

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

DEPT: Public Works

BOARD AGENDA #: *C-3

AGENDA DATE: November 22, 2016

SUBJECT:

Approval of the Professional Survey Services Master Agreements with Associated Engineering Group, Northstar Engineering Group, Inc., Hawkins and Associates Engineering, Inc., O'Dell Engineering, and Sandis Engineering for On-Call Survey Services

BOARD ACTION AS FOLLOWS:

No. 2016-583

On motion of Supervisor Withrow, Seconded by Supervisor O'Brien
and approved by the following vote,

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

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

- 1) Approved as recommended
- 2) Denied
- 3) Approved as amended
- 4) Other:

MOTION:

ATTEST: 
ELIZABETH A. KING, Clerk of the Board of Supervisors

File No.

**THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
AGENDA ITEM**

DEPT: Public Works
Urgent Routine

BOARD AGENDA #: *C-3
AGENDA DATE: November 22, 2016

CEO CONCURRENCE: _____ 4/5 Vote Required: Yes No



SUBJECT:

Approval of the Professional Survey Services Master Agreements with Associated Engineering Group, Northstar Engineering Group, Inc., Hawkins and Associates Engineering, Inc., O'Dell Engineering, and Sandis Engineering for On-Call Survey Services

STAFF RECOMMENDATIONS:

1. Approve the Professional Survey Services Master Agreements with Associated Engineering Group, Northstar Engineering Group, Inc., Hawkins and Associates Inc., O'Dell Engineering and Sandis Engineering to provide on-call survey services for various Department of Public Works projects through November 22, 2019, each contract at an amount not to exceed \$500,000.
2. Authorize the Public Works Director to sign the agreements.
3. Authorize the Public Works Director to sign future amendments during the life of the agreement and within the approved compensation limits.

DISCUSSION:

Survey services are an essential part of the project development process. Professional survey services include, but are not limited to:

- Boundary surveys
- Right-of-way surveys
- Topographic surveys and mapping
- Legal descriptions and plat maps
- Records of surveys
- Construction staking
- Setting of monument wells to Stanislaus County Standards
- Map checking
- American Land Title Association surveys

In anticipation of the upcoming design projects in years 2016 through 2019, the need for survey services for current projects, and the County's collection of required survey data, improvement plan design and construction support, Public Works posted a Request for Proposals (RFP). The RFP for on-call survey services was posted to the Modesto Reprographics website on August 1, 2016.

Approval of the Professional Survey Services Master Agreements with Associated Engineering Group, Northstar Engineering Group, Inc., Hawkins and Associates Engineering, Inc., O'Dell Engineering, and Sandis Engineering for On-Call Survey Services

On August 26, 2016, five consultants submitted proposals for review. All consultants were evaluated and scored based on demonstrated competence and qualifications only, as required by Government Code 4526. The consultant's rates were included but not part of the evaluation process. Below is a list of consultants that submitted proposals:

- Associated Engineering
- Northstar Engineering Group, Inc.
- Hawkins and Associates, Inc.
- O'Dell Engineering
- Sandis Engineering

The consultants were evaluated based on the following criteria:

- Professional surveying services provided;
- Experience of Project Manager;
- Qualifications and experience of Key Personnel;
- Demonstration of Professional and Financial Responsibility;
- Experience work with Public Agencies; and,
- References.

Public Works staff selected all five of the consultants, Associated Engineering Group, Northstar Engineering Group, Inc., Hawkins and Associates, Inc., O'Dell Engineering, and Sandis Engineering as being qualified consultants based on the results of the evaluation criteria.

Public Works staff recommends hiring all five consultants for on-call survey services to ensure consultant availability and flexibility in upcoming projects.

The Professional Survey Services Master Agreements for each consultant will commence on November 22, 2016 and will expire on November 22, 2019, with a not to exceed amount of \$500,000 per consulting firm. The County may extend these agreements on a year-to-year basis; however, in no case shall the renewal extend beyond 2 years from the expiration.

Any individual project exceeding \$175,000 will be presented to the Board as a separate agenda item per Public Contract Code Section 22032.

POLICY ISSUE:

Public Contract Code Section 22032 requires The Board of Supervisors' approval for all contracts exceeding \$175,000.

FISCAL IMPACT:

At this time there is no direct fiscal impact. Survey services will be awarded on an as-needed basis per purchasing department policies. Funding for these contracts is available in the Fiscal Year 2016-2017 Public Works project budget.

Approval of the Professional Survey Services Master Agreements with Associated Engineering Group, Northstar Engineering Group, Inc., Hawkins and Associates Engineering, Inc., O'Dell Engineering, and Sandis Engineering for On-Call Survey Services

BOARD OF SUPERVISORS' PRIORITY:

The recommended actions are consistent with the Board's priorities of providing A Safe Community, A Healthy Community and A Well Planned Infrastructure System by ensuring all surveying regulations and requirements applicable to County projects are in compliance.

STAFFING IMPACT:

Existing Public Works staff will administer the necessary consultant contracts and manage the projects.

CONTACT PERSON:

Matt Machado, Public Works Director

Telephone: (209) 525-4153

ATTACHMENT(S):

1. Contract for Professional Survey Services with Associated Engineering Group
2. Contract for Professional Survey Services with Northstar Engineering Group, Inc.
3. Contract for Professional Survey Services with Hawkins and Associates, Inc.
4. Contract for Professional Survey Services with O'Dell Engineering
5. Contract for Professional Survey Services with Sandis Engineering

ATTACHMENT 1

Contract for Professional Survey Services with Associated Engineering Group

STANISLAUS COUNTY PUBLIC WORKS

PROFESSIONAL DESIGN SERVICES MASTER AGREEMENT

This Master Agreement, hereinafter referred to as "Agreement" is made and entered into by and between the County of Stanislaus, a political subdivision of the State of California, hereinafter referred to as "County" and Associated Engineering Group, Inc., hereinafter referred to as "Consultant".

WHEREAS, County, by its Resolution No. 2016-583, adopted on the 22 day of November, 2016, awarded to Consultant an Agreement for On-Call Surveying Services for the Stanislaus County Public Works Department.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions contained herein, the parties hereby agree as follows:

1.0 PROFESSIONAL SERVICES TO BE PROVIDED BY CONSULTANT

1.1 Scope of Services: Consultant shall provide the professional services described in the County's Request for Proposal ("RFP") and Consultant's Response to County's RFP (the "Response") which are incorporated by reference in Section 2.0 entitled "Contract Documents".

Each project added to and to be performed under this Agreement shall be separately approved by the parties. Each project where the cost of services does not exceed \$100,000 shall be approved by purchase order issued by the County Purchasing Agent or designee; projects greater than \$100,000 shall be approved by resolution of the Board of Supervisors for the County.

1.2 Professional Practices: All professional services to be provided by Consultant pursuant to this Agreement shall be provided by personnel experienced in their respective fields and in a manner consistent with the standards of care, diligence and skill ordinarily exercised by professional consultants in similar fields and circumstances in accordance with sound professional practices. Consultant also represents that it is familiar with all laws that may affect its performance of this Agreement and shall advise County of any changes in any laws that may affect Consultant's performance of this Agreement.

1.3 Representations: Consultant represents that it has reviewed the RFP and that in its professional judgment the services to be performed under this Agreement can be performed within the maximum fee set forth in Section 3.1 – Compensation. Consultant represents that it is qualified to perform the professional services required by this Agreement and possesses the necessary licenses and permits required to perform said services.

1.4 Compliance with Laws: Consultant agrees that it shall perform the services required by this Agreement in compliance with all applicable Federal and California laws including, but not limited to, those laws related to minimum hours and wages; occupational health and safety; fair employment and employment practices; workers' compensation insurance and safety in employment; and all other Federal, State and local laws and ordinances applicable to the services required under this Agreement.

1.5 Non-Discrimination: During the performance of this Agreement, Consultant and its officers, employees, agents, representatives or subconsultants shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment 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

disability, medical condition (including genetic characteristics), marital status, age, political affiliation, sex or sexual orientation. Consultant and its officers, employees, agents, representatives or subconsultants 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.

1.6 Non-Exclusive Agreement: Consultant acknowledges that County may enter into agreements with other consultants for services similar to the services that are subject to this Agreement or may have its own employees perform services similar to those services contemplated by this Agreement.

1.7 Delegation and Assignment: This is a personal service contract, and the duties set forth herein shall not be delegated or assigned to any person or entity without the prior written consent of County. Consultant may engage a subconsultant(s) as permitted by law and may employ other personnel to perform services contemplated by this Agreement at Consultant's sole cost and expense.

1.8 Subcontracting: Nothing contained in this contract or otherwise, shall create any contractual relation between County and any subconsultants(s), and no subconsultant shall relieve Consultant of its responsibilities and obligations hereunder. Consultant agrees to be as fully responsible to County for the acts and omissions of its subconsultant(s) and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by Consultant. Consultant's obligation to pay its subconsultant(s) is an independent obligation from County's obligation to make payments to the Consultant.

Consultant shall perform the services with resources available within its own organization; and no portion of the work pertinent to this Agreement shall be subcontracted without written authorization by the County, except that, which is expressly identified in the approved Cost Proposal.

Any substitution of subconsultants must be approved in writing by the County.

1.9 Conflict of Interest: Consultant shall disclose any financial, business, or other relationship with County that may have an impact upon the outcome of this Agreement, or any ensuing County construction project. The Consultant shall also list current clients who may have a financial interest in the outcome of this Agreement, or any ensuing County construction project, which will follow.

Consultant represents that it has no interest and shall not acquire any interest direct or indirect which conflicts, or has the appearance of conflicting, in any manner or degree with the performance of the work and services under this Agreement.

Consultant hereby certifies that neither Consultant, nor any firm affiliated with the Consultant will bid on any construction agreement, or on any agreement to provide construction inspection for any construction project resulting from this Agreement. An affiliated firm is one, which is subject to the control of the same persons through joint ownership, or otherwise.

Except for subconsultants whose services are limited to providing surveying or materials testing information, no subconsultant who has provided design services in connection with this Agreement shall be eligible to bid on any construction agreement, or on any agreement to provide construction inspection for any construction project resulting from this Agreement.

1.10 Covenant Against Contingent Fees: Consultant warrants that he/she has not employed or retained any company or person, other than a bona fide employee working for the consultant; to solicit or secure this Master Agreement; and that he/she has not paid or agreed to pay any company or person other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award, or formation of this Master Agreement. For breach or violation of this warranty, the local agency shall have the right to annul this Master Agreement without liability, or at its discretion; to deduct from the Master Agreement price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

1.11 Rebates, Kickbacks or Other Unlawful Consideration: The Consultant warrants that this Master Agreement was not obtained or secured through rebates, kickbacks or other unlawful consideration, either promised or paid to any County employee. For breach or violation of this warranty, County shall have the right in its discretion; to terminate the agreement without liability; to pay only for the value of the work actually performed; or to deduct from the agreement price; or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

1.12 Prohibition of Expending State or Federal Funds for Lobbying: The Consultant certifies to the best of his or her knowledge and belief that:

No, state, federal or local agency appropriated funds have been paid, or will be paid by-or-on behalf of the Consultant to any person for influencing or attempting to influence an officer or employee of any state or federal agency; a Member of the State Legislature or United States Congress; an officer or employee of the Legislature or Congress; or any employee of a Member of the Legislature or Congress, in connection with the awarding of any state or federal contract; the making of any state or federal grant; the making of any state or federal loan; the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any state or federal contract, grant, loan, or cooperative agreement.

If any funds other than federal appropriated funds have been paid, or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency; a Member of Congress; an officer or employee of Congress, or an employee of a Member of Congress; in connection with this federal contract, grant, loan, or cooperative agreement; the Consultant shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Consultant also agrees by signing this document that he or she shall require that the language of this certification be included in all lower-tier subcontracts, which exceed \$100,000, and that all such sub recipients shall certify and disclose accordingly.

1.13 Debarment and Suspension Certification: The Consultant's signature affixed herein, shall constitute a certification under penalty of perjury under the laws of the State of California, that the Consultant has complied with Title 49, Code of Federal Regulations, Part 29, Debarment and Suspension Certificate, which certifies that he/she or any person associated therewith in the capacity of owner,

partner, director, officer, or manager, is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency; has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years; does not have a proposed debarment pending; and has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct with the past three (3) years. Any exceptions to this certification must be disclosed to the County.

Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining Consultant responsibility. Disclosures must indicate to who exceptions apply, initiating agency, and dates of actions.

2.0 CONTRACT DOCUMENTS

Contract documents consist of the following documents, including all changes, addenda, and modifications thereto:

1. Agreement and all attachments
 - a. Exhibit A – Fee Schedule
 - b. Exhibit B – Insurance Requirements
2. County's Request for Proposal
3. Consultant's Response

3.0 COMPENSATION AND BILLING

3.1 Compensation: For each task or project let under this Agreement Consultant shall be paid in accordance with the fee schedule set forth in Exhibit "A", attached hereto and made a part of this Agreement (the "Fee Schedule"). Consultant will be compensated on a time and materials basis, based on the hours worked by the Consultant's employees or subconsultants at the hourly rates specified in the Fee Schedule. Fee Schedule rates shall include direct salary costs, employee benefits, and overhead. The rates stated in the Fee Schedule are not adjustable during the term of this Agreement. Consultant's compensation under this Agreement shall in no case exceed Five Hundred Thousand Dollars (\$500,000) during the term of this Agreement. The County may retain five percent of all periodic or progress payments made to the Consultant until completion and acceptance of all work tasks and County shall have right to withhold payment from Consultant for any unsatisfactory service until such time service is performed satisfactorily.

3.2 Reimbursements: In addition to the aforementioned fees, Consultant will be reimbursed for any expenses specifically set forth in a Project Scope of Work. All such reimbursement amounts are limited to those costs and expenses that are reasonable, necessary and actually incurred by the Consultant in connection with the services provided. The County shall not pay a mark up on any item of reimbursement. The County shall not pay for any item of overhead such as telephone, facsimile, postage, etc. All requests for reimbursement shall be accompanied by a copy of the original invoice.

3.3 Additional Services: Consultant shall not receive compensation for any services provided outside the scope of services specified in the County's ("RFP") and the Consultant's ("Response") and also as specified in each Project Scope of Services unless the County or the Project Manager for the Project, prior to Consultant performing the additional services, approves such additional services in writing. It is specifically understood that oral requests and/or approvals of such additional services or additional compensation shall be barred and are unenforceable.

3.4 Method of Billing: Consultant may submit invoices to County's Project Manager for approval on a progress basis, but no more often than once each calendar month. Said invoice shall be based on the total of all Consultants' services that have been completed to County's sole satisfaction. County shall pay Consultant's invoice within forty-five (45) days from the date County receives said invoice. Each invoice shall describe in detail, the services performed and the associated percentage of tasks completed. Any additional services approved and performed pursuant to this Agreement shall be designated as "Additional Services" and shall identify the number of the authorized change order, where applicable, on all invoices.

3.5 Records and Audits: Records of Consultant's services relating to this Agreement shall be maintained in accordance with generally recognized accounting principles and shall be made available to County, its Project Manager, The State, State Auditor, FHWA, or any duly authorized representative of the Federal Government for inspection and/or audit at mutually convenient times for a period of three (3) years from the termination of this Agreement.

3.6 Extension of Term of Agreement: The original Fee Schedule shall apply to the extension of the term of the agreement unless renegotiated and approved by both parties in writing.

3.7 Cost Principles: The Consultant agrees that the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., shall be used to determine the allowability of cost individual items.

The Consultant also agrees to comply with federal procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

Any costs for which payment has been made to Consultant that are determined by subsequent audit to be unallowable under 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., are subject to repayment by Consultant to the County.

All subcontracts in excess of \$25,000 shall contain the above provisions.

4.0 TIME OF PERFORMANCE

4.1 Commencement and Completion of Work: The professional services to be performed pursuant to this Agreement shall commence within five (5) days after County delivers its Notice to Proceed for each separately approved Project. Said services shall be performed in strict compliance with the Project Schedule approved by County as set forth in each Project Scope of Services. Each Project Schedule may be amended by mutual agreement of the parties. Failure to commence work in a timely manner and/or diligently pursue work to completion may be grounds for termination of this Agreement.

