital Projects Division and the Department of Planning and Community Development Building Permits Division. Through this service level agreement, the Building Permits Division will act as a primary provider for on-call inspection services to include the following:

- Provide on-site inspection of work in progress in conformance with the Contract, and as directed by the Construction Manager;
- Maintain current construction records and documents with Request for Information (RFI) and change orders;
- Review shop drawings in consultation with the Construction Manager;
- Attend Weekly Progress meetings;
- Attend Quality Control meetings;
- Advise the Construction Manager upon the issuance of non-compliance orders and sign off upon resolution;
- Manage substantial completion inspections and sign off on corrections;

- Maintain an adequate inspection system and perform such inspections as will ensure that the work conforms to the Contract Documents;
- Maintain complete inspection records and make them available to the Owner;

At this time, the Chief Executive Office is returning to the Board to approve on-call contracts with Iomlan Construction Services and Stewart and Stewart, Inc to provide additional on-call inspection services for the County's upcoming capital projects, on an as needed basis.

POLICY ISSUES:

Approval of this action supports the Board's priority of *Efficient delivery of public services and Effective partnerships*.

STAFFING IMPACT:

Current Capital Projects staff will supervise the contracts for On Call Inspection Services. There is no additional staffing impact.

**AGREEMENT
FOR
ON-CALL INSPECTION SERVICES**

This Agreement is made and entered into by and between the **County of Stanislaus** ("County") and **Stewart & Stewart, Inc.**, ("Consultant"), on March 31, 2009 ("Agreement").

INTRODUCTION

WHEREAS, the County has a need for Inspection Services for the County's capital projects; and

WHEREAS, 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:

1 SCOPE OF WORK and KEY PERSONNEL. The Consultant shall provide to the County Inspection Services for the County's capital projects in accordance with the Scope of Work described in Exhibit A attached hereto and in accordance with work orders which are or will be attached hereto and incorporated herein by this reference ("Work Orders"). The following are Consultant's key personnel under this Agreement:

- Bruce Stewart, Project Inspector/Owner

2 SCHEDULE. Services and work provided by the Consultant shall be performed in a timely manner in accordance with approved Work Orders and as directed by the County's Construction Manager.

3 TERM.

3.1 The term of this Agreement shall be from the date of approval of this Agreement until December 31, 2012, unless this agreement is sooner terminated as set forth below.

3.2 Should Consultant default in the performance of this Agreement or materially breach any of its provisions, or become insolvent, the County, at its option, may terminate this Agreement by giving 15 days notification to the other party, provided that Consultant does not cure the default during that period.

3.3 The County may terminate this Agreement for its convenience upon 10 days prior written notice. Termination of this Agreement shall not affect the County's obligation to pay for all services actually performed by the Consultant in accordance with the terms of this Agreement.

3.4 County may terminate this Agreement at any time if any key personnel are no longer available to provide services under this Agreement, and if Consultant does not find a replacement satisfactory to County within 10 days.

- 4 OWNERSHIP OF RECORDS. All documents and drawings prepared or produced by the Consultant under this Agreement are the property of the County. The Consultant shall not be responsible for damage caused by subsequent changes to or uses of the plans or specifications, where subsequent changes or uses are not authorized or approved by the Consultant.
- 5 COMPLIANCE WITH LAWS AND REGULATIONS. The Consultant shall provide services and work under this Agreement consistent with the requirements and standards established by applicable federal, state and local laws, ordinances, regulations and resolutions. Consultant agrees to perform the services called for hereunder at a level consistent with the standards of practice observed by persons who hold themselves out as experts performing similar services at the time and in the location as the services hereunder.
- 6 USE OF SUBCONSULTANTS. If the consultant deems it appropriate to utilize the services of a sub-consultant 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 retention. Any sub-consultant retained by the consultant will be the agent of the consultant, and not the County.
- 7 CONSIDERATION.
- 7.1 The Consultant shall be compensated on a negotiated amount for each Work Order. The Consultant shall not exceed the contract limit in each Work Order.
- 7.2 The compensation to be paid to the Consultant shall be for all labor, material, transportation, insurance, subcontractors and services required under this Agreement.
- 7.3 Except as expressly provided in this Agreement, the 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, the Consultant shall not be entitled by virtue of this Agreement to consideration in the form of overtime, insurance, 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.
- 7.4 The Consultant shall provide the County with a monthly statement, as services warrant, of fees earned and costs incurred for services provided during the billing period, which the County shall pay within 30 days of the date each invoice is approved by the County. The statement shall generally describe the services performed, the applicable rate or rates, the basis for the calculation of fees, the balance due on the statement, and the balance of funds available under this contract, after subtracting amounts paid to date. 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.
- 7.5 County will not withhold any Federal or State income taxes or Social Security tax from any payments made by County to the Consultant under the terms and conditions of this Agreement. Payment of all taxes and other assessments on such sums is the sole

responsibility of the Consultant. The County has no responsibility or liability for payment of the Consultant's taxes or assessments.