4.2 Excusable Delays: Neither party shall be responsible for delays or lack of performance resulting from acts beyond the reasonable control of the party or parties. Such acts shall include, but not be limited to, acts of God, fire, strikes, material shortages, compliance with laws or regulations, riots, acts of war, or any other conditions beyond the reasonable control of a party.

5.0 TERM OF CONTRACT AND TERMINATION

5.1 Term: This Agreement shall commence on the date of the award of this agreement and shall continue for a period of thirty-six months, or until all work on each project let during the thirty-six

month period is completed, unless previously terminated as provided herein or as otherwise agreed to in writing by the parties. Additionally, the term of this agreement may be extended for an additional twenty-four months by the parties mutual agreement.

5.2 Notice of Termination: The County reserves and has the right and privilege of canceling, suspending or abandoning the execution of all or any part of the work contemplated by this Agreement, with or without cause, at any time, by providing written notice to Consultant. The termination of this Agreement shall be deemed effective upon receipt of the notice of termination. In the event of such termination, Consultant shall immediately stop rendering services under this Agreement unless directed otherwise by the County.

5.3 Compensation: In the event of termination, County shall pay Consultant for reasonable costs incurred and professional services satisfactorily performed up to and including the date of County's written notice of termination. Compensation for work in progress shall be prorated as to the percentage of work completed as of the effective date of termination in accordance with the fees set forth in Exhibit "A". In ascertaining the professional services actually rendered hereunder up to the effective date of termination of this Agreement, consideration shall be given to both completed work and work in progress, to complete and incomplete drawings, and to other documents pertaining to the services contemplated herein whether delivered to the County or in the possession of the Consultant.

5.4 Documents: In the event of termination of this Agreement, all documents prepared by Consultant in its performance of this Agreement including, but not limited to, finished or unfinished design, development and construction documents, data studies, drawings, maps and reports, shall be delivered to the County within ten (10) days of delivery of termination notice to Consultant, at no cost to County. Any use of uncompleted documents without specific written authorization from Consultant shall be at County's sole risk and without liability or legal expense to Consultant.

6.0 INSURANCE REQUIREMENTS

6.1 Coverage Required: Contractor shall obtain, and maintain at all times during the term of this Agreement, insurance coverage in the amounts and coverage specified in the attached "Exhibit B".

7.0 INDEMNIFICATION

7.1 Indemnification: To the fullest extent allowed by law, Consultant shall defend, indemnify, and hold harmless the County and its officers, directors, officials, agents, employees, volunteers and representatives (collectively, "Indemnitee") from and against any and all claims, suits, actions, losses, injuries, damages or expenses of every name, kind, and description, including litigation costs and reasonable attorney's fees incurred, (collectively, "losses") which are founded upon, arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, the alleged negligence, recklessness, or willful misconduct of Consultant, its officers, agents, employees, volunteers, representatives, contractors and subconsultants, excluding, however, such liabilities caused in part by the sole negligence, active negligence or willful misconduct of the County, its agents, employees, and representatives. These indemnification obligations shall not be limited by any assertion or finding that (1) the person or entity indemnified is liable by reason of non-delegable duty, or (2) the losses were caused in part by the negligence of, breach of contract by, or violation of law by Indemnitee. Nothing in this Agreement, including the provisions of this paragraph, shall constitute a waiver or limitation of any rights which Indemnitee may have under applicable law, including without limitation, the right to implied indemnity.

7.2 Duty to Defend: The duty of Consultant to indemnify and save harmless as set forth

herein, shall include both the duty to indemnify and at Consultant's own cost and expense the duty to defend as set forth in Section 2778 of the California Civil Code and as limited in section 2782.8 of the California Civil Code. This duty to defend arises immediately when such claim is made and shall be independent of any finding of negligence and shall arise regardless of any claim or assertion that Indemnitee caused or contributed to the Losses. Consultant shall provide legal counsel acceptable to the County.

7.3 Duty to Cooperate: Each party shall notify the other party within ten (10) days in writing of any claim or damage related to activities performed under this Agreement. The parties shall cooperate with each other in the investigation and disposition of any claim arising out of the activities under this Agreement. Specifically, Consultant shall take all steps necessary to assist the County in the defense of any claim brought by a contractor hired to construct the Project regarding any errors, flaws, and/or omissions in the plans or specifications of the Project.

7.4 Patent Rights: Consultant represents that professional services provided by Consultant pursuant to this Agreement does not infringe on any other copyrighted work. Consultant shall defend, indemnify and hold harmless the County from all loss, cost, damage, expense, liability or claims, including attorneys' fees, court costs, litigation expenses and expert consultant or witness fees, that may at any time arise for any infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark or any other proprietary right of any person or persons in consequence of the use by the County of any articles or services supplied under this agreement.

The foregoing provisions in this section "Indemnification" shall survive the term and termination of this Agreement.

8.0 GENERAL PROVISIONS

8.1 Entire Agreement: This Agreement constitutes the entire Agreement between the parties with respect to any matter referenced herein and supersedes any and all other prior writings and oral negotiations. This Agreement may be modified only in writing, and signed by the parties in interest at the time of such modification. The terms of this Agreement shall prevail over any inconsistent provision in any other contract document appurtenant hereto, including exhibits to this Agreement.

8.2 Representatives: The Director of the Stanislaus County Department of Public Works, or his designee, shall be the representative of County for purposes of this Agreement and may issue all consents, approvals, directives and agreements on behalf of the County, called for by this Agreement, except as otherwise expressly provided in this Agreement. Consultant shall designate a representative for purposes of this Agreement who shall be authorized to issue all consents, approvals, directives and agreements on behalf of Consultant called for by this Agreement, except as otherwise expressly provided in this Agreement.

8.3 Project Managers: County shall designate a Project Manager to work directly with Consultant in the performance of this Agreement. Consultant shall designate a Project Manager who shall represent it and be its agent in all consultations with County during the term of this Agreement. Consultant or its Project Manager shall attend and assist in all coordination meetings called by County.

8.4 Designated Personnel: A material covenant of this agreement is that the Consultant shall assign the individuals designated below to perform the functions designated so long as they continue in the employ of the Consultant. The designated individuals shall, so long as their performance continues to be acceptable to County, remain in charge of the services for the Project from beginning through

completion of services.

- a. Project Manager: Dave Skidmore, President.
- b. Lead/Manager: n/a

8.5 Removal of Personnel or Sub-Consultants: If the County, in its sole discretion at any time during the term of this agreement, desires the removal of any person or sub-consultant assigned by Consultant to perform services, then the Consultant shall remove such person or consultant immediately upon receiving notice from the County.

8.6 Notices: Any notices, documents, correspondence or other communications concerning this Agreement or the work hereunder may be provided by personal delivery, facsimile or mail and shall be addressed as set forth below. Such communication shall be deemed served or delivered: a) at the time of delivery if such communication is sent by personal delivery; b) at the time of transmission if such communication is sent by facsimile; and c) 48 hours after deposit in the U.S. Mail as reflected by the official U.S. postmark if such communication is sent through regular United States mail.

If to County: Stanislaus County Public Works
Attn: Chris Brady, Deputy Director
1716 Morgan Road
Modesto, CA 95358

If to Consultant: Associated Engineering Group, Inc.
Attn: Dave Skidmore, President
4206 Technology Drive, Ste. 4
Modesto, CA 95356

8.7 Attorneys' Fees: In the event that litigation is brought by any party in connection with this Agreement, the prevailing party shall be entitled to recover from the opposing party all costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party in the exercise of any of its rights or remedies hereunder or the enforcement of any of the terms, conditions, or provisions hereof.

8.8 Claims Filed by County's Construction Contractor: If claims are filed by County's construction contractor relating to work performed by Consultant's personnel, and additional information or assistance from Consultant's personnel is required in order to evaluate or defend against such claims; Consultant agrees to make its personnel available for consultation with County's construction contract administration and legal staff and for testimony, if necessary, at depositions and at trial or arbitration proceedings.

Consultant's personnel that County considers essential to assist in defending against construction contractor claims will be made available on reasonable notice from County. Consultation or testimony will be reimbursed at the same rates, including travel costs that are being paid for Consultant's personnel services under this contract.

8.9 Governing Law: This Agreement shall be governed by and construed under the laws of the State of California without giving effect to that body of laws pertaining to conflict of laws. In the event of any legal action to enforce or interpret this Agreement, the parties hereto agree that the sole and exclusive venue shall be a court of competent jurisdiction located in Stanislaus County, California.

8.10 Assignment: Consultant shall not voluntarily or by operation of law assign, transfer,

sublet or encumber all or any part of Consultant's interest in this Agreement without County's prior written consent. Any attempted assignment, transfer, subletting or encumbrance shall be void and shall constitute a breach of this Agreement and cause for termination of this Agreement. Regardless of County's consent, no subletting or assignment shall release Consultant of Consultant's obligation to perform all other obligations to be performed by Consultant hereunder for the term of this Agreement.

8.11 Independent Contractor: Consultant is and shall be acting at all times as an independent contractor and not as an employee of County. Consultant shall secure, at his expense, and be responsible for any and all payment of Income Tax, Social Security, State Disability Insurance Compensation, Unemployment Compensation, and other payroll deductions for Consultant and its officers, agents, and employees, and all business licenses, if any are required, in connection with the services to be performed hereunder. 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.

8.12 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.

Permission to Disclose information on one occasion, or public hearing held by the County relating to the contract, shall not authorize the Consultant to further disclose such information, or disseminate the same on any other occasion.

The Consultant shall not comment publicly to the press or any other media regarding the contract or the County's actions on the same, except to the County's staff, Consultant's own personnel involved in the performance of this contract, at public hearings or in response to questions from a Legislative committee.

The Consultant shall not issue any news release or public relations item of any nature, whatsoever, regarding work performed or to be performed under this contract without prior review of the contents thereof by the County, and receipt of the County's written permission.

Any subcontract entered into as a result of this contract shall contain all of the provisions of this Article.

8.13 National Labor Relations Board Certification: In accordance with Public Contract Code Section 10296, Consultant hereby states under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against Consultant with the immediately preceding two-year period, because of Consultant's failure to comply with an order of a federal court that orders Consultant to comply with an order of the National Labor Relations Board.

8.14 Ownership of Documents: Any interest, including copyright interests, of Consultant or its contractors or subconsultants in studies, reports, memoranda, computational sheets, drawings, plans or any other documents, including electronic data, prepared in connection with the Services, shall be the property of County. To the extent permitted by law, work product produced under this Agreement shall be deemed works for hire and all copyrights in such works shall be the property of the County. In the event that it is ever determined that any works created by Consultant or its subconsultants under this Agreement are not works for hire, Consultant hereby assigns to County all copyrights to such works. With the County's prior written approval, Consultant may retain and use copies of such works for reference and as documentation of experience and capabilities.

8.15 Reuse of Design Documents: Should the County desire to reuse the documents

specified above and not use the services of the Consultant, then the County agrees to require the new consultant to assume any and all obligations for the reuse of the documents, and the County releases Consultant and its subconsultants from all liability associated with the reuse of such documents.

8.16 Public Records Act Disclosure: Consultant has been advised and is aware that all reports, documents, information and data including, but not limited to, computer tapes, discs or files furnished or prepared by Consultant, or any of its subconsultants, and provided to County may be subject to public disclosure as required by the California Public Records Act (California Government Code Section 6250 et. seq.). Exceptions to public disclosure may be those documents or information that qualifies as trade secrets, as that term is defined in the California Government Code Section 6254.7, and of which Consultant informs County of such trade secret. The County will endeavor to maintain as confidential all information obtained by it that is designated as a trade secret. The County shall not, in any way, be liable or responsible for the disclosure of any trade secret including, without limitation, those records so marked if disclosure is deemed to be required by law or by order of the Court.

8.17 Responsibility for Errors: Consultant shall be responsible for its work and results under this Agreement. Consultant, when requested, shall furnish clarification and/or explanation as may be required by the County's representative, regarding any services rendered under this Agreement at no additional cost to County. In the event that an error or omission attributable to Consultant occurs, then Consultant shall, at no cost to County, provide all necessary design drawings, estimates and other Consultant professional services necessary to rectify and correct the matter to the sole satisfaction of County and to participate in any meeting required with regard to the correction.

8.18 Order of Precedence: In the event of inconsistency among any of the Contract Documents, the following order of precedence applies:

1. This agreement shall prevail over all other documents;
2. The attachments to this agreement shall prevail over the RFP and Response;
3. The RFP shall prevail over the Response.

8.19 Costs: Each party shall bear its own costs and fees incurred in the preparation and negotiation of this Agreement and in the performance of its obligations hereunder except as expressly provided herein.

8.20 No Third Party Beneficiary Rights: This Agreement is entered into for the sole benefit of County and Consultant and no other parties are intended to be direct or incidental beneficiaries of this Agreement and no third party shall have any right in, under or to this Agreement.

8.21 Construction: The parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises with respect to this Agreement, this Agreement shall be construed as if drafted jointly by the parties and in accordance with its fair meaning. There shall be no presumption or burden of proof favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

8.22 Amendments: This Agreement may be amended only by a writing executed by the parties hereto or their respective successors and assigns.

8.23 Waiver: The delay or failure of either party at any time to require performance or compliance by the other of any of its obligations or agreements shall in no way be deemed a waiver of those rights to require such performance or compliance. No waiver of any provision of this Agreement

shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought. The waiver of any right or remedy in respect to any occurrence or event shall not be deemed a waiver of any right or remedy in respect to any other occurrence or event, nor shall any waiver constitute a continuing waiver.


8.24 Severability: If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable in any circumstance, such determination shall not affect the validity or enforceability of the remaining terms and provisions hereof or of the offending provision in any other circumstance. Notwithstanding the foregoing, if the value of this Agreement, based upon the substantial benefit of the bargain for any party is materially impaired, which determination as made by the presiding court or arbitrator of competent jurisdiction shall be binding, then both parties agree to substitute such provision(s) through good faith negotiations.

8.25 Counterparts: This Agreement may be executed in one or more counterparts, each of which shall be deemed an original. All counterparts shall be construed together and shall constitute one agreement.

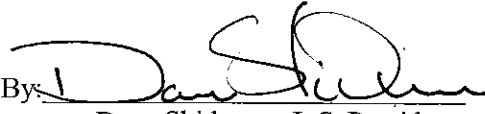
8.26 Corporate Authority: The persons executing this Agreement on behalf of the parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said parties and that by doing so, the parties hereto are formally bound to the provisions of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by and through their respective authorized officers:

COUNTY OF STANISLAUS

By: 
Matt Machado, Director
Department of Public Works

ASSOCIATED ENGINEERING GROUP, INC.

By: 
Dave Skidmore, L.S. President
Principal, Land Surveyor
21

APPROVED AS TO FORM:

John P. Doering
County Counsel

By: 
Amanda DeHart
Deputy County Counsel

EXHIBIT A
FEE SCHEDULE



**ASSOCIATED ENGINEERING GROUP
HOURLY RATE SCHEDULE
ON-CALL SURVEYING SERVICES
STANISLAUS COUNTY PUBLIC WORKS DEPARTMENT
2016**

ON-CALL SURVEYING SERVICES

Land Surveyor	\$ 160.00
Assistant Surveyor	130.00
Survey Technician	110.00
Field Technician (Robot-GPS)	145.00
Two-Person Field Crew	180.00
Field Technician (Robot-GPS) (Prevailing Wage)	175.00
Two-Person Field Crew (Prevailing Wage)	235.00
Technical Assistant	65.00

**Client authorized overtime will be invoiced at 1½ times the above rates.
This Rate Schedule is effective January 1, 2016 through December 31, 2016 and
is subject to change annually.**

EXHIBIT B

INSURANCE REQUIREMENTS

INSURANCE REQUIREMENTS

Minimum Scope and Limits of Insurance: Consultant, at its sole cost and expense, for the full term of this Agreement (and any extensions thereof), shall obtain and maintain, at minimum, compliance with all of the following insurance coverage(s) and requirements. If Consultant normally carries insurance in an amount greater than the minimum amount listed below, that greater amount shall become the minimum required amount of insurance for purposes of this Agreement. The insurance listed below shall have a retroactive date of placement prior to, or coinciding with, the date services are first provided that are governed by the terms of this Agreement:

- (a) Comprehensive general liability, including premises-operations, products/ completed operations, broad form property damage, blanket contractual liability, independent contractors, personal injury with a policy limit of not less than Two Million Dollars (\$2,000,000), combined single limits, per occurrence and aggregate. 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.
- (b) Automobile liability for owned vehicles, hired, and non-owned vehicles, with a policy limit of not less than One Million Dollars (\$1,000,000), combined single limits, per occurrence and aggregate.
- (c) Workers' compensation insurance as required by the State of California.
- (d) Professional errors and omissions ("E&O") liability insurance with policy limits of not less than Two Million Dollars (\$2,000,000), combined single limit for each occurrence. If Consultant cannot provide an occurrence policy, Consultant shall provide insurance covering claims made as a result of performance of Work on this Project and shall maintain such insurance in effect for not less than three years following Final Completion of the Project.