7.6 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.

8 **REQUIRED LICENSES, CERTIFICATES AND PERMITS.** Any licenses, certificates or permits required by the federal, state, county or municipal governments for the Consultant to provide the services and work described in Exhibit A must be procured by the Consultant and be valid at the time the Consultant enters into this Agreement. Further, during the term of this Agreement, the 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 the Consultant at no expense to the County.

9 **INSURANCE.** The Consultant shall take out, and maintain during the life of this Agreement, insurance policies with coverage at least as broad as follows:

9.1 General Liability Insurance. General Liability Insurance with an additional insured endorsement naming the County, its Board, officers, employees and agents as additional insureds, with limits of no less than One Million Dollars (\$1,000,000) combined single limit per occurrence for bodily injury including personal injury and property damage.

9.2 Automobile Liability Insurance. If the Consultant or the Consultant's officers, employees, agents, representatives or sub-consultants 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 and property damage with limits of no less than One Million Dollars (\$1,000,000) per incident or occurrence.

9.3 Professional Liability Insurance. Professional errors and omissions (malpractice) liability insurance with limits of no less than One Million Dollars (\$1,000,000) aggregate. If the policy is a "claims made" policy, 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.

9.4 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.

9.5 Deductibles. 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.

- 9.6 Additional Insured Endorsement. The County, its officers, the Board, agents and employees shall be named as additional insureds by separate endorsement on the Consultant's general liability and automobile insurance policy.
- 9.7 Waiver of Right of Subrogation. For Workers' Compensation insurance, the insurance carrier shall waive all rights of subrogation against the County, its Board, officers, agents and employees for losses arising from the performance of or the omission to perform any term or condition of this Agreement.
- 9.8 Consultant's Insurance is Primary. The Consultant's insurance coverage shall be primary insurance regarding the County and County's officers, the Board, 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 the Consultant's insurance.
- 9.9 Notice to be Provided In the Event of Cancellation of Insurance. Each insurance policy required by this section shall be endorsed to state that coverage shall not be 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.
- 9.10 Minimum Rating Requirements. 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 Lesser ratings must be approved in writing by the County prior to the commencement of work under this Agreement.
- 9.11 Subcontractors shall Maintain Same Levels of Insurance. The 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 named insureds under its insurance policies.
- 9.12 Certificates of Insurance. At least ten (10) days prior to the date the Consultant begins performance of its obligations under this Agreement, the Consultant shall furnish County with certificates of insurance and with original endorsements effecting coverage required by this Agreement, including, without limitation, those effecting coverage for subcontractors of the Consultant. 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.

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

10 DEFENSE AND INDEMNIFICATION

- 10.1 The Consultant shall defend, indemnify and hold harmless the County and its Board, agents, officers and employees from and against all claims, damages, losses, judgments, liabilities, expenses and other costs, including litigation costs and attorney fees, arising out of or resulting from the negligent performance of this Agreement or any willful misconduct by the Consultant, or its officers, employees, agents or sub-consultants, except Consultant shall have no obligation to defend, indemnify and hold harmless the County for the County's sole negligence, the County's active negligence, or the County's willful misconduct.
- 10.2 The Consultant's obligation to defend, indemnify and hold the County and its agents, Board, officers and employees harmless under the provisions of this paragraph is not limited to or restricted by any requirement in this Agreement for the Consultant to procure and maintain a policy of insurance.
- 10.3 To the extent permitted by law, the County shall defend, indemnify and hold harmless the Consultant 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 active negligence or wrongful acts of County.