Endorsements: The Consultant shall obtain a specific endorsement to all required insurance policies, except Professional Liability insurance, naming the County of Stanislaus, its Officers, Directors, Officials, Agents, Employees and Volunteers as additional insureds for at least three years after the completion of the work to be performed under this Agreement, but, to the extent that any insurance issued to Consultant in effect after the expiration of three years provides additional insured coverage to parties Consultant agreed in writing to name as an additional insured, then Consultant shall have the obligation under this contract to obtain such additional insured coverage for the County, under any and all policies Consultant has 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 its subconsultants;
- (b) Ongoing 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.
- (e) 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.

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. 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.

Certificates of Insurance: At least ten (10) days prior to the date the Consultant begins performance of its obligations under this Agreement, Consultant 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 subconsultants 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.

Non-limiting: Nothing in this Section or the insurance described herein shall be construed as limiting in any way, the indemnification provisions contained in this Agreement, or the liability of Consultant and Consultant's officers, employees, agents, representatives or subconsultants for payments of damages to persons or property.

Primary Insurance: The Consultant's insurance coverage shall be primary insurance regarding the County of Stanislaus, its Officers, Directors, Officials, Agents, Employees and Volunteers. Any insurance or self-insurance maintained by the County of Stanislaus, its Officers, Directors, Officials, Agents, Employees and Volunteers shall be excess of the Consultant's insurance and shall not contribute with Consultant's insurance. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the County or its officers, 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. Any and all insurances cared by it shall be deemed liability coverage for any and all actions it performs in connection with this Contract.

Cancellation of Insurance: 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. Consultant shall maintain such coverage in effect for three years after substantial completion of the project to the extent it is commercially available at reasonable rates.

California Admitted Insurer: 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.

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

STANISLAUS COUNTY PUBLIC WORKS

PROFESSIONAL DESIGN SERVICES MASTER AGREEMENT

This Master Agreement, hereinafter referred to as "Agreement" is made and entered into by and between the County of Stanislaus, a political subdivision of the State of California, hereinafter referred to as "County" and Hawkins & Associates Engineering, Inc., hereinafter referred to as "Consultant".

WHEREAS, County, by its Resolution No. 2016-583, adopted on the 22 day of November, 2016, awarded to Consultant an Agreement for On-Call Surveying Services for the Stanislaus County Public Works Department.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions contained herein, the parties hereby agree as follows:

1.0 PROFESSIONAL SERVICES TO BE PROVIDED BY CONSULTANT

1.1 Scope of Services: Consultant shall provide the professional services described in the County's Request for Proposal ("RFP") and Consultant's Response to County's RFP (the "Response") which are incorporated by reference in Section 2.0 entitled "Contract Documents".

Each project added to and to be performed under this Agreement shall be separately approved by the parties. Each project where the cost of services does not exceed \$100,000 shall be approved by purchase order issued by the County Purchasing Agent or designee; projects greater than \$100,000 shall be approved by resolution of the Board of Supervisors for the County.

1.2 Professional Practices: All professional services to be provided by Consultant pursuant to this Agreement shall be provided by personnel experienced in their respective fields and in a manner consistent with the standards of care, diligence and skill ordinarily exercised by professional consultants in similar fields and circumstances in accordance with sound professional practices. Consultant also represents that it is familiar with all laws that may affect its performance of this Agreement and shall advise County of any changes in any laws that may affect Consultant's performance of this Agreement.

1.3 Representations: Consultant represents that it has reviewed the RFP and that in its professional judgment the services to be performed under this Agreement can be performed within the maximum fee set forth in Section 3.1 – Compensation. Consultant represents that it is qualified to perform the professional services required by this Agreement and possesses the necessary licenses and permits required to perform said services.

1.4 Compliance with Laws: Consultant agrees that it shall perform the services required by this Agreement in compliance with all applicable Federal and California laws including, but not limited to, those laws related to minimum hours and wages; occupational health and safety; fair employment and employment practices; workers' compensation insurance and safety in employment; and all other Federal, State and local laws and ordinances applicable to the services required under this Agreement.

1.5 Non-Discrimination: During the performance of this Agreement, Consultant and its officers, employees, agents, representatives or subconsultants shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment 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

disability, medical condition (including genetic characteristics), marital status, age, political affiliation, sex or sexual orientation. Consultant and its officers, employees, agents, representatives or subconsultants 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.

1.6 Non-Exclusive Agreement: Consultant acknowledges that County may enter into agreements with other consultants for services similar to the services that are subject to this Agreement or may have its own employees perform services similar to those services contemplated by this Agreement.

1.7 Delegation and Assignment: This is a personal service contract, and the duties set forth herein shall not be delegated or assigned to any person or entity without the prior written consent of County. Consultant may engage a subconsultant(s) as permitted by law and may employ other personnel to perform services contemplated by this Agreement at Consultant's sole cost and expense.

1.8 Subcontracting: Nothing contained in this contract or otherwise, shall create any contractual relation between County and any subconsultants(s), and no subconsultant shall relieve Consultant of its responsibilities and obligations hereunder. Consultant agrees to be as fully responsible to County for the acts and omissions of its subconsultant(s) and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by Consultant. Consultant's obligation to pay its subconsultant(s) is an independent obligation from County's obligation to make payments to the Consultant.

Consultant shall perform the services with resources available within its own organization; and no portion of the work pertinent to this Agreement shall be subcontracted without written authorization by the County, except that, which is expressly identified in the approved Cost Proposal.

Any substitution of subconsultants must be approved in writing by the County.

1.9 Conflict of Interest: Consultant shall disclose any financial, business, or other relationship with County that may have an impact upon the outcome of this Agreement, or any ensuing County construction project. The Consultant shall also list current clients who may have a financial interest in the outcome of this Agreement, or any ensuing County construction project, which will follow.

Consultant represents that it has no interest and shall not acquire any interest direct or indirect which conflicts, or has the appearance of conflicting, in any manner or degree with the performance of the work and services under this Agreement.

Consultant hereby certifies that neither Consultant, nor any firm affiliated with the Consultant will bid on any construction agreement, or on any agreement to provide construction inspection for any construction project resulting from this Agreement. An affiliated firm is one, which is subject to the control of the same persons through joint ownership, or otherwise.

Except for subconsultants whose services are limited to providing surveying or materials testing information, no subconsultant who has provided design services in connection with this Agreement shall be eligible to bid on any construction agreement, or on any agreement to provide construction inspection for any construction project resulting from this Agreement.

1.10 Covenant Against Contingent Fees: Consultant warrants that he/she has not employed or retained any company or person, other than a bona fide employee working for the consultant; to solicit or secure this Master Agreement; and that he/she has not paid or agreed to pay any company or person other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award, or formation of this Master Agreement. For breach or violation of this warranty, the local agency shall have the right to annul this Master Agreement without liability, or at its discretion; to deduct from the Master Agreement price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

1.11 Rebates, Kickbacks or Other Unlawful Consideration: The Consultant warrants that this Master Agreement was not obtained or secured through rebates, kickbacks or other unlawful consideration, either promised or paid to any County employee. For breach or violation of this warranty, County shall have the right in its discretion; to terminate the agreement without liability; to pay only for the value of the work actually performed; or to deduct from the agreement price; or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

1.12 Prohibition of Expending State or Federal Funds for Lobbying: The Consultant certifies to the best of his or her knowledge and belief that:

No, state, federal or local agency appropriated funds have been paid, or will be paid by-or-on behalf of the Consultant to any person for influencing or attempting to influence an officer or employee of any state or federal agency; a Member of the State Legislature or United States Congress; an officer or employee of the Legislature or Congress; or any employee of a Member of the Legislature or Congress, in connection with the awarding of any state or federal contract; the making of any state or federal grant; the making of any state or federal loan; the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any state or federal contract, grant, loan, or cooperative agreement.

If any funds other than federal appropriated funds have been paid, or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency; a Member of Congress; an officer or employee of Congress, or an employee of a Member of Congress; in connection with this federal contract, grant, loan, or cooperative agreement; the Consultant shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Consultant also agrees by signing this document that he or she shall require that the language of this certification be included in all lower-tier subcontracts, which exceed \$100,000, and that all such sub recipients shall certify and disclose accordingly.

1.13 Debarment and Suspension Certification: The Consultant's signature affixed herein, shall constitute a certification under penalty of perjury under the laws of the State of California, that the Consultant has complied with Title 49, Code of Federal Regulations, Part 29, Debarment and Suspension Certificate, which certifies that he/she or any person associated therewith in the capacity of owner,

partner, director, officer, or manager, is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency; has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years; does not have a proposed debarment pending; and has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct with the past three (3) years. Any exceptions to this certification must be disclosed to the County.

Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining Consultant responsibility. Disclosures must indicate to who exceptions apply, initiating agency, and dates of actions.

2.0 CONTRACT DOCUMENTS

Contract documents consist of the following documents, including all changes, addenda, and modifications thereto:

1. Agreement and all attachments
 - a. Exhibit A – Fee Schedule
 - b. Exhibit B – Insurance Requirements
2. County's Request for Proposal
3. Consultant's Response

3.0 COMPENSATION AND BILLING

3.1 Compensation: For each task or project let under this Agreement Consultant shall be paid in accordance with the fee schedule set forth in Exhibit "A", attached hereto and made a part of this Agreement (the "Fee Schedule"). Consultant will be compensated on a time and materials basis, based on the hours worked by the Consultant's employees or subconsultants at the hourly rates specified in the Fee Schedule. Fee Schedule rates shall include direct salary costs, employee benefits, and overhead. The rates stated in the Fee Schedule are not adjustable during the term of this Agreement. Consultant's compensation under this Agreement shall in no case exceed Five Hundred Thousand Dollars (\$500,000) during the term of this Agreement. The County may retain five percent of all periodic or progress payments made to the Consultant until completion and acceptance of all work tasks and County shall have right to withhold payment from Consultant for any unsatisfactory service until such time service is performed satisfactorily.

3.2 Reimbursements: In addition to the aforementioned fees, Consultant will be reimbursed for any expenses specifically set forth in a Project Scope of Work. All such reimbursement amounts are limited to those costs and expenses that are reasonable, necessary and actually incurred by the Consultant in connection with the services provided. The County shall not pay a mark up on any item of reimbursement. The County shall not pay for any item of overhead such as telephone, facsimile, postage, etc. All requests for reimbursement shall be accompanied by a copy of the original invoice.

3.3 Additional Services: Consultant shall not receive compensation for any services provided outside the scope of services specified in the County's ("RFP") and the Consultant's ("Response") and also as specified in each Project Scope of Services unless the County or the Project Manager for the Project, prior to Consultant performing the additional services, approves such additional services in writing. It is specifically understood that oral requests and/or approvals of such additional services or additional compensation shall be barred and are unenforceable.

3.4 Method of Billing: Consultant may submit invoices to County's Project Manager for approval on a progress basis, but no more often than once each calendar month. Said invoice shall be based on the total of all Consultants' services that have been completed to County's sole satisfaction. County shall pay Consultant's invoice within forty-five (45) days from the date County receives said invoice. Each invoice shall describe in detail, the services performed and the associated percentage of tasks completed. Any additional services approved and performed pursuant to this Agreement shall be designated as "Additional Services" and shall identify the number of the authorized change order, where applicable, on all invoices.

3.5 Records and Audits: Records of Consultant's services relating to this Agreement shall be maintained in accordance with generally recognized accounting principles and shall be made available to County, its Project Manager, The State, State Auditor, FHWA, or any duly authorized representative of the Federal Government for inspection and/or audit at mutually convenient times for a period of three (3) years from the termination of this Agreement.

3.6 Extension of Term of Agreement: The original Fee Schedule shall apply to the extension of the term of the agreement unless renegotiated and approved by both parties in writing.

3.7 Cost Principles: The Consultant agrees that the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., shall be used to determine the allowability of cost individual items.

The Consultant also agrees to comply with federal procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

Any costs for which payment has been made to Consultant that are determined by subsequent audit to be unallowable under 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., are subject to repayment by Consultant to the County.

All subcontracts in excess of \$25,000 shall contain the above provisions.

4.0 TIME OF PERFORMANCE

4.1 Commencement and Completion of Work: The professional services to be performed pursuant to this Agreement shall commence within five (5) days after County delivers its Notice to Proceed for each separately approved Project. Said services shall be performed in strict compliance with the Project Schedule approved by County as set forth in each Project Scope of Services. Each Project Schedule may be amended by mutual agreement of the parties. Failure to commence work in a timely manner and/or diligently pursue work to completion may be grounds for termination of this Agreement.

4.2 Excusable Delays: Neither party shall be responsible for delays or lack of performance resulting from acts beyond the reasonable control of the party or parties. Such acts shall include, but not be limited to, acts of God, fire, strikes, material shortages, compliance with laws or regulations, riots, acts of war, or any other conditions beyond the reasonable control of a party.

5.0 TERM OF CONTRACT AND TERMINATION

5.1 Term: This Agreement shall commence on the date of the award of this agreement and shall continue for a period of thirty-six months, or until all work on each project let during the thirty-six

month period is completed, unless previously terminated as provided herein or as otherwise agreed to in writing by the parties. Additionally, the term of this agreement may be extended for an additional twenty-four months by the parties mutual agreement.

5.2 Notice of Termination: The County reserves and has the right and privilege of canceling, suspending or abandoning the execution of all or any part of the work contemplated by this Agreement, with or without cause, at any time, by providing written notice to Consultant. The termination of this Agreement shall be deemed effective upon receipt of the notice of termination. In the event of such termination, Consultant shall immediately stop rendering services under this Agreement unless directed otherwise by the County.

5.3 Compensation: In the event of termination, County shall pay Consultant for reasonable costs incurred and professional services satisfactorily performed up to and including the date of County's written notice of termination. Compensation for work in progress shall be prorated as to the percentage of work completed as of the effective date of termination in accordance with the fees set forth in Exhibit "A". In ascertaining the professional services actually rendered hereunder up to the effective date of termination of this Agreement, consideration shall be given to both completed work and work in progress, to complete and incomplete drawings, and to other documents pertaining to the services contemplated herein whether delivered to the County or in the possession of the Consultant.

5.4 Documents: In the event of termination of this Agreement, all documents prepared by Consultant in its performance of this Agreement including, but not limited to, finished or unfinished design, development and construction documents, data studies, drawings, maps and reports, shall be delivered to the County within ten (10) days of delivery of termination notice to Consultant, at no cost to County. Any use of uncompleted documents without specific written authorization from Consultant shall be at County's sole risk and without liability or legal expense to Consultant.

6.0 INSURANCE REQUIREMENTS

6.1 Coverage Required: Contractor shall obtain, and maintain at all times during the term of this Agreement, insurance coverage in the amounts and coverage specified in the attached "Exhibit B".

7.0 INDEMNIFICATION

7.1 Indemnification: To the fullest extent allowed by law, Consultant shall defend, indemnify, and hold harmless the County and its officers, directors, officials, agents, employees, volunteers and representatives (collectively, "Indemnitee") from and against any and all claims, suits, actions, losses, injuries, damages or expenses of every name, kind, and description, including litigation costs and reasonable attorney's fees incurred, (collectively, "losses") which are founded upon, arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, the alleged negligence, recklessness, or willful misconduct of Consultant, its officers, agents, employees, volunteers, representatives, contractors and subconsultants, excluding, however, such liabilities caused in part by the sole negligence, active negligence or willful misconduct of the County, its agents, employees, and representatives. These indemnification obligations shall not be limited by any assertion or finding that (1) the person or entity indemnified is liable by reason of non-delegable duty, or (2) the losses were caused in part by the negligence of, breach of contract by, or violation of law by Indemnitee. Nothing in this Agreement, including the provisions of this paragraph, shall constitute a waiver or limitation of any rights which Indemnitee may have under applicable law, including without limitation, the right to implied indemnity.