11 STATUS OF ON CALL INSPECTION SERVICES.

- 11.1 All acts of the Consultant and its officers, employees, agents, representatives, sub-consultants and all others acting on behalf of the Consultant relating to the performance of this Agreement, shall be performed as an independent contractors.
- 11.2 At all times during the term of this Agreement, the Consultant and its officers, employees, agents, representatives or sub-consultants are, and shall represent and conduct themselves as independent contractors and not employees of County.
- 11.3 The Consultant shall determine the method, details and means of performing the work and services to be provided by the Consultant under this Agreement. The 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 the Consultant in fulfillment of this Agreement. The Consultant has control over the manner and means of performing the services under this Agreement.

- 11.4 If in the performance of this Agreement any third persons are utilized by the Consultant, such persons shall be entirely and exclusively under the direction, supervision and control of the Consultant. All terms of retention 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.
- 11.5 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 County.
- 11.6 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, partnership, or a joint venture. As an independent contractor, the 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.
- 11.7 So long as the County utilizes the services of Consultant, the County agrees not to solicit any employee of the Consultant for employment with the County.

12 RECORDS AND AUDIT.

- 12.1 Consultant shall 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.
- 12.2 Any authorized representative of County shall have access to any writings as defined above for the purposes of making an audit, evaluation, or examination during the period such records are to be maintained by the 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.

- 13 **NONDISCRIMINATION.** During the performance of this Agreement, the 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, marital status, age, political affiliation, sex or sexual orientation. The Consultant and its officers, employees, agents, representatives or sub-consultants shall comply with the provisions of the Fair Employment and Housing Act (Government Code, sections 12900, et seq.) and the applicable regulations promulgated there under in the California Code of Regulations. The Consultant shall also abide by the Federal Civil Rights Act of 1964 (P.L. 88-352) and all amendments thereto and all administrative rules and regulations issued pursuant to said act. The Consultant further agrees to abide by the County's nondiscrimination policy.

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

15 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.

16 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 the 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
Chief Executive Office
Attention: Patricia Hill Thomas
1010 10th Street, Suite 6800
Modesto, CA 95354

To Consultant:
Stewart & Stewart, Inc.
5500 N. Quincy Road
Denair, CA 95316
(209) 664-0228

17 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.

18 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.

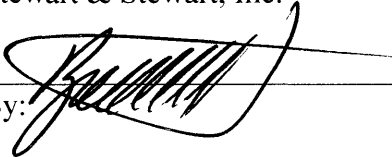
19 INTEGRATION. This Agreement is an integrated agreement and constitutes the entire arrangement agreed to by the parties. This Agreement supersedes any and all other agreements, either oral or in writing, between any of the parties herein with respect to the subject matter hereof and contains all the 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.

- 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.
- 22 CONFLICT OF INTEREST. Consultant represents and warrants that it presently has no interest, and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of services required under this Agreement. Without limitation, Consultant represents to and agrees with County that Consultant has no present, and will have no future conflict of interest between providing County services hereunder and any interest Consultant may presently have, or will have in the future, with respect to any other person or entity which has any interest adverse or potentially adverse to County, as determined in the reasonable judgment of County.
- 23 CONFIDENTIALITY. Any information, whether proprietary or not, made known to or discovered by Consultant during the performance of or in connection with this Agreement for County, will be kept confidential and not be disclosed to any other person. Consultant will immediately notify County in writing if it is requested to disclose any information made known to or discovered by during the performance of or in connection with this Agreement. These conflict of interest, confidentiality and future service provisions and limitations shall remain fully effective indefinitely after termination of services to County hereunder.

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

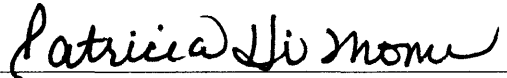
CONSULTANT
Stewart & Stewart, Inc.

By: 

Telephone: 209-471-1997

Fax: 209-664-0278

THE COUNTY OF STANISLAUS



Patricia Hill Thomas
Stanislaus County
Assistant Executive Officer
Chief Operating Officer
1010 10th Street, Suite 6800
Modesto, CA 95354
(209)525-6333 (telephone)
(209)525-4033 (facsimile)

Approved as to form:

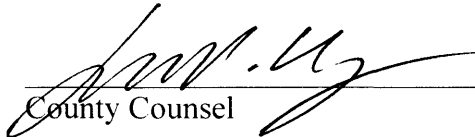

County Counsel

EXHIBIT A

SCOPE OF WORK

I. SCOPE OF SERVICES

1. Provide on-site inspection of work in progress in conformance with the Contract, and as directed by the Construction Manager;
2. Provide coordination of testing agency and of code inspections;
3. Review of Requests for Information (RFI) in consultation with the Construction Manager;
4. Maintain current construction records and documents with RFI's and change orders;
5. Review shop drawings in consultation with the Construction Manager;
6. Review pay requests and inspect stored materials;
7. Attend Weekly Progress meetings;
8. Attend Quality Control meetings;
9. Advise the Construction Manager upon the issuance of non-compliance orders and sign off upon resolution;
10. Manage substantial completion inspections and sign off on corrections;
11. Maintain an adequate inspection system and perform such inspections as will ensure that the work conforms to the Contract Documents;
12. Maintain complete inspection records and make them available to the Owner;
13. Note that the Inspector is prohibited from accepting from the Contractor, his employees, and subcontractors any gratuity, gift, service or material of any value;
14. Provide information to the County relating to the notices of change, potential claims and claims.
15. Owner inspections are for the sole benefit of the Owner and do not:
 - a) Relieve the Contractor of responsibility for damage to or loss of the material before acceptance;
 - b) Constitute or imply acceptance;

- c) Affect the continuing rights of the Owner after acceptance of the completed work to pursue its rights and remedies relating to latent defects, gross mistakes, fraud or the Owner's rights under any warranty or guarantee; or
 - d) Relieve the Contractor of responsibility for providing adequate quality control measures.
16. The presence or absence of an Owner inspector does not relieve the Contractor from any contract requirement, nor is the inspector authorized to change any term or condition of the specifications without the Owner's written authorization.
17. The Inspector shall promptly furnish, without additional charge, all facilities, labor, and material reasonably needed for performing such safe and convenient inspections as may be required by the Owner.
18. The Inspector shall also provide services in accordance with the attached typical General Conditions from the Construction Contract Documents.

EXHIBIT B

SCHEDULE BILLING RATES

| | |
|-----------------------|------------------|
| Senior Inspector | \$70.00/hour |
| Junior Inspector | \$50.00/hour |
| Reimbursable Expenses | Time & Materials |

**WORK AUTHORIZATION FOR ON-CALL
INSPECTION SERVICES**

No. 1

1. This Work Authorization is entered into as of [_____], in accordance with the terms and conditions of that agreement between County and [_____] dated [_____].
2. Description of Services: Provide On-Call Inspection Services for the [Name of the Project].
3. Hourly Rate: \$[_____].
4. Period of Performance: [Starting to Date to Completion Date], as directed by the County's Construction Manager.
5. NOT TO EXCEED: \$[_____,_____._____]
6. Funding Source(s): [Oracle Project Name, Fund, And Org]
7. Board of Supervisors Approval Date: [_____]; Board Agenda Item: [_____].

Dated: [_____]

Stanislaus County

Inspector

**AGREEMENT
FOR
ON-CALL INSPECTION SERVICES**

This Agreement is made and entered into by and between the **County of Stanislaus** ("County") and **Iomlan Construction Services, Inc.**, ("Consultant"), on March 31, 2009 ("Agreement").

INTRODUCTION

WHEREAS, the County has a need for Inspection Services for the County's capital projects; and

WHEREAS, 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:

- 1 **SCOPE OF WORK and KEY PERSONNEL.** The Consultant shall provide to the County Inspection Services for the County's capital projects in accordance with the Scope of Work described in Exhibit A attached hereto and in accordance with work orders which are or will be attached hereto and incorporated herein by this reference ("Work Orders"). The following are Consultant's key personnel under this Agreement:
 - William Munt, Principal/Senior Inspector
 - Melvin Ladousier, Senior Inspector
 - Ryan Carter, Contract Administrator/Junior Inspector
 - Derek Thorn, Junior Inspector
 - John Beckman, Junior Inspector

- 2 **SCHEDULE.** Services and work provided by the Consultant shall be performed in a timely manner in accordance with approved Work Orders and as directed by the County's Construction Manager.

- 3 **TERM.**
 - 3.1 The term of this Agreement shall be from the date of approval of this Agreement until December 31, 2009, unless this agreement is sooner terminated as set forth below.

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obligation to pay for all services actually performed by the Consultant in accordance with the terms of this Agreement.