7.2 Duty to Defend: The duty of Consultant to indemnify and save harmless as set forth

herein, shall include both the duty to indemnify and at Consultant's own cost and expense the duty to defend as set forth in Section 2778 of the California Civil Code and as limited in section 2782.8 of the California Civil Code. This duty to defend arises immediately when such claim is made and shall be independent of any finding of negligence and shall arise regardless of any claim or assertion that Indemnitee caused or contributed to the Losses. Consultant shall provide legal counsel acceptable to the County.

7.3 Duty to Cooperate: Each party shall notify the other party within ten (10) days in writing of any claim or damage related to activities performed under this Agreement. The parties shall cooperate with each other in the investigation and disposition of any claim arising out of the activities under this Agreement. Specifically, Consultant shall take all steps necessary to assist the County in the defense of any claim brought by a contractor hired to construct the Project regarding any errors, flaws, and/or omissions in the plans or specifications of the Project.

7.4 Patent Rights: Consultant represents that professional services provided by Consultant pursuant to this Agreement does not infringe on any other copyrighted work. Consultant shall defend, indemnify and hold harmless the County from all loss, cost, damage, expense, liability or claims, including attorneys' fees, court costs, litigation expenses and expert consultant or witness fees, that may at any time arise for any infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark or any other proprietary right of any person or persons in consequence of the use by the County of any articles or services supplied under this agreement.

The foregoing provisions in this section "Indemnification" shall survive the term and termination of this Agreement.

8.0 GENERAL PROVISIONS

8.1 Entire Agreement: This Agreement constitutes the entire Agreement between the parties with respect to any matter referenced herein and supersedes any and all other prior writings and oral negotiations. This Agreement may be modified only in writing, and signed by the parties in interest at the time of such modification. The terms of this Agreement shall prevail over any inconsistent provision in any other contract document appurtenant hereto, including exhibits to this Agreement.

8.2 Representatives: The Director of the Stanislaus County Department of Public Works, or his designee, shall be the representative of County for purposes of this Agreement and may issue all consents, approvals, directives and agreements on behalf of the County, called for by this Agreement, except as otherwise expressly provided in this Agreement. Consultant shall designate a representative for purposes of this Agreement who shall be authorized to issue all consents, approvals, directives and agreements on behalf of Consultant called for by this Agreement, except as otherwise expressly provided in this Agreement.

8.3 Project Managers: County shall designate a Project Manager to work directly with Consultant in the performance of this Agreement. Consultant shall designate a Project Manager who shall represent it and be its agent in all consultations with County during the term of this Agreement. Consultant or its Project Manager shall attend and assist in all coordination meetings called by County.

8.4 Designated Personnel: A material covenant of this agreement is that the Consultant shall assign the individuals designated below to perform the functions designated so long as they continue in the employ of the Consultant. The designated individuals shall, so long as their performance continues to

be acceptable to County, remain in charge of the services for the Project from beginning through completion of services.

- a. Project Manager: Landon Blake, Mapping Department Manager
- b. Lead/Manager: n/a

8.5 Removal of Personnel or Sub-Consultants: If the County, in its sole discretion at any time during the term of this agreement, desires the removal of any person or sub-consultant assigned by Consultant to perform services, then the Consultant shall remove such person or consultant immediately upon receiving notice from the County.

8.6 Notices: Any notices, documents, correspondence or other communications concerning this Agreement or the work hereunder may be provided by personal delivery, facsimile or mail and shall be addressed as set forth below. Such communication shall be deemed served or delivered: a) at the time of delivery if such communication is sent by personal delivery; b) at the time of transmission if such communication is sent by facsimile; and c) 48 hours after deposit in the U.S. Mail as reflected by the official U.S. postmark if such communication is sent through regular United States mail.

If to County: Stanislaus County Public Works
Attn: Chris Brady, Deputy Director
1716 Morgan Road
Modesto, CA 95358

If to Consultant: Hawkins & Associates Engineering
Attn: Landon Blake, Manager
436 Mitchell Road
Modesto, CA 95354

8.7 Attorneys' Fees: In the event that litigation is brought by any party in connection with this Agreement, the prevailing party shall be entitled to recover from the opposing party all costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party in the exercise of any of its rights or remedies hereunder or the enforcement of any of the terms, conditions, or provisions hereof.

8.8 Claims Filed by County's Construction Contractor: If claims are filed by County's construction contractor relating to work performed by Consultant's personnel, and additional information or assistance from Consultant's personnel is required in order to evaluate or defend against such claims; Consultant agrees to make its personnel available for consultation with County's construction contract administration and legal staff and for testimony, if necessary, at depositions and at trial or arbitration proceedings.

Consultant's personnel that County considers essential to assist in defending against construction contractor claims will be made available on reasonable notice from County. Consultation or testimony will be reimbursed at the same rates, including travel costs that are being paid for Consultant's personnel services under this contract.

8.9 Governing Law: This Agreement shall be governed by and construed under the laws of the State of California without giving effect to that body of laws pertaining to conflict of laws. In the event of any legal action to enforce or interpret this Agreement, the parties hereto agree that the sole and exclusive venue shall be a court of competent jurisdiction located in Stanislaus County, California.

8.10 Assignment: Consultant shall not voluntarily or by operation of law assign, transfer, sublet or encumber all or any part of Consultant's interest in this Agreement without County's prior written consent. Any attempted assignment, transfer, subletting or encumbrance shall be void and shall constitute a breach of this Agreement and cause for termination of this Agreement. Regardless of County's consent, no subletting or assignment shall release Consultant of Consultant's obligation to perform all other obligations to be performed by Consultant hereunder for the term of this Agreement.

8.11 Independent Contractor: Consultant is and shall be acting at all times as an independent contractor and not as an employee of County. Consultant shall secure, at his expense, and be responsible for any and all payment of Income Tax, Social Security, State Disability Insurance Compensation, Unemployment Compensation, and other payroll deductions for Consultant and its officers, agents, and employees, and all business licenses, if any are required, in connection with the services to be performed hereunder. 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.

8.12 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.

Permission to Disclose information on one occasion, or public hearing held by the County relating to the contract, shall not authorize the Consultant to further disclose such information, or disseminate the same on any other occasion.

The Consultant shall not comment publicly to the press or any other media regarding the contract or the County's actions on the same, except to the County's staff, Consultant's own personnel involved in the performance of this contract, at public hearings or in response to questions from a Legislative committee.

The Consultant shall not issue any news release or public relations item of any nature, whatsoever, regarding work performed or to be performed under this contract without prior review of the contents thereof by the County, and receipt of the County's written permission.

Any subcontract entered into as a result of this contract shall contain all of the provisions of this Article.

8.13 National Labor Relations Board Certification: In accordance with Public Contract Code Section 10296, Consultant hereby states under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against Consultant with the immediately preceding two-year period, because of Consultant's failure to comply with an order of a federal court that orders Consultant to comply with an order of the National Labor Relations Board.

8.14 Ownership of Documents: Any interest, including copyright interests, of Consultant or its contractors or subconsultants in studies, reports, memoranda, computational sheets, drawings, plans or any other documents, including electronic data, prepared in connection with the Services, shall be the property of County. To the extent permitted by law, work product produced under this Agreement shall be deemed works for hire and all copyrights in such works shall be the property of the County. In the event that it is ever determined that any works created by Consultant or its subconsultants under this Agreement are not works for hire, Consultant hereby assigns to County all copyrights to such works. With the County's prior written approval, Consultant may retain and use copies of such works for reference and as documentation of experience and capabilities.

8.15 Reuse of Design Documents: Should the County desire to reuse the documents specified above and not use the services of the Consultant, then the County agrees to require the new consultant to assume any and all obligations for the reuse of the documents, and the County releases Consultant and its subconsultants from all liability associated with the reuse of such documents.

8.16 Public Records Act Disclosure: Consultant has been advised and is aware that all reports, documents, information and data including, but not limited to, computer tapes, discs or files furnished or prepared by Consultant, or any of its subconsultants, and provided to County may be subject to public disclosure as required by the California Public Records Act (California Government Code Section 6250 et. seq.). Exceptions to public disclosure may be those documents or information that qualifies as trade secrets, as that term is defined in the California Government Code Section 6254.7, and of which Consultant informs County of such trade secret. The County will endeavor to maintain as confidential all information obtained by it that is designated as a trade secret. The County shall not, in any way, be liable or responsible for the disclosure of any trade secret including, without limitation, those records so marked if disclosure is deemed to be required by law or by order of the Court.

8.17 Responsibility for Errors: Consultant shall be responsible for its work and results under this Agreement. Consultant, when requested, shall furnish clarification and/or explanation as may be required by the County's representative, regarding any services rendered under this Agreement at no additional cost to County. In the event that an error or omission attributable to Consultant occurs, then Consultant shall, at no cost to County, provide all necessary design drawings, estimates and other Consultant professional services necessary to rectify and correct the matter to the sole satisfaction of County and to participate in any meeting required with regard to the correction.

8.18 Order of Precedence: In the event of inconsistency among any of the Contract Documents, the following order of precedence applies:

1. This agreement shall prevail over all other documents;
2. The attachments to this agreement shall prevail over the RFP and Response;
3. The RFP shall prevail over the Response.

8.19 Costs: Each party shall bear its own costs and fees incurred in the preparation and negotiation of this Agreement and in the performance of its obligations hereunder except as expressly provided herein.

8.20 No Third Party Beneficiary Rights: This Agreement is entered into for the sole benefit of County and Consultant and no other parties are intended to be direct or incidental beneficiaries of this Agreement and no third party shall have any right in, under or to this Agreement.

8.21 Construction: The parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises with respect to this Agreement, this Agreement shall be construed as if drafted jointly by the parties and in accordance with its fair meaning. There shall be no presumption or burden of proof favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

8.22 Amendments: This Agreement may be amended only by a writing executed by the parties hereto or their respective successors and assigns.

8.23 Waiver: The delay or failure of either party at any time to require performance or compliance by the other of any of its obligations or agreements shall in no way be deemed a waiver of

those rights to require such performance or compliance. No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought. The waiver of any right or remedy in respect to any occurrence or event shall not be deemed a waiver of any right or remedy in respect to any other occurrence or event, nor shall any waiver constitute a continuing waiver.

8.24 Severability: If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable in any circumstance, such determination shall not affect the validity or enforceability of the remaining terms and provisions hereof or of the offending provision in any other circumstance. Notwithstanding the foregoing, if the value of this Agreement, based upon the substantial benefit of the bargain for any party is materially impaired, which determination as made by the presiding court or arbitrator of competent jurisdiction shall be binding, then both parties agree to substitute such provision(s) through good faith negotiations.

8.25 Counterparts: This Agreement may be executed in one or more counterparts, each of which shall be deemed an original. All counterparts shall be construed together and shall constitute one agreement.


8.26 Corporate Authority: The persons executing this Agreement on behalf of the parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said parties and that by doing so, the parties hereto are formally bound to the provisions of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by and through their respective authorized officers:

COUNTY OF STANISLAUS

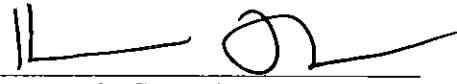
HAWKINS & ASSOCIATES ENGINEERING, INC.

By: _____



Matt Machado, Director
Department of Public Works

By: _____



Kevin Genasci
Vice President

APPROVED AS TO FORM:

John P. Doering
County Counsel

By: _____



Amanda DeHart
Deputy County Counsel

EXHIBIT A
FEE SCHEDULE

Fee Schedule

Stanislaus County Surveying Services



Fee Schedule

Type	Hourly Rate
Land Planner	\$135.00
Civil Engineer	\$135.00
Project Manager	\$100.00
Engineering Associate	\$100.00
Project Designer	\$90.00
Land Surveyor	\$135.00
Survey Party Chief	\$145.00
Survey Technician	\$115.00
Clerical	\$50.00

Note 1: Field surveyor rates include basic equipment. Special equipment or supplies will be billed at cost plus %5 unless other arrangements are made as part of the contract.

Note 2: Printing services and sub-consultant services will be billed at cost plus %5 unless other arrangements are made as part of the contract.

Date: 2016-08-10

Version: 1.00

EXHIBIT B

INSURANCE REQUIREMENTS

INSURANCE REQUIREMENTS

Minimum Scope and Limits of Insurance: Consultant, at its sole cost and expense, for the full term of this Agreement (and any extensions thereof), shall obtain and maintain, at minimum, compliance with all of the following insurance coverage(s) and requirements. If Consultant normally carries insurance in an amount greater than the minimum amount listed below, that greater amount shall become the minimum required amount of insurance for purposes of this Agreement. The insurance listed below shall have a retroactive date of placement prior to, or coinciding with, the date services are first provided that are governed by the terms of this Agreement:

- (a) Comprehensive general liability, including premises-operations, products/ completed operations, broad form property damage, blanket contractual liability, independent contractors, personal injury with a policy limit of not less than Two Million Dollars (\$2,000,000), combined single limits, per occurrence and aggregate. 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.
- (b) Automobile liability for owned vehicles, hired, and non-owned vehicles, with a policy limit of not less than One Million Dollars (\$1,000,000), combined single limits, per occurrence and aggregate.
- (c) Workers' compensation insurance as required by the State of California.
- (d) Professional errors and omissions ("E&O") liability insurance with policy limits of not less than Two Million Dollars (\$2,000,000), combined single limit for each occurrence. If Consultant cannot provide an occurrence policy, Consultant shall provide insurance covering claims made as a result of performance of Work on this Project and shall maintain such insurance in effect for not less than three years following Final Completion of the Project.

Endorsements: The Consultant shall obtain a specific endorsement to all required insurance policies, except Professional Liability insurance, naming the County of Stanislaus, its Officers, Directors, Officials, Agents, Employees and Volunteers as additional insureds for at least three years after the completion of the work to be performed under this Agreement, but, to the extent that any insurance issued to Consultant in effect after the expiration of three years provides additional insured coverage to parties Consultant agreed in writing to name as an additional insured, then Consultant shall have the obligation under this contract to obtain such additional insured coverage for the County, under any and all policies Consultant has 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 its subconsultants;
- (b) Ongoing 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.
- (e) 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.

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. 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.

Certificates of Insurance: At least ten (10) days prior to the date the Consultant begins performance of its obligations under this Agreement, Consultant 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 subconsultants 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.

Non-limiting: Nothing in this Section or the insurance described herein shall be construed as limiting in any way, the indemnification provisions contained in this Agreement, or the liability of Consultant and Consultant's officers, employees, agents, representatives or subconsultants for payments of damages to persons or property.

Primary Insurance: The Consultant's insurance coverage shall be primary insurance regarding the County of Stanislaus, its Officers, Directors, Officials, Agents, Employees and Volunteers. Any insurance or self-insurance maintained by the County of Stanislaus, its Officers, Directors, Officials, Agents, Employees and Volunteers shall be excess of the Consultant's insurance and shall not contribute with Consultant's insurance. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the County or its officers, 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. Any and all insurances cared by it shall be deemed liability coverage for any and all actions it performs in connection with this Contract.

Cancellation of Insurance: 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. Consultant shall maintain such coverage in effect for three years after substantial completion of the project to the extent it is commercially available at reasonable rates.

California Admitted Insurer: 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.

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

STANISLAUS COUNTY PUBLIC WORKS

PROFESSIONAL DESIGN SERVICES MASTER AGREEMENT

This Master Agreement, hereinafter referred to as "Agreement" is made and entered into by and between the County of Stanislaus, a political subdivision of the State of California, hereinafter referred to as "County" and North Star Engineering Group, Inc., hereinafter referred to as "Consultant".

WHEREAS, County, by its Resolution No. 2016-583, adopted on the 22 day of November, 2016, awarded to Consultant an Agreement for On-Call Surveying Services for the Stanislaus County Public Works Department.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions contained herein, the parties hereby agree as follows:

1.0 PROFESSIONAL SERVICES TO BE PROVIDED BY CONSULTANT

1.1 Scope of Services: Consultant shall provide the professional services described in the County's Request for Proposal ("RFP") and Consultant's Response to County's RFP (the "Response") which are incorporated by reference in Section 2.0 entitled "Contract Documents".

Each project added to and to be performed under this Agreement shall be separately approved by the parties. Each project where the cost of services does not exceed \$100,000 shall be approved by purchase order issued by the County Purchasing Agent or designee; projects greater than \$100,000 shall be approved by resolution of the Board of Supervisors for the County.