- 3.4 County may terminate this Agreement at any time if any key personnel are no longer available to provide services under this Agreement, and if Consultant does not find a replacement satisfactory to County within 10 days.
- 4 OWNERSHIP OF RECORDS. All documents and drawings prepared or produced by the Consultant under this Agreement are the property of the County. The Consultant shall not be responsible for damage caused by subsequent changes to or uses of the plans or specifications, where subsequent changes or uses are not authorized or approved by the Consultant.
- 5 COMPLIANCE WITH LAWS AND REGULATIONS. The Consultant shall provide services and work under this Agreement consistent with the requirements and standards established by applicable federal, state and local laws, ordinances, regulations and resolutions. Consultant agrees to perform the services called for hereunder at a level consistent with the standards of practice observed by persons who hold themselves out as experts performing similar services at the time and in the location as the services hereunder.
- 6 USE OF SUBCONSULTANTS. If the consultant deems it appropriate to utilize the services of a sub-consultant 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 retention. Any sub-consultant retained by the consultant will be the agent of the consultant, and not the County.
- 7 CONSIDERATION.
 - 7.1 The Consultant shall be compensated on a negotiated amount for each Work Order. The Consultant shall not exceed the contract limit in each Work Order.
 - 7.2 The compensation to be paid to the Consultant shall be for all labor, material, transportation, insurance, subcontractors and services required under this Agreement.
 - 7.3 Except as expressly provided in this Agreement, the 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, the Consultant shall not be entitled by virtue of this Agreement to consideration in the form of overtime, insurance, 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.
 - 7.4 The Consultant shall provide the County with a monthly statement, as services warrant, of fees earned and costs incurred for services provided during the billing period, which the County shall pay within 30 days of the date each invoice is

approved by the County. The statement shall generally describe the services performed, the applicable rate or rates, the basis for the calculation of fees, the balance due on the statement, and the balance of funds available under this contract, after subtracting amounts paid to date. 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.

- 7.5 County will not withhold any Federal or State income taxes or Social Security tax from any payments made by County to the Consultant under the terms and conditions of this Agreement. Payment of all taxes and other assessments on such sums is the sole responsibility of the Consultant. The County has no responsibility or liability for payment of the Consultant's taxes or assessments.
- 7.6 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.

8 **REQUIRED LICENSES, CERTIFICATES AND PERMITS.** Any licenses, certificates or permits required by the federal, state, county or municipal governments for the Consultant to provide the services and work described in Exhibit A must be procured by the Consultant and be valid at the time the Consultant enters into this Agreement. Further, during the term of this Agreement, the 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 the Consultant at no expense to the County.

9 **INSURANCE.** The Consultant shall take out, and maintain during the life of this Agreement, insurance policies with coverage at least as broad as follows:

- 9.1 General Liability Insurance. General Liability Insurance with an additional insured endorsement naming the County, its Board, officers, employees and agents as additional insureds, with limits of no less than One Million Dollars (\$1,000,000) combined single limit per occurrence for bodily injury including personal injury and property damage.
- 9.2 Automobile Liability Insurance. If the Consultant or the Consultant's officers, employees, agents, representatives or sub-consultants 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 and property damage with limits of no less than One Million Dollars (\$1,000,000) per incident or occurrence.
- 9.3 Professional Liability Insurance. Professional errors and omissions (malpractice) liability insurance with limits of no less than One Million Dollars (\$1,000,000) aggregate. If the policy is a "claims made" policy, 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.

- 9.4 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.
- 9.5 Deductibles. 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.
- 9.6 Additional Insured Endorsement. The County, its officers, the Board, agents and employees shall be named as additional insureds by separate endorsement on the Consultant's general liability and automobile insurance policy.
- 9.7 Waiver of Right of Subrogation. For Workers' Compensation insurance, the insurance carrier shall waive all rights of subrogation against the County, its Board, officers, agents and employees for losses arising from the performance of or the omission to perform any term or condition of this Agreement.
- 9.8 Consultant's Insurance is Primary. The Consultant's insurance coverage shall be primary insurance regarding the County and County's officers, the Board, 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 the Consultant's insurance.
- 9.9 Notice to be Provided In the Event of Cancellation of Insurance. Each insurance policy required by this section shall be endorsed to state that coverage shall not be 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.
- 9.10 Minimum Rating Requirements. 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 Lesser ratings must be approved in writing by the County prior to the commencement of work under this Agreement.

- 9.11 Subcontractors shall Maintain Same Levels of Insurance. The 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 named insureds under its insurance policies.
- 9.12 Certificates of Insurance. At least ten (10) days prior to the date the Consultant begins performance of its obligations under this Agreement, the Consultant shall furnish County with certificates of insurance and with original endorsements effecting coverage required by this Agreement, including, without limitation, those effecting coverage for subcontractors of the Consultant. 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.
- 9.13 Miscellaneous. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the County or its officers, the Board, officials and employees. 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.