1.2 Professional Practices: All professional services to be provided by Consultant pursuant to this Agreement shall be provided by personnel experienced in their respective fields and in a manner consistent with the standards of care, diligence and skill ordinarily exercised by professional consultants in similar fields and circumstances in accordance with sound professional practices. Consultant also represents that it is familiar with all laws that may affect its performance of this Agreement and shall advise County of any changes in any laws that may affect Consultant's performance of this Agreement.

1.3 Representations: Consultant represents that it has reviewed the RFP and that in its professional judgment the services to be performed under this Agreement can be performed within the maximum fee set forth in Section 3.1 – Compensation. Consultant represents that it is qualified to perform the professional services required by this Agreement and possesses the necessary licenses and permits required to perform said services.

1.4 Compliance with Laws: Consultant agrees that it shall perform the services required by this Agreement in compliance with all applicable Federal and California laws including, but not limited to, those laws related to minimum hours and wages; occupational health and safety; fair employment and employment practices; workers' compensation insurance and safety in employment; and all other Federal, State and local laws and ordinances applicable to the services required under this Agreement.

1.5 Non-Discrimination: During the performance of this Agreement, Consultant and its officers, employees, agents, representatives or subconsultants shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment 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

disability, medical condition (including genetic characteristics), marital status, age, political affiliation, sex or sexual orientation. Consultant and its officers, employees, agents, representatives or subconsultants 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.

1.6 Non-Exclusive Agreement: Consultant acknowledges that County may enter into agreements with other consultants for services similar to the services that are subject to this Agreement or may have its own employees perform services similar to those services contemplated by this Agreement.

1.7 Delegation and Assignment: This is a personal service contract, and the duties set forth herein shall not be delegated or assigned to any person or entity without the prior written consent of County. Consultant may engage a subconsultant(s) as permitted by law and may employ other personnel to perform services contemplated by this Agreement at Consultant's sole cost and expense.

1.8 Subcontracting: Nothing contained in this contract or otherwise, shall create any contractual relation between County and any subconsultants(s), and no subconsultant shall relieve Consultant of its responsibilities and obligations hereunder. Consultant agrees to be as fully responsible to County for the acts and omissions of its subconsultant(s) and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by Consultant. Consultant's obligation to pay its subconsultant(s) is an independent obligation from County's obligation to make payments to the Consultant.

Consultant shall perform the services with resources available within its own organization; and no portion of the work pertinent to this Agreement shall be subcontracted without written authorization by the County, except that, which is expressly identified in the approved Cost Proposal.

Any substitution of subconsultants must be approved in writing by the County.

1.9 Conflict of Interest: Consultant shall disclose any financial, business, or other relationship with County that may have an impact upon the outcome of this Agreement, or any ensuing County construction project. The Consultant shall also list current clients who may have a financial interest in the outcome of this Agreement, or any ensuing County construction project, which will follow.

Consultant represents that it has no interest and shall not acquire any interest direct or indirect which conflicts, or has the appearance of conflicting, in any manner or degree with the performance of the work and services under this Agreement.

Consultant hereby certifies that neither Consultant, nor any firm affiliated with the Consultant will bid on any construction agreement, or on any agreement to provide construction inspection for any construction project resulting from this Agreement. An affiliated firm is one, which is subject to the control of the same persons through joint ownership, or otherwise.

Except for subconsultants whose services are limited to providing surveying or materials testing information, no subconsultant who has provided design services in connection with this Agreement shall be eligible to bid on any construction agreement, or on any agreement to provide construction inspection for any construction project resulting from this Agreement.

1.10 Covenant Against Contingent Fees: Consultant warrants that he/she has not employed or retained any company or person, other than a bona fide employee working for the consultant; to solicit or secure this Master Agreement; and that he/she has not paid or agreed to pay any company or person other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award, or formation of this Master Agreement. For breach or violation of this warranty, the local agency shall have the right to annul this Master Agreement without liability, or at its discretion; to deduct from the Master Agreement price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

1.11 Rebates, Kickbacks or Other Unlawful Consideration: The Consultant warrants that this Master Agreement was not obtained or secured through rebates, kickbacks or other unlawful consideration, either promised or paid to any County employee. For breach or violation of this warranty, County shall have the right in its discretion; to terminate the agreement without liability; to pay only for the value of the work actually performed; or to deduct from the agreement price; or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

1.12 Prohibition of Expending State or Federal Funds for Lobbying: The Consultant certifies to the best of his or her knowledge and belief that:

No, state, federal or local agency appropriated funds have been paid, or will be paid by-or-on behalf of the Consultant to any person for influencing or attempting to influence an officer or employee of any state or federal agency; a Member of the State Legislature or United States Congress; an officer or employee of the Legislature or Congress; or any employee of a Member of the Legislature or Congress, in connection with the awarding of any state or federal contract; the making of any state or federal grant; the making of any state or federal loan; the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any state or federal contract, grant, loan, or cooperative agreement.

If any funds other than federal appropriated funds have been paid, or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency; a Member of Congress; an officer or employee of Congress, or an employee of a Member of Congress; in connection with this federal contract, grant, loan, or cooperative agreement; the Consultant shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Consultant also agrees by signing this document that he or she shall require that the language of this certification be included in all lower-tier subcontracts, which exceed \$100,000, and that all such subcontract recipients shall certify and disclose accordingly.

1.13 Debarment and Suspension Certification: The Consultant's signature affixed herein, shall constitute a certification under penalty of perjury under the laws of the State of California, that the Consultant has complied with Title 49, Code of Federal Regulations, Part 29, Debarment and Suspension Certificate, which certifies that he/she or any person associated therewith in the capacity of owner,

partner, director, officer, or manager, is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency; has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years; does not have a proposed debarment pending; and has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct with the past three (3) years. Any exceptions to this certification must be disclosed to the County.

Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining Consultant responsibility. Disclosures must indicate to who exceptions apply, initiating agency, and dates of actions.

2.0 CONTRACT DOCUMENTS

Contract documents consist of the following documents, including all changes, addenda, and modifications thereto:

1. Agreement and all attachments
 - a. Exhibit A – Fee Schedule
 - b. Exhibit B – Insurance Requirements
2. County's Request for Proposal
3. Consultant's Response

3.0 COMPENSATION AND BILLING

3.1 Compensation: For each task or project let under this Agreement Consultant shall be paid in accordance with the fee schedule set forth in Exhibit "A", attached hereto and made a part of this Agreement (the "Fee Schedule"). Consultant will be compensated on a time and materials basis, based on the hours worked by the Consultant's employees or subconsultants at the hourly rates specified in the Fee Schedule. Fee Schedule rates shall include direct salary costs, employee benefits, and overhead. The rates stated in the Fee Schedule are not adjustable during the term of this Agreement. Consultant's compensation under this Agreement shall in no case exceed Five Hundred Thousand Dollars (\$500,000) during the term of this Agreement. The County may retain five percent of all periodic or progress payments made to the Consultant until completion and acceptance of all work tasks and County shall have right to withhold payment from Consultant for any unsatisfactory service until such time service is performed satisfactorily.

3.2 Reimbursements: In addition to the aforementioned fees, Consultant will be reimbursed for any expenses specifically set forth in a Project Scope of Work. All such reimbursement amounts are limited to those costs and expenses that are reasonable, necessary and actually incurred by the Consultant in connection with the services provided. The County shall not pay a mark up on any item of reimbursement. The County shall not pay for any item of overhead such as telephone, facsimile, postage, etc. All requests for reimbursement shall be accompanied by a copy of the original invoice.

3.3 Additional Services: Consultant shall not receive compensation for any services provided outside the scope of services specified in the County's ("RFP") and the Consultant's ("Response") and also as specified in each Project Scope of Services unless the County or the Project Manager for the Project, prior to Consultant performing the additional services, approves such additional services in writing. It is specifically understood that oral requests and/or approvals of such additional services or additional compensation shall be barred and are unenforceable.

3.4 Method of Billing: Consultant may submit invoices to County's Project Manager for approval on a progress basis, but no more often than once each calendar month. Said invoice shall be based on the total of all Consultants' services that have been completed to County's sole satisfaction. County shall pay Consultant's invoice within forty-five (45) days from the date County receives said invoice. Each invoice shall describe in detail, the services performed and the associated percentage of tasks completed. Any additional services approved and performed pursuant to this Agreement shall be designated as "Additional Services" and shall identify the number of the authorized change order, where applicable, on all invoices.

3.5 Records and Audits: Records of Consultant's services relating to this Agreement shall be maintained in accordance with generally recognized accounting principles and shall be made available to County, its Project Manager, The State, State Auditor, FHWA, or any duly authorized representative of the Federal Government for inspection and/or audit at mutually convenient times for a period of three (3) years from the termination of this Agreement.

3.6 Extension of Term of Agreement: The original Fee Schedule shall apply to the extension of the term of the agreement unless renegotiated and approved by both parties in writing.

3.7 Cost Principles: The Consultant agrees that the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., shall be used to determine the allowability of cost individual items.

The Consultant also agrees to comply with federal procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

Any costs for which payment has been made to Consultant that are determined by subsequent audit to be unallowable under 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., are subject to repayment by Consultant to the County.

All subcontracts in excess of \$25,000 shall contain the above provisions.

4.0 TIME OF PERFORMANCE

4.1 Commencement and Completion of Work: The professional services to be performed pursuant to this Agreement shall commence within five (5) days after County delivers its Notice to Proceed for each separately approved Project. Said services shall be performed in strict compliance with the Project Schedule approved by County as set forth in each Project Scope of Services. Each Project Schedule may be amended by mutual agreement of the parties. Failure to commence work in a timely manner and/or diligently pursue work to completion may be grounds for termination of this Agreement.

4.2 Excusable Delays: Neither party shall be responsible for delays or lack of performance resulting from acts beyond the reasonable control of the party or parties. Such acts shall include, but not be limited to, acts of God, fire, strikes, material shortages, compliance with laws or regulations, riots, acts of war, or any other conditions beyond the reasonable control of a party.

5.0 TERM OF CONTRACT AND TERMINATION

5.1 Term: This Agreement shall commence on the date of the award of this agreement and shall continue for a period of thirty-six months, or until all work on each project let during the thirty-six

month period is completed, unless previously terminated as provided herein or as otherwise agreed to in writing by the parties. Additionally, the term of this agreement may be extended for an additional twenty-four months by the parties mutual agreement.

5.2 Notice of Termination: The County reserves and has the right and privilege of canceling, suspending or abandoning the execution of all or any part of the work contemplated by this Agreement, with or without cause, at any time, by providing written notice to Consultant. The termination of this Agreement shall be deemed effective upon receipt of the notice of termination. In the event of such termination, Consultant shall immediately stop rendering services under this Agreement unless directed otherwise by the County.

5.3 Compensation: In the event of termination, County shall pay Consultant for reasonable costs incurred and professional services satisfactorily performed up to and including the date of County's written notice of termination. Compensation for work in progress shall be prorated as to the percentage of work completed as of the effective date of termination in accordance with the fees set forth in Exhibit "A". In ascertaining the professional services actually rendered hereunder up to the effective date of termination of this Agreement, consideration shall be given to both completed work and work in progress, to complete and incomplete drawings, and to other documents pertaining to the services contemplated herein whether delivered to the County or in the possession of the Consultant.

5.4 Documents: In the event of termination of this Agreement, all documents prepared by Consultant in its performance of this Agreement including, but not limited to, finished or unfinished design, development and construction documents, data studies, drawings, maps and reports, shall be delivered to the County within ten (10) days of delivery of termination notice to Consultant, at no cost to County. Any use of uncompleted documents without specific written authorization from Consultant shall be at County's sole risk and without liability or legal expense to Consultant.

6.0 INSURANCE REQUIREMENTS

6.1 Coverage Required: Contractor shall obtain, and maintain at all times during the term of this Agreement, insurance coverage in the amounts and coverage specified in the attached "Exhibit B".

7.0 INDEMNIFICATION

7.1 Indemnification: To the fullest extent allowed by law, Consultant shall defend, indemnify, and hold harmless the County and its officers, directors, officials, agents, employees, volunteers and representatives (collectively, "Indemnitee") from and against any and all claims, suits, actions, losses, injuries, damages or expenses of every name, kind, and description, including litigation costs and reasonable attorney's fees incurred, (collectively, "losses") which are founded upon, arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, the alleged negligence, recklessness, or willful misconduct of Consultant, its officers, agents, employees, volunteers, representatives, contractors and subconsultants, excluding, however, such liabilities caused in part by the sole negligence, active negligence or willful misconduct of the County, its agents, employees, and representatives. These indemnification obligations shall not be limited by any assertion or finding that (1) the person or entity indemnified is liable by reason of non-delegable duty, or (2) the losses were caused in part by the negligence of, breach of contract by, or violation of law by Indemnitee. Nothing in this Agreement, including the provisions of this paragraph, shall constitute a waiver or limitation of any rights which Indemnitee may have under applicable law, including without limitation, the right to implied indemnity.

7.2 Duty to Defend: The duty of Consultant to indemnify and save harmless as set forth

herein, shall include both the duty to indemnify and at Consultant's own cost and expense the duty to defend as set forth in Section 2778 of the California Civil Code and as limited in section 2782.8 of the California Civil Code. This duty to defend arises immediately when such claim is made and shall be independent of any finding of negligence and shall arise regardless of any claim or assertion that Indemnitee caused or contributed to the Losses. Consultant shall provide legal counsel acceptable to the County.

7.3 Duty to Cooperate: Each party shall notify the other party within ten (10) days in writing of any claim or damage related to activities performed under this Agreement. The parties shall cooperate with each other in the investigation and disposition of any claim arising out of the activities under this Agreement. Specifically, Consultant shall take all steps necessary to assist the County in the defense of any claim brought by a contractor hired to construct the Project regarding any errors, flaws, and/or omissions in the plans or specifications of the Project.

7.4 Patent Rights: Consultant represents that professional services provided by Consultant pursuant to this Agreement does not infringe on any other copyrighted work. Consultant shall defend, indemnify and hold harmless the County from all loss, cost, damage, expense, liability or claims, including attorneys' fees, court costs, litigation expenses and expert consultant or witness fees, that may at any time arise for any infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark or any other proprietary right of any person or persons in consequence of the use by the County of any articles or services supplied under this agreement.

The foregoing provisions in this section "Indemnification" shall survive the term and termination of this Agreement.

8.0 GENERAL PROVISIONS

8.1 Entire Agreement: This Agreement constitutes the entire Agreement between the parties with respect to any matter referenced herein and supersedes any and all other prior writings and oral negotiations. This Agreement may be modified only in writing, and signed by the parties in interest at the time of such modification. The terms of this Agreement shall prevail over any inconsistent provision in any other contract document appurtenant hereto, including exhibits to this Agreement.

8.2 Representatives: The Director of the Stanislaus County Department of Public Works, or his designee, shall be the representative of County for purposes of this Agreement and may issue all consents, approvals, directives and agreements on behalf of the County, called for by this Agreement, except as otherwise expressly provided in this Agreement. Consultant shall designate a representative for purposes of this Agreement who shall be authorized to issue all consents, approvals, directives and agreements on behalf of Consultant called for by this Agreement, except as otherwise expressly provided in this Agreement.

8.3 Project Managers: County shall designate a Project Manager to work directly with Consultant in the performance of this Agreement. Consultant shall designate a Project Manager who shall represent it and be its agent in all consultations with County during the term of this Agreement. Consultant or its Project Manager shall attend and assist in all coordination meetings called by County.

8.4 Designated Personnel: A material covenant of this agreement is that the Consultant shall assign the individuals designated below to perform the functions designated so long as they continue in the employ of the Consultant. The designated individuals shall, so long as their performance continues to

be acceptable to County, remain in charge of the services for the Project from beginning through completion of services.

- a. Project Manager: Kent Hysell, L.S. 6953, CFO
- b. Lead/Manager: n/a

8.5 Removal of Personnel or Sub-Consultants: If the County, in its sole discretion at any time during the term of this agreement, desires the removal of any person or sub-consultant assigned by Consultant to perform services, then the Consultant shall remove such person or consultant immediately upon receiving notice from the County.

8.6 Notices: Any notices, documents, correspondence or other communications concerning this Agreement or the work hereunder may be provided by personal delivery, facsimile or mail and shall be addressed as set forth below. Such communication shall be deemed served or delivered: a) at the time of delivery if such communication is sent by personal delivery; b) at the time of transmission if such communication is sent by facsimile; and c) 48 hours after deposit in the U.S. Mail as reflected by the official U.S. postmark if such communication is sent through regular United States mail.

If to County: Stanislaus County Public Works
Attn: Chris Brady, Deputy Director
1716 Morgan Road
Modesto, CA 95358

If to Consultant: North Star Engineering Group, Inc.
Attn: Kent Hysell, CFO
620 12th Street
Modesto, CA 95354

8.7 Attorneys' Fees: In the event that litigation is brought by any party in connection with this Agreement, the prevailing party shall be entitled to recover from the opposing party all costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party in the exercise of any of its rights or remedies hereunder or the enforcement of any of the terms, conditions, or provisions hereof.

8.8 Claims Filed by County's Construction Contractor: If claims are filed by County's construction contractor relating to work performed by Consultant's personnel, and additional information or assistance from Consultant's personnel is required in order to evaluate or defend against such claims; Consultant agrees to make its personnel available for consultation with County's construction contract administration and legal staff and for testimony, if necessary, at depositions and at trial or arbitration proceedings.

Consultant's personnel that County considers essential to assist in defending against construction contractor claims will be made available on reasonable notice from County. Consultation or testimony will be reimbursed at the same rates, including travel costs that are being paid for Consultant's personnel services under this contract.

8.9 Governing Law: This Agreement shall be governed by and construed under the laws of the State of California without giving effect to that body of laws pertaining to conflict of laws. In the event of any legal action to enforce or interpret this Agreement, the parties hereto agree that the sole and exclusive venue shall be a court of competent jurisdiction located in Stanislaus County, California.

8.10 Assignment: Consultant shall not voluntarily or by operation of law assign, transfer, sublet or encumber all or any part of Consultant's interest in this Agreement without County's prior written consent. Any attempted assignment, transfer, subletting or encumbrance shall be void and shall constitute a breach of this Agreement and cause for termination of this Agreement. Regardless of County's consent, no subletting or assignment shall release Consultant of Consultant's obligation to perform all other obligations to be performed by Consultant hereunder for the term of this Agreement.

8.11 Independent Contractor: Consultant is and shall be acting at all times as an independent contractor and not as an employee of County. Consultant shall secure, at his expense, and be responsible for any and all payment of Income Tax, Social Security, State Disability Insurance Compensation, Unemployment Compensation, and other payroll deductions for Consultant and its officers, agents, and employees, and all business licenses, if any are required, in connection with the services to be performed hereunder. 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.

8.12 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.

Permission to Disclose information on one occasion, or public hearing held by the County relating to the contract, shall not authorize the Consultant to further disclose such information, or disseminate the same on any other occasion.

The Consultant shall not comment publicly to the press or any other media regarding the contract or the County's actions on the same, except to the County's staff, Consultant's own personnel involved in the performance of this contract, at public hearings or in response to questions from a Legislative committee.

The Consultant shall not issue any news release or public relations item of any nature, whatsoever, regarding work performed or to be performed under this contract without prior review of the contents thereof by the County, and receipt of the County's written permission.

Any subcontract entered into as a result of this contract shall contain all of the provisions of this Article.

8.13 National Labor Relations Board Certification: In accordance with Public Contract Code Section 10296, Consultant hereby states under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against Consultant with the immediately preceding two-year period, because of Consultant's failure to comply with an order of a federal court that orders Consultant to comply with an order of the National Labor Relations Board.

8.14 Ownership of Documents: Any interest, including copyright interests, of Consultant or its contractors or subconsultants in studies, reports, memoranda, computational sheets, drawings, plans or any other documents, including electronic data, prepared in connection with the Services, shall be the property of County. To the extent permitted by law, work product produced under this Agreement shall be deemed works for hire and all copyrights in such works shall be the property of the County. In the event that it is ever determined that any works created by Consultant or its subconsultants under this Agreement are not works for hire, Consultant hereby assigns to County all copyrights to such works. With the County's prior written approval, Consultant may retain and use copies of such works for reference and as documentation of experience and capabilities.

8.15 Reuse of Design Documents: Should the County desire to reuse the documents specified above and not use the services of the Consultant, then the County agrees to require the new consultant to assume any and all obligations for the reuse of the documents, and the County releases Consultant and its subconsultants from all liability associated with the reuse of such documents.

8.16 Public Records Act Disclosure: Consultant has been advised and is aware that all reports, documents, information and data including, but not limited to, computer tapes, discs or files furnished or prepared by Consultant, or any of its subconsultants, and provided to County may be subject to public disclosure as required by the California Public Records Act (California Government Code Section 6250 et. seq.). Exceptions to public disclosure may be those documents or information that qualifies as trade secrets, as that term is defined in the California Government Code Section 6254.7, and of which Consultant informs County of such trade secret. The County will endeavor to maintain as confidential all information obtained by it that is designated as a trade secret. The County shall not, in any way, be liable or responsible for the disclosure of any trade secret including, without limitation, those records so marked if disclosure is deemed to be required by law or by order of the Court.

8.17 Responsibility for Errors: Consultant shall be responsible for its work and results under this Agreement. Consultant, when requested, shall furnish clarification and/or explanation as may be required by the County's representative, regarding any services rendered under this Agreement at no additional cost to County. In the event that an error or omission attributable to Consultant occurs, then Consultant shall, at no cost to County, provide all necessary design drawings, estimates and other Consultant professional services necessary to rectify and correct the matter to the sole satisfaction of County and to participate in any meeting required with regard to the correction.

8.18 Order of Precedence: In the event of inconsistency among any of the Contract Documents, the following order of precedence applies:

1. This agreement shall prevail over all other documents;
2. The attachments to this agreement shall prevail over the RFP and Response;
3. The RFP shall prevail over the Response.

8.19 Costs: Each party shall bear its own costs and fees incurred in the preparation and negotiation of this Agreement and in the performance of its obligations hereunder except as expressly provided herein.

8.20 No Third Party Beneficiary Rights: This Agreement is entered into for the sole benefit of County and Consultant and no other parties are intended to be direct or incidental beneficiaries of this Agreement and no third party shall have any right in, under or to this Agreement.

8.21 Construction: The parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises with respect to this Agreement, this Agreement shall be construed as if drafted jointly by the parties and in accordance with its fair meaning. There shall be no presumption or burden of proof favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

8.22 Amendments: This Agreement may be amended only by a writing executed by the parties hereto or their respective successors and assigns.

8.23 Waiver: The delay or failure of either party at any time to require performance or compliance by the other of any of its obligations or agreements shall in no way be deemed a waiver of

those rights to require such performance or compliance. No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought. The waiver of any right or remedy in respect to any occurrence or event shall not be deemed a waiver of any right or remedy in respect to any other occurrence or event, nor shall any waiver constitute a continuing waiver.

8.24 Severability: If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable in any circumstance, such determination shall not affect the validity or enforceability of the remaining terms and provisions hereof or of the offending provision in any other circumstance. Notwithstanding the foregoing, if the value of this Agreement, based upon the substantial benefit of the bargain for any party is materially impaired, which determination as made by the presiding court or arbitrator of competent jurisdiction shall be binding, then both parties agree to substitute such provision(s) through good faith negotiations.


8.25 Counterparts: This Agreement may be executed in one or more counterparts, each of which shall be deemed an original. All counterparts shall be construed together and shall constitute one agreement.


8.26 Corporate Authority: The persons executing this Agreement on behalf of the parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said parties and that by doing so, the parties hereto are formally bound to the provisions of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by and through their respective authorized officers:

COUNTY OF STANISLAUS

NORTH STAR ENGINEERING GROUP, INC.

By: 
Matt Machado, Director
Department of Public Works

By: 
Kent Hysell
L.S. 6953
Chief Financial Officer

APPROVED AS TO FORM:

John P. Doering
County Counsel

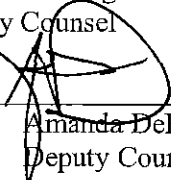
By: 
Amanda DeHart
Deputy County Counsel

EXHIBIT A
FEE SCHEDULE

NorthStar Engineering Group, Inc.

620 12th Street
Modesto, CA 95354
(209) 524-3525 Phone
(209) 524-3526 Fax

RATE SCHEDULE

Engineering:

PRINCIPAL	\$165.00
CIVIL ENGINEER	\$135.00
PROJECT MANAGER	\$135.00
DESIGNER III	\$115.00
DESIGNER II	\$110.00
DESIGNER I	\$105.00
DRAFTER / CAD III	\$100.00
DRAFTER/CAD II	\$95.00
DRAFTER/CAD I	\$90.00

Surveying:

PRINCIPAL	\$165.00
LAND SURVEYOR	\$135.00
LAND SURVEYOR ASSISTANT	\$125.00
SURVEY CREW COORDINATOR	\$110.00
ONE-MAN SURVEY CREW	\$155.00
TWO-MAN SURVEY CREW	\$215.00

Planning:

PRINCIPAL	\$165.00
PLANNER	\$135.00

Field Services:

CONSTRUCTION OBSERVATION	\$145.00
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Administration:

CLERICAL	\$80.00
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Materials:

COST PLUS 10 PERCENT	
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The above rate schedule is effective through December 31, 2016 and is subject to adjustment January 1, 2017.

NOTE: Overtime and Saturday work will be billed at time and a half and Sunday work will be billed at double time.

EXHIBIT B

INSURANCE REQUIREMENTS

INSURANCE REQUIREMENTS

Minimum Scope and Limits of Insurance: Consultant, at its sole cost and expense, for the full term of this Agreement (and any extensions thereof), shall obtain and maintain, at minimum, compliance with all of the following insurance coverage(s) and requirements. If Consultant normally carries insurance in an amount greater than the minimum amount listed below, that greater amount shall become the minimum required amount of insurance for purposes of this Agreement. The insurance listed below shall have a retroactive date of placement prior to, or coinciding with, the date services are first provided that are governed by the terms of this Agreement:

- (a) Comprehensive general liability, including premises-operations, products/ completed operations, broad form property damage, blanket contractual liability, independent contractors, personal injury with a policy limit of not less than Two Million Dollars (\$2,000,000), combined single limits, per occurrence and aggregate. 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.
- (b) Automobile liability for owned vehicles, hired, and non-owned vehicles, with a policy limit of not less than One Million Dollars (\$1,000,000), combined single limits, per occurrence and aggregate.
- (c) Workers' compensation insurance as required by the State of California.
- (d) Professional errors and omissions ("E&O") liability insurance with policy limits of not less than Two Million Dollars (\$2,000,000), combined single limit for each occurrence. If Consultant cannot provide an occurrence policy, Consultant shall provide insurance covering claims made as a result of performance of Work on this Project and shall maintain such insurance in effect for not less than three years following Final Completion of the Project.

Endorsements: The Consultant shall obtain a specific endorsement to all required insurance policies, except Professional Liability insurance, naming the County of Stanislaus, its Officers, Directors, Officials, Agents, Employees and Volunteers as additional insureds for at least three years after the completion of the work to be performed under this Agreement, but, to the extent that any insurance issued to Consultant in effect after the expiration of three years provides additional insured coverage to parties Consultant agreed in writing to name as an additional insured, then Consultant shall have the obligation under this contract to obtain such additional insured coverage for the County, under any and all policies Consultant has 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 its subconsultants;
- (b) Ongoing 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.
- (e) 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.

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. 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.

Certificates of Insurance: At least ten (10) days prior to the date the Consultant begins performance of its obligations under this Agreement, Consultant 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 subconsultants 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.

Non-limiting: Nothing in this Section or the insurance described herein shall be construed as limiting in any way, the indemnification provisions contained in this Agreement, or the liability of Consultant and Consultant's officers, employees, agents, representatives or subconsultants for payments of damages to persons or property.

Primary Insurance: The Consultant's insurance coverage shall be primary insurance regarding the County of Stanislaus, its Officers, Directors, Officials, Agents, Employees and Volunteers. Any insurance or self-insurance maintained by the County of Stanislaus, its Officers, Directors, Officials, Agents, Employees and Volunteers shall be excess of the Consultant's insurance and shall not contribute with Consultant's insurance. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the County or its officers, 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. Any and all insurances cared by it shall be deemed liability coverage for any and all actions it performs in connection with this Contract.

Cancellation of Insurance: 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. Consultant shall maintain such coverage in effect for three years after substantial completion of the project to the extent it is commercially available at reasonable rates.

California Admitted Insurer: 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.

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

STANISLAUS COUNTY PUBLIC WORKS

PROFESSIONAL DESIGN SERVICES MASTER AGREEMENT

This Master Agreement, hereinafter referred to as "Agreement" is made and entered into by and between the County of Stanislaus, a political subdivision of the State of California, hereinafter referred to as "County" and O'Dell Engineering, Inc., hereinafter referred to as "Consultant".

WHEREAS, County, by its Resolution No. 2016-583, adopted on the 22 day of November, 2016, awarded to Consultant an Agreement for On-Call Surveying Services for the Stanislaus County Public Works Department.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions contained herein, the parties hereby agree as follows:

1.0 PROFESSIONAL SERVICES TO BE PROVIDED BY CONSULTANT

1.1 Scope of Services: Consultant shall provide the professional services described in the County's Request for Proposal ("RFP") and Consultant's Response to County's RFP (the "Response") which are incorporated by reference in Section 2.0 entitled "Contract Documents".

Each project added to and to be performed under this Agreement shall be separately approved by the parties. Each project where the cost of services does not exceed \$100,000 shall be approved by purchase order issued by the County Purchasing Agent or designee; projects greater than \$100,000 shall be approved by resolution of the Board of Supervisors for the County.

1.2 Professional Practices: All professional services to be provided by Consultant pursuant to this Agreement shall be provided by personnel experienced in their respective fields and in a manner consistent with the standards of care, diligence and skill ordinarily exercised by professional consultants in similar fields and circumstances in accordance with sound professional practices. Consultant also represents that it is familiar with all laws that may affect its performance of this Agreement and shall advise County of any changes in any laws that may affect Consultant's performance of this Agreement.

1.3 Representations: Consultant represents that it has reviewed the RFP and that in its professional judgment the services to be performed under this Agreement can be performed within the maximum fee set forth in Section 3.1 – Compensation. Consultant represents that it is qualified to perform the professional services required by this Agreement and possesses the necessary licenses and permits required to perform said services.

1.4 Compliance with Laws: Consultant agrees that it shall perform the services required by this Agreement in compliance with all applicable Federal and California laws including, but not limited to, those laws related to minimum hours and wages; occupational health and safety; fair employment and employment practices; workers' compensation insurance and safety in employment; and all other Federal, State and local laws and ordinances applicable to the services required under this Agreement.

1.5 Non-Discrimination: During the performance of this Agreement, Consultant and its officers, employees, agents, representatives or subconsultants shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment 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

disability, medical condition (including genetic characteristics), marital status, age, political affiliation, sex or sexual orientation. Consultant and its officers, employees, agents, representatives or subconsultants 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.

1.6 Non-Exclusive Agreement: Consultant acknowledges that County may enter into agreements with other consultants for services similar to the services that are subject to this Agreement or may have its own employees perform services similar to those services contemplated by this Agreement.

1.7 Delegation and Assignment: This is a personal service contract, and the duties set forth herein shall not be delegated or assigned to any person or entity without the prior written consent of County. Consultant may engage a subconsultant(s) as permitted by law and may employ other personnel to perform services contemplated by this Agreement at Consultant's sole cost and expense.

1.8 Subcontracting: Nothing contained in this contract or otherwise, shall create any contractual relation between County and any subconsultants(s), and no subconsultant shall relieve Consultant of its responsibilities and obligations hereunder. Consultant agrees to be as fully responsible to County for the acts and omissions of its subconsultant(s) and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by Consultant. Consultant's obligation to pay its subconsultant(s) is an independent obligation from County's obligation to make payments to the Consultant.

Consultant shall perform the services with resources available within its own organization; and no portion of the work pertinent to this Agreement shall be subcontracted without written authorization by the County, except that, which is expressly identified in the approved Cost Proposal.

Any substitution of subconsultants must be approved in writing by the County.

1.9 Conflict of Interest: Consultant shall disclose any financial, business, or other relationship with County that may have an impact upon the outcome of this Agreement, or any ensuing County construction project. The Consultant shall also list current clients who may have a financial interest in the outcome of this Agreement, or any ensuing County construction project, which will follow.