10 DEFENSE AND INDEMNIFICATION

- 10.1 The Consultant shall defend, indemnify and hold harmless the County and its Board, agents, officers and employees from and against all claims, damages, losses, judgments, liabilities, expenses and other costs, including litigation costs and attorney fees, arising out of or resulting from the negligent performance of this Agreement or any willful misconduct by the Consultant, or its officers, employees, agents or sub-consultants , except Consultant shall have no obligation to defend, indemnify and hold harmless the County for the County's sole negligence, the County's active negligence, or the County's willful misconduct.
- 10.2 The Consultant's obligation to defend, indemnify and hold the County and its agents, Board, officers and employees harmless under the provisions of this paragraph is not limited to or restricted by any requirement in this Agreement for the Consultant to procure and maintain a policy of insurance.
- 10.3 To the extent permitted by law, the County shall defend, indemnify and hold harmless the Consultant 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 active negligence or wrongful acts of County.

11 STATUS OF ON CALL INSPECTION SERVICES.

- 11.1 All acts of the Consultant and its officers, employees, agents, representatives, sub-consultants and all others acting on behalf of the Consultant relating to the performance of this Agreement, shall be performed as an independent contractors.
- 11.2 At all times during the term of this Agreement, the Consultant and its officers, employees, agents, representatives or sub-consultants are, and shall represent and conduct themselves as independent contractors and not employees of County.
- 11.3 The Consultant shall determine the method, details and means of performing the work and services to be provided by the Consultant under this Agreement. The 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 the Consultant in fulfillment of this Agreement. The Consultant has control over the manner and means of performing the services under this Agreement.
- 11.4 If in the performance of this Agreement any third persons are utilized by the Consultant, such persons shall be entirely and exclusively under the direction, supervision and control of the Consultant. All terms of retention 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.
- 11.5 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 County.
- 11.6 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, partnership, or a joint venture. As an independent contractor, the 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.
- 11.7 So long as the County utilizes the services of Consultant, the County agrees not to solicit any employee of the Consultant for employment with the County.

12 RECORDS AND AUDIT.

- 12.1 Consultant shall 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.

- 12.2 Any authorized representative of County shall have access to any writings as defined above for the purposes of making an audit, evaluation, or examination during the period such records are to be maintained by the 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.
- 13 **NONDISCRIMINATION.** During the performance of this Agreement, the 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, marital status, age, political affiliation, sex or sexual orientation. The Consultant and its officers, employees, agents, representatives or sub-consultants shall comply with the provisions of the Fair Employment and Housing Act (Government Code, sections 12900, et seq.) and the applicable regulations promulgated there under in the California Code of Regulations. The Consultant shall also abide by the Federal Civil Rights Act of 1964 (P.L. 88-352) and all amendments thereto and all administrative rules and regulations issued pursuant to said act. The Consultant further agrees to abide by the County's nondiscrimination policy.
- 14 **ASSIGNMENT.** This agreement for the services of the Consultant. County has relied upon the skills, knowledge, experience and training of the Consultant and the Consultant's firm, associates and employees as an inducement to enter into this Agreement. The Consultant shall not assign or subcontract this Agreement without the express written consent of County. Further, the Consultant shall not assign any monies due or to become due under this Agreement without the prior written consent of County. The County shall not assign its rights under this agreement without the express written consent of Consultant, such consent shall not be unreasonably upheld.
- 15 **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.
- 16 **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 the 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
Chief Executive Office
Attention: Patricia Hill Thomas
1010 10th Street, Suite 6800
Modesto, CA 95354

To Consultant:

Iomlan Construction Services, Inc.
1670 Fulkerth Road
Turlock, CA 95380
(209) 664-9960

- 17 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.
- 18 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.
- 19 INTEGRATION. This Agreement is an integrated agreement and constitutes the entire arrangement agreed to by the parties. 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.
- 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.
- 22 CONFLICT OF INTEREST. Consultant represents and warrants that it presently has no interest, and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of services required under this Agreement. Without limitation, Consultant represents to and agrees with County that Consultant has no present, and will have no future conflict of interest between providing County services hereunder and any interest Consultant may presently have, or will have in the future, with respect to any other person or entity which has any interest adverse or potentially adverse to County, as determined in the reasonable judgment of County.
- 23 CONFIDENTIALITY. Any information, whether proprietary or not, made known to or discovered by Consultant during the performance of or in connection with this

Agreement for County, will be kept confidential and not be disclosed to any other person. Consultant will immediately notify County in writing if it is requested to disclose any information made known to or discovered by during the performance of or in connection with this Agreement. These conflict of interest, confidentiality and future service provisions and limitations shall remain fully effective indefinitely after termination of services to County hereunder.