Consultant represents that it has no interest and shall not acquire any interest direct or indirect which conflicts, or has the appearance of conflicting, in any manner or degree with the performance of the work and services under this Agreement.

Consultant hereby certifies that neither Consultant, nor any firm affiliated with the Consultant will bid on any construction agreement, or on any agreement to provide construction inspection for any construction project resulting from this Agreement. An affiliated firm is one, which is subject to the control of the same persons through joint ownership, or otherwise.

Except for subconsultants whose services are limited to providing surveying or materials testing information, no subconsultant who has provided design services in connection with this Agreement shall be eligible to bid on any construction agreement, or on any agreement to provide construction inspection for any construction project resulting from this Agreement.

1.10 Covenant Against Contingent Fees: Consultant warrants that he/she has not employed or retained any company or person, other than a bona fide employee working for the consultant; to solicit or secure this Master Agreement; and that he/she has not paid or agreed to pay any company or person other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award, or formation of this Master Agreement. For breach or violation of this warranty, the local agency shall have the right to annul this Master Agreement without liability, or at its discretion; to deduct from the Master Agreement price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

1.11 Rebates, Kickbacks or Other Unlawful Consideration: The Consultant warrants that this Master Agreement was not obtained or secured through rebates, kickbacks or other unlawful consideration, either promised or paid to any County employee. For breach or violation of this warranty, County shall have the right in its discretion; to terminate the agreement without liability; to pay only for the value of the work actually performed; or to deduct from the agreement price; or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

1.12 Prohibition of Expending State or Federal Funds for Lobbying: The Consultant certifies to the best of his or her knowledge and belief that:

No, state, federal or local agency appropriated funds have been paid, or will be paid by-or-on behalf of the Consultant to any person for influencing or attempting to influence an officer or employee of any state or federal agency; a Member of the State Legislature or United States Congress; an officer or employee of the Legislature or Congress; or any employee of a Member of the Legislature or Congress, in connection with the awarding of any state or federal contract; the making of any state or federal grant; the making of any state or federal loan; the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any state or federal contract, grant, loan, or cooperative agreement.

If any funds other than federal appropriated funds have been paid, or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency; a Member of Congress; an officer or employee of Congress, or an employee of a Member of Congress; in connection with this federal contract, grant, loan, or cooperative agreement; the Consultant shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Consultant also agrees by signing this document that he or she shall require that the language of this certification be included in all lower-tier subcontracts, which exceed \$100,000, and that all such sub recipients shall certify and disclose accordingly.

1.13 Debarment and Suspension Certification: The Consultant's signature affixed herein, shall constitute a certification under penalty of perjury under the laws of the State of California, that the Consultant has complied with Title 49, Code of Federal Regulations, Part 29, Debarment and Suspension Certificate, which certifies that he/she or any person associated therewith in the capacity of owner,

partner, director, officer, or manager, is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency; has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years; does not have a proposed debarment pending; and has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct with the past three (3) years. Any exceptions to this certification must be disclosed to the County.

Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining Consultant responsibility. Disclosures must indicate to who exceptions apply, initiating agency, and dates of actions.

2.0 CONTRACT DOCUMENTS

Contract documents consist of the following documents, including all changes, addenda, and modifications thereto:

1. Agreement and all attachments
 - a. Exhibit A – Fee Schedule
 - b. Exhibit B – Insurance Requirements
2. County's Request for Proposal
3. Consultant's Response

3.0 COMPENSATION AND BILLING

3.1 Compensation: For each task or project let under this Agreement Consultant shall be paid in accordance with the fee schedule set forth in Exhibit "A", attached hereto and made a part of this Agreement (the "Fee Schedule"). Consultant will be compensated on a time and materials basis, based on the hours worked by the Consultant's employees or subconsultants at the hourly rates specified in the Fee Schedule. Fee Schedule rates shall include direct salary costs, employee benefits, and overhead. The rates stated in the Fee Schedule are not adjustable during the term of this Agreement. Consultant's compensation under this Agreement shall in no case exceed Five Hundred Thousand Dollars (\$500,000) during the term of this Agreement. The County may retain five percent of all periodic or progress payments made to the Consultant until completion and acceptance of all work tasks and County shall have right to withhold payment from Consultant for any unsatisfactory service until such time service is performed satisfactorily.

3.2 Reimbursements: In addition to the aforementioned fees, Consultant will be reimbursed for any expenses specifically set forth in a Project Scope of Work. All such reimbursement amounts are limited to those costs and expenses that are reasonable, necessary and actually incurred by the Consultant in connection with the services provided. The County shall not pay a mark up on any item of reimbursement. The County shall not pay for any item of overhead such as telephone, facsimile, postage, etc. All requests for reimbursement shall be accompanied by a copy of the original invoice.

3.3 Additional Services: Consultant shall not receive compensation for any services provided outside the scope of services specified in the County's ("RFP") and the Consultant's ("Response") and also as specified in each Project Scope of Services unless the County or the Project Manager for the Project, prior to Consultant performing the additional services, approves such additional services in writing. It is specifically understood that oral requests and/or approvals of such additional services or additional compensation shall be barred and are unenforceable.

3.4 Method of Billing: Consultant may submit invoices to County's Project Manager for approval on a progress basis, but no more often than once each calendar month. Said invoice shall be based on the total of all Consultants' services that have been completed to County's sole satisfaction. County shall pay Consultant's invoice within forty-five (45) days from the date County receives said invoice. Each invoice shall describe in detail, the services performed and the associated percentage of tasks completed. Any additional services approved and performed pursuant to this Agreement shall be designated as "Additional Services" and shall identify the number of the authorized change order, where applicable, on all invoices.

3.5 Records and Audits: Records of Consultant's services relating to this Agreement shall be maintained in accordance with generally recognized accounting principles and shall be made available to County, its Project Manager, The State, State Auditor, FHWA, or any duly authorized representative of the Federal Government for inspection and/or audit at mutually convenient times for a period of three (3) years from the termination of this Agreement.

3.6 Extension of Term of Agreement: The original Fee Schedule shall apply to the extension of the term of the agreement unless renegotiated and approved by both parties in writing.

3.7 Cost Principles: The Consultant agrees that the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., shall be used to determine the allowability of cost individual items.

The Consultant also agrees to comply with federal procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

Any costs for which payment has been made to Consultant that are determined by subsequent audit to be unallowable under 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., are subject to repayment by Consultant to the County.

All subcontracts in excess of \$25,000 shall contain the above provisions.

4.0 TIME OF PERFORMANCE

4.1 Commencement and Completion of Work: The professional services to be performed pursuant to this Agreement shall commence within five (5) days after County delivers its Notice to Proceed for each separately approved Project. Said services shall be performed in strict compliance with the Project Schedule approved by County as set forth in each Project Scope of Services. Each Project Schedule may be amended by mutual agreement of the parties. Failure to commence work in a timely manner and/or diligently pursue work to completion may be grounds for termination of this Agreement.

4.2 Excusable Delays: Neither party shall be responsible for delays or lack of performance resulting from acts beyond the reasonable control of the party or parties. Such acts shall include, but not be limited to, acts of God, fire, strikes, material shortages, compliance with laws or regulations, riots, acts of war, or any other conditions beyond the reasonable control of a party.

5.0 TERM OF CONTRACT AND TERMINATION

5.1 Term: This Agreement shall commence on the date of the award of this agreement and shall continue for a period of thirty-six months, or until all work on each project let during the thirty-six

month period is completed, unless previously terminated as provided herein or as otherwise agreed to in writing by the parties. Additionally, the term of this agreement may be extended for an additional twenty-four months by the parties mutual agreement.

5.2 Notice of Termination: The County reserves and has the right and privilege of canceling, suspending or abandoning the execution of all or any part of the work contemplated by this Agreement, with or without cause, at any time, by providing written notice to Consultant. The termination of this Agreement shall be deemed effective upon receipt of the notice of termination. In the event of such termination, Consultant shall immediately stop rendering services under this Agreement unless directed otherwise by the County.

5.3 Compensation: In the event of termination, County shall pay Consultant for reasonable costs incurred and professional services satisfactorily performed up to and including the date of County's written notice of termination. Compensation for work in progress shall be prorated as to the percentage of work completed as of the effective date of termination in accordance with the fees set forth in Exhibit "A". In ascertaining the professional services actually rendered hereunder up to the effective date of termination of this Agreement, consideration shall be given to both completed work and work in progress, to complete and incomplete drawings, and to other documents pertaining to the services contemplated herein whether delivered to the County or in the possession of the Consultant.

5.4 Documents: In the event of termination of this Agreement, all documents prepared by Consultant in its performance of this Agreement including, but not limited to, finished or unfinished design, development and construction documents, data studies, drawings, maps and reports, shall be delivered to the County within ten (10) days of delivery of termination notice to Consultant, at no cost to County. Any use of uncompleted documents without specific written authorization from Consultant shall be at County's sole risk and without liability or legal expense to Consultant.

6.0 INSURANCE REQUIREMENTS

6.1 Coverage Required: Contractor shall obtain, and maintain at all times during the term of this Agreement, insurance coverage in the amounts and coverage specified in the attached "Exhibit B".

7.0 INDEMNIFICATION

7.1 Indemnification: To the fullest extent allowed by law, Consultant shall defend, indemnify, and hold harmless the County and its officers, directors, officials, agents, employees, volunteers and representatives (collectively, "Indemnitee") from and against any and all claims, suits, actions, losses, injuries, damages or expenses of every name, kind, and description, including litigation costs and reasonable attorney's fees incurred, (collectively, "losses") which are founded upon, arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, the alleged negligence, recklessness, or willful misconduct of Consultant, its officers, agents, employees, volunteers, representatives, contractors and subconsultants, excluding, however, such liabilities caused in part by the sole negligence, active negligence or willful misconduct of the County, its agents, employees, and representatives. These indemnification obligations shall not be limited by any assertion or finding that (1) the person or entity indemnified is liable by reason of non-delegable duty, or (2) the losses were caused in part by the negligence of, breach of contract by, or violation of law by Indemnitee. Nothing in this Agreement, including the provisions of this paragraph, shall constitute a waiver or limitation of any rights which Indemnitee may have under applicable law, including without limitation, the right to implied indemnity.

7.2 Duty to Defend: The duty of Consultant to indemnify and save harmless as set forth

herein, shall include both the duty to indemnify and at Consultant's own cost and expense the duty to defend as set forth in Section 2778 of the California Civil Code and as limited in section 2782.8 of the California Civil Code. This duty to defend arises immediately when such claim is made and shall be independent of any finding of negligence and shall arise regardless of any claim or assertion that Indemnitee caused or contributed to the Losses. Consultant shall provide legal counsel acceptable to the County.

7.3 Duty to Cooperate: Each party shall notify the other party within ten (10) days in writing of any claim or damage related to activities performed under this Agreement. The parties shall cooperate with each other in the investigation and disposition of any claim arising out of the activities under this Agreement. Specifically, Consultant shall take all steps necessary to assist the County in the defense of any claim brought by a contractor hired to construct the Project regarding any errors, flaws, and/or omissions in the plans or specifications of the Project.

7.4 Patent Rights: Consultant represents that professional services provided by Consultant pursuant to this Agreement does not infringe on any other copyrighted work. Consultant shall defend, indemnify and hold harmless the County from all loss, cost, damage, expense, liability or claims, including attorneys' fees, court costs, litigation expenses and expert consultant or witness fees, that may at any time arise for any infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark or any other proprietary right of any person or persons in consequence of the use by the County of any articles or services supplied under this agreement.

The foregoing provisions in this section "Indemnification" shall survive the term and termination of this Agreement.

8.0 GENERAL PROVISIONS

8.1 Entire Agreement: This Agreement constitutes the entire Agreement between the parties with respect to any matter referenced herein and supersedes any and all other prior writings and oral negotiations. This Agreement may be modified only in writing, and signed by the parties in interest at the time of such modification. The terms of this Agreement shall prevail over any inconsistent provision in any other contract document appurtenant hereto, including exhibits to this Agreement.

8.2 Representatives: The Director of the Stanislaus County Department of Public Works, or his designee, shall be the representative of County for purposes of this Agreement and may issue all consents, approvals, directives and agreements on behalf of the County, called for by this Agreement, except as otherwise expressly provided in this Agreement. Consultant shall designate a representative for purposes of this Agreement who shall be authorized to issue all consents, approvals, directives and agreements on behalf of Consultant called for by this Agreement, except as otherwise expressly provided in this Agreement.

8.3 Project Managers: County shall designate a Project Manager to work directly with Consultant in the performance of this Agreement. Consultant shall designate a Project Manager who shall represent it and be its agent in all consultations with County during the term of this Agreement. Consultant or its Project Manager shall attend and assist in all coordination meetings called by County.

8.4 Designated Personnel: A material covenant of this agreement is that the Consultant shall assign the individuals designated below to perform the functions designated so long as they continue in the employ of the Consultant. The designated individuals shall, so long as their performance continues to

be acceptable to County, remain in charge of the services for the Project from beginning through completion of services.

- a. Project Manager: Dylan Crawford, Vice President
- b. Lead/Manager: n/a

8.5 Removal of Personnel or Sub-Consultants: If the County, in its sole discretion at any time during the term of this agreement, desires the removal of any person or sub-consultant assigned by Consultant to perform services, then the Consultant shall remove such person or consultant immediately upon receiving notice from the County.

8.6 Notices: Any notices, documents, correspondence or other communications concerning this Agreement or the work hereunder may be provided by personal delivery, facsimile or mail and shall be addressed as set forth below. Such communication shall be deemed served or delivered: a) at the time of delivery if such communication is sent by personal delivery; b) at the time of transmission if such communication is sent by facsimile; and c) 48 hours after deposit in the U.S. Mail as reflected by the official U.S. postmark if such communication is sent through regular United States mail.

If to County: Stanislaus County Public Works
Attn: Chris Brady, Deputy Director
1716 Morgan Road
Modesto, CA 95358

If to Consultant: O'Dell Engineering
Attn: Dylan Crawford, Vice President
1165 Scenic Drive, Ste. B
Modesto, CA 95350

8.7 Attorneys' Fees: In the event that litigation is brought by any party in connection with this Agreement, the prevailing party shall be entitled to recover from the opposing party all costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party in the exercise of any of its rights or remedies hereunder or the enforcement of any of the terms, conditions, or provisions hereof.

8.8 Claims Filed by County's Construction Contractor: If claims are filed by County's construction contractor relating to work performed by Consultant's personnel, and additional information or assistance from Consultant's personnel is required in order to evaluate or defend against such claims; Consultant agrees to make its personnel available for consultation with County's construction contract administration and legal staff and for testimony, if necessary, at depositions and at trial or arbitration proceedings.

Consultant's personnel that County considers essential to assist in defending against construction contractor claims will be made available on reasonable notice from County. Consultation or testimony will be reimbursed at the same rates, including travel costs that are being paid for Consultant's personnel services under this contract.

8.9 Governing Law: This Agreement shall be governed by and construed under the laws of the State of California without giving effect to that body of laws pertaining to conflict of laws. In the event of any legal action to enforce or interpret this Agreement, the parties hereto agree that the sole and exclusive venue shall be a court of competent jurisdiction located in Stanislaus County, California.

8.10 Assignment: Consultant shall not voluntarily or by operation of law assign, transfer, sublet or encumber all or any part of Consultant's interest in this Agreement without County's prior written consent. Any attempted assignment, transfer, subletting or encumbrance shall be void and shall constitute a breach of this Agreement and cause for termination of this Agreement. Regardless of County's consent, no subletting or assignment shall release Consultant of Consultant's obligation to perform all other obligations to be performed by Consultant hereunder for the term of this Agreement.

8.11 Independent Contractor: Consultant is and shall be acting at all times as an independent contractor and not as an employee of County. Consultant shall secure, at his expense, and be responsible for any and all payment of Income Tax, Social Security, State Disability Insurance Compensation, Unemployment Compensation, and other payroll deductions for Consultant and its officers, agents, and employees, and all business licenses, if any are required, in connection with the services to be performed hereunder. 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.

8.12 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.

Permission to Disclose information on one occasion, or public hearing held by the County relating to the contract, shall not authorize the Consultant to further disclose such information, or disseminate the same on any other occasion.