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

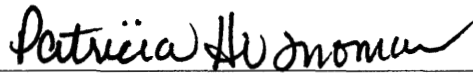
CONSULTANT
Iomlan Construction Services, Inc.


By:

Telephone: 209-869-5090

Fax: 869-5080 or 664-9979
Turlock

THE COUNTY OF STANISLAUS


Patricia Hill Thomas

Stanislaus County
Assistant Executive Officer
Chief Operating Officer
1010 10th Street, Suite 6800
Modesto, CA 95354
(209)525-6333 (telephone)
(209)525-4033 (facsimile)

Approved as to form:

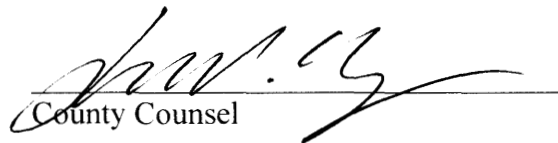

County Counsel

EXHIBIT A

SCOPE OF WORK

I. SCOPE OF SERVICES

1. Provide on-site inspection of work in progress in conformance with the Contract, and as directed by the Construction Manager;
2. Provide coordination of testing agency and of code inspections;
3. Review of Requests for Information (RFI) in consultation with the Construction Manager;
4. Maintain current construction records and documents with RFI's and change orders;
5. Review shop drawings in consultation with the Construction Manager;
6. Review pay requests and inspect stored materials;
7. Attend Weekly Progress meetings;
8. Attend Quality Control meetings;
9. Advise the Construction Manager upon the issuance of non-compliance orders and sign off upon resolution;
10. Manage substantial completion inspections and sign off on corrections;
11. Maintain an adequate inspection system and perform such inspections as will ensure that the work conforms to the Contract Documents;
12. Maintain complete inspection records and make them available to the Owner;
13. Note that the Inspector is prohibited from accepting from the Contractor, his employees, and subcontractors any gratuity, gift, service or material of any value;
14. Provide information to the County relating to the notices of change, potential claims and claims.
15. Owner inspections are for the sole benefit of the Owner and do not:
 - a) Relieve the Contractor of responsibility for damage to or loss of the material before acceptance;
 - b) Constitute or imply acceptance;

- c) Affect the continuing rights of the Owner after acceptance of the completed work to pursue its rights and remedies relating to latent defects, gross mistakes, fraud or the Owner's rights under any warranty or guarantee; or
 - d) Relieve the Contractor of responsibility for providing adequate quality control measures.
16. The presence or absence of an Owner inspector does not relieve the Contractor from any contract requirement, nor is the inspector authorized to change any term or condition of the specifications without the Owner's written authorization.
 17. The Inspector shall promptly furnish, without additional charge, all facilities, labor, and material reasonably needed for performing such safe and convenient inspections as may be required by the Owner.
 18. The Inspector shall also provide services in accordance with the attached typical General Conditions from the Construction Contract Documents.

EXHIBIT B
SCHEDULE BILLING RATES

| | |
|-----------------------------------|------------------|
| Senior Inspector | \$75.00/hour |
| Inspector (6-10 years experience) | \$65.00/hour |
| Junior Inspector | \$55.00/hour |
| Secretary/Clerk | \$45.00/hour |
| Reimbursable Expenses | Time & Materials |

**WORK AUTHORIZATION FOR ON-CALL
INSPECTION SERVICES**

No. 1

1. This Work Authorization is entered into as of [_____], in accordance with the terms and conditions of that agreement between County and [_____] dated [_____].
2. Description of Services: Provide On-Call Inspection Services for the [Name of the Project].
3. Hourly Rate: \$[_____].
4. Period of Performance: [Starting to Date to Completion Date], as directed by the County's Construction Manager.
5. NOT TO EXCEED: \$[_____.____.____].
6. Funding Source(s): [Oracle Project Name, Fund, And Org]
7. Board of Supervisors Approval Date: [_____]; Board Agenda Item: [_____].

Dated: [_____]

Stanislaus County

Inspector