The Consultant shall not comment publicly to the press or any other media regarding the contract or the County's actions on the same, except to the County's staff, Consultant's own personnel involved in the performance of this contract, at public hearings or in response to questions from a Legislative committee.

The Consultant shall not issue any news release or public relations item of any nature, whatsoever, regarding work performed or to be performed under this contract without prior review of the contents thereof by the County, and receipt of the County's written permission.

Any subcontract entered into as a result of this contract shall contain all of the provisions of this Article.

8.13 National Labor Relations Board Certification: In accordance with Public Contract Code Section 10296, Consultant hereby states under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against Consultant with the immediately preceding two-year period, because of Consultant's failure to comply with an order of a federal court that orders Consultant to comply with an order of the National Labor Relations Board.

8.14 Ownership of Documents: Any interest, including copyright interests, of Consultant or its contractors or subconsultants in studies, reports, memoranda, computational sheets, drawings, plans or any other documents, including electronic data, prepared in connection with the Services, shall be the property of County. To the extent permitted by law, work product produced under this Agreement shall be deemed works for hire and all copyrights in such works shall be the property of the County. In the event that it is ever determined that any works created by Consultant or its subconsultants under this Agreement are not works for hire, Consultant hereby assigns to County all copyrights to such works. With the County's prior written approval, Consultant may retain and use copies of such works for reference and as documentation of experience and capabilities.

8.15 Reuse of Design Documents: Should the County desire to reuse the documents specified above and not use the services of the Consultant, then the County agrees to require the new consultant to assume any and all obligations for the reuse of the documents, and the County releases Consultant and its subconsultants from all liability associated with the reuse of such documents.

8.16 Public Records Act Disclosure: Consultant has been advised and is aware that all reports, documents, information and data including, but not limited to, computer tapes, discs or files furnished or prepared by Consultant, or any of its subconsultants, and provided to County may be subject to public disclosure as required by the California Public Records Act (California Government Code Section 6250 et. seq.). Exceptions to public disclosure may be those documents or information that qualifies as trade secrets, as that term is defined in the California Government Code Section 6254.7, and of which Consultant informs County of such trade secret. The County will endeavor to maintain as confidential all information obtained by it that is designated as a trade secret. The County shall not, in any way, be liable or responsible for the disclosure of any trade secret including, without limitation, those records so marked if disclosure is deemed to be required by law or by order of the Court.

8.17 Responsibility for Errors: Consultant shall be responsible for its work and results under this Agreement. Consultant, when requested, shall furnish clarification and/or explanation as may be required by the County's representative, regarding any services rendered under this Agreement at no additional cost to County. In the event that an error or omission attributable to Consultant occurs, then Consultant shall, at no cost to County, provide all necessary design drawings, estimates and other Consultant professional services necessary to rectify and correct the matter to the sole satisfaction of County and to participate in any meeting required with regard to the correction.

8.18 Order of Precedence: In the event of inconsistency among any of the Contract Documents, the following order of precedence applies:

1. This agreement shall prevail over all other documents;
2. The attachments to this agreement shall prevail over the RFP and Response;
3. The RFP shall prevail over the Response.

8.19 Costs: Each party shall bear its own costs and fees incurred in the preparation and negotiation of this Agreement and in the performance of its obligations hereunder except as expressly provided herein.

8.20 No Third Party Beneficiary Rights: This Agreement is entered into for the sole benefit of County and Consultant and no other parties are intended to be direct or incidental beneficiaries of this Agreement and no third party shall have any right in, under or to this Agreement.

8.21 Construction: The parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises with respect to this Agreement, this Agreement shall be construed as if drafted jointly by the parties and in accordance with its fair meaning. There shall be no presumption or burden of proof favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

8.22 Amendments: This Agreement may be amended only by a writing executed by the parties hereto or their respective successors and assigns.

8.23 Waiver: The delay or failure of either party at any time to require performance or compliance by the other of any of its obligations or agreements shall in no way be deemed a waiver of

those rights to require such performance or compliance. No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought. The waiver of any right or remedy in respect to any occurrence or event shall not be deemed a waiver of any right or remedy in respect to any other occurrence or event, nor shall any waiver constitute a continuing waiver.

8.24 Severability: If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable in any circumstance, such determination shall not affect the validity or enforceability of the remaining terms and provisions hereof or of the offending provision in any other circumstance. Notwithstanding the foregoing, if the value of this Agreement, based upon the substantial benefit of the bargain for any party is materially impaired, which determination as made by the presiding court or arbitrator of competent jurisdiction shall be binding, then both parties agree to substitute such provision(s) through good faith negotiations.


8.25 Counterparts: This Agreement may be executed in one or more counterparts, each of which shall be deemed an original. All counterparts shall be construed together and shall constitute one agreement.

8.26 Corporate Authority: The persons executing this Agreement on behalf of the parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said parties and that by doing so, the parties hereto are formally bound to the provisions of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by and through their respective authorized officers:


COUNTY OF STANISLAUS

By: _____


Matt Machado, Director
Department of Public Works

O'DELL ENGINEERING

By: _____


Brian Crawford
Vice President

APPROVED AS TO FORM:

John P. Doering
County Counsel

By: _____


Amanda DeHart
Deputy County Counsel

EXHIBIT A
FEE SCHEDULE



**O'Dell Engineering
FEE SCHEDULE
2016**

<u>Classification:</u>	<u>Regular Hourly Rate:</u>
Principal	\$200
Senior Civil Engineer	\$179
Senior Engineer 2	\$168
Senior Engineer 1	\$158
Engineer 2	\$147
Engineer 1	\$137
Assistant Engineer 2	\$121
Assistant Engineer 1	\$100
Senior Landscape Architect	\$147
Landscape Architect 2	\$131
Landscape Architect 1	\$121
Landscape Designer 2	\$110
Landscape Designer 1	\$100
Planner	\$147
Assistant Planner	\$121
Utility Engineer	\$147
CADD Operator 2	\$89
CADD Operator 1	\$74
Senior Land Surveyor	\$160
Senior Surveyor 2	\$140
Senior Surveyor 1	\$130
Surveyor 2	\$120
Surveyor 1	\$110
Assistant Surveyor 2	\$100
Assistant Surveyor 1	\$80
Survey Crew 2-man/1-man	\$230/\$160
Survey Crew 2-man/1-man (prevailing wage)	\$270/\$180
Administrative	\$80
Expert Witness	\$300

Outside Services:

Cost of services and expenses charged to <i>O'DELL ENGINEERING</i> by outside consultants, professional or technical firms engaged in connection with the project.	Actual cost plus 10%
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Reproduction:

Reproduction costs and services charged to <i>O'DELL ENGINEERING</i> by outside commercial printers engaged in connection with the project.	Actual cost plus 10%
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Travel:

Mileage, per diem, and subsistence are not normally charged to the client unless specific prior authorization is negotiated between client and consultant.	Actual cost plus 10%
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Rates Subject to a 5% Escalation Factor per Year

EXHIBIT B

INSURANCE REQUIREMENTS

INSURANCE REQUIREMENTS

Minimum Scope and Limits of Insurance: Consultant, at its sole cost and expense, for the full term of this Agreement (and any extensions thereof), shall obtain and maintain, at minimum, compliance with all of the following insurance coverage(s) and requirements. If Consultant normally carries insurance in an amount greater than the minimum amount listed below, that greater amount shall become the minimum required amount of insurance for purposes of this Agreement. The insurance listed below shall have a retroactive date of placement prior to, or coinciding with, the date services are first provided that are governed by the terms of this Agreement:

- (a) Comprehensive general liability, including premises-operations, products/ completed operations, broad form property damage, blanket contractual liability, independent contractors, personal injury with a policy limit of not less than Two Million Dollars (\$2,000,000), combined single limits, per occurrence and aggregate. 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.
- (b) Automobile liability for owned vehicles, hired, and non-owned vehicles, with a policy limit of not less than One Million Dollars (\$1,000,000), combined single limits, per occurrence and aggregate.
- (c) Workers' compensation insurance as required by the State of California.
- (d) Professional errors and omissions ("E&O") liability insurance with policy limits of not less than Two Million Dollars (\$2,000,000), combined single limit for each occurrence. If Consultant cannot provide an occurrence policy, Consultant shall provide insurance covering claims made as a result of performance of Work on this Project and shall maintain such insurance in effect for not less than three years following Final Completion of the Project.

Endorsements: The Consultant shall obtain a specific endorsement to all required insurance policies, except Professional Liability insurance, naming the County of Stanislaus, its Officers, Directors, Officials, Agents, Employees and Volunteers as additional insureds for at least three years after the completion of the work to be performed under this Agreement, but, to the extent that any insurance issued to Consultant in effect after the expiration of three years provides additional insured coverage to parties Consultant agreed in writing to name as an additional insured, then Consultant shall have the obligation under this contract to obtain such additional insured coverage for the County, under any and all policies Consultant has 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 its subconsultants;
- (b) Ongoing 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.
- (e) 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.

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. 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.

Certificates of Insurance: At least ten (10) days prior to the date the Consultant begins performance of its obligations under this Agreement, Consultant 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 subconsultants 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.

Non-limiting: Nothing in this Section or the insurance described herein shall be construed as limiting in any way, the indemnification provisions contained in this Agreement, or the liability of Consultant and Consultant's officers, employees, agents, representatives or subconsultants for payments of damages to persons or property.

Primary Insurance: The Consultant's insurance coverage shall be primary insurance regarding the County of Stanislaus, its Officers, Directors, Officials, Agents, Employees and Volunteers. Any insurance or self-insurance maintained by the County of Stanislaus, its Officers, Directors, Officials, Agents, Employees and Volunteers shall be excess of the Consultant's insurance and shall not contribute with Consultant's insurance. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the County or its officers, 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. Any and all insurances cared by it shall be deemed liability coverage for any and all actions it performs in connection with this Contract.

Cancellation of Insurance: 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. Consultant shall maintain such coverage in effect for three years after substantial completion of the project to the extent it is commercially available at reasonable rates.

California Admitted Insurer: 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.

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

STANISLAUS COUNTY PUBLIC WORKS

PROFESSIONAL DESIGN SERVICES MASTER AGREEMENT

This Master Agreement, hereinafter referred to as "Agreement" is made and entered into by and between the County of Stanislaus, a political subdivision of the State of California, hereinafter referred to as "County" and Sandis Civil Engineers, Surveyors, Planners, dba Sandis hereinafter referred to as "Consultant".

WHEREAS, County, by its Resolution No. 2016-583, adopted on the 22 day of November, 2016, awarded to Consultant an Agreement for On-Call Surveying Services for the Stanislaus County Public Works Department.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions contained herein, the parties hereby agree as follows:

1.0 PROFESSIONAL SERVICES TO BE PROVIDED BY CONSULTANT

1.1 Scope of Services: Consultant shall provide the professional services described in the County's Request for Proposal ("RFP") and Consultant's Response to County's RFP (the "Response") which are incorporated by reference in Section 2.0 entitled "Contract Documents".

Each project added to and to be performed under this Agreement shall be separately approved by the parties. Each project where the cost of services does not exceed \$100,000 shall be approved by purchase order issued by the County Purchasing Agent or designee; projects greater than \$100,000 shall be approved by resolution of the Board of Supervisors for the County.

1.2 Professional Practices: All professional services to be provided by Consultant pursuant to this Agreement shall be provided by personnel experienced in their respective fields and in a manner consistent with the standards of care, diligence and skill ordinarily exercised by professional consultants in similar fields and circumstances in accordance with sound professional practices. Consultant also represents that it is familiar with all laws that may affect its performance of this Agreement and shall advise County of any changes in any laws that may affect Consultant's performance of this Agreement.

1.3 Representations: Consultant represents that it has reviewed the RFP and that in its professional judgment the services to be performed under this Agreement can be performed within the maximum fee set forth in Section 3.1 – Compensation. Consultant represents that it is qualified to perform the professional services required by this Agreement and possesses the necessary licenses and permits required to perform said services.

1.4 Compliance with Laws: Consultant agrees that it shall perform the services required by this Agreement in compliance with all applicable Federal and California laws including, but not limited to, those laws related to minimum hours and wages; occupational health and safety; fair employment and employment practices; workers' compensation insurance and safety in employment; and all other Federal, State and local laws and ordinances applicable to the services required under this Agreement.

1.5 Non-Discrimination: During the performance of this Agreement, Consultant and its officers, employees, agents, representatives or subconsultants shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment 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

disability, medical condition (including genetic characteristics), marital status, age, political affiliation, sex or sexual orientation. Consultant and its officers, employees, agents, representatives or subconsultants 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.

1.6 Non-Exclusive Agreement: Consultant acknowledges that County may enter into agreements with other consultants for services similar to the services that are subject to this Agreement or may have its own employees perform services similar to those services contemplated by this Agreement.

1.7 Delegation and Assignment: This is a personal service contract, and the duties set forth herein shall not be delegated or assigned to any person or entity without the prior written consent of County. Consultant may engage a subconsultant(s) as permitted by law and may employ other personnel to perform services contemplated by this Agreement at Consultant's sole cost and expense.

1.8 Subcontracting: Nothing contained in this contract or otherwise, shall create any contractual relation between County and any subconsultants(s), and no subconsultant shall relieve Consultant of its responsibilities and obligations hereunder. Consultant agrees to be as fully responsible to County for the acts and omissions of its subconsultant(s) and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by Consultant. Consultant's obligation to pay its subconsultant(s) is an independent obligation from County's obligation to make payments to the Consultant.

Consultant shall perform the services with resources available within its own organization; and no portion of the work pertinent to this Agreement shall be subcontracted without written authorization by the County, except that, which is expressly identified in the approved Cost Proposal.

Any substitution of subconsultants must be approved in writing by the County.

1.9 Conflict of Interest: Consultant shall disclose any financial, business, or other relationship with County that may have an impact upon the outcome of this Agreement, or any ensuing County construction project. The Consultant shall also list current clients who may have a financial interest in the outcome of this Agreement, or any ensuing County construction project, which will follow.

Consultant represents that it has no interest and shall not acquire any interest direct or indirect which conflicts, or has the appearance of conflicting, in any manner or degree with the performance of the work and services under this Agreement.

Consultant hereby certifies that neither Consultant, nor any firm affiliated with the Consultant will bid on any construction agreement, or on any agreement to provide construction inspection for any construction project resulting from this Agreement. An affiliated firm is one, which is subject to the control of the same persons through joint ownership, or otherwise.

Except for subconsultants whose services are limited to providing surveying or materials testing information, no subconsultant who has provided design services in connection with this Agreement shall be eligible to bid on any construction agreement, or on any agreement to provide construction inspection for any construction project resulting from this Agreement.

1.10 Covenant Against Contingent Fees: Consultant warrants that he/she has not employed or retained any company or person, other than a bona fide employee working for the consultant; to solicit or secure this Master Agreement; and that he/she has not paid or agreed to pay any company or person other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award, or formation of this Master Agreement. For breach or violation of this warranty, the local agency shall have the right to annul this Master Agreement without liability, or at its discretion; to deduct from the Master Agreement price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

1.11 Rebates, Kickbacks or Other Unlawful Consideration: The Consultant warrants that this Master Agreement was not obtained or secured through rebates, kickbacks or other unlawful consideration, either promised or paid to any County employee. For breach or violation of this warranty, County shall have the right in its discretion; to terminate the agreement without liability; to pay only for the value of the work actually performed; or to deduct from the agreement price; or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

1.12 Prohibition of Expending State or Federal Funds for Lobbying: The Consultant certifies to the best of his or her knowledge and belief that:

No, state, federal or local agency appropriated funds have been paid, or will be paid by-or-on behalf of the Consultant to any person for influencing or attempting to influence an officer or employee of any state or federal agency; a Member of the State Legislature or United States Congress; an officer or employee of the Legislature or Congress; or any employee of a Member of the Legislature or Congress, in connection with the awarding of any state or federal contract; the making of any state or federal grant; the making of any state or federal loan; the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any state or federal contract, grant, loan, or cooperative agreement.

If any funds other than federal appropriated funds have been paid, or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency; a Member of Congress; an officer or employee of Congress, or an employee of a Member of Congress; in connection with this federal contract, grant, loan, or cooperative agreement; the Consultant shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Consultant also agrees by signing this document that he or she shall require that the language of this certification be included in all lower-tier subcontracts, which exceed \$100,000, and that all such sub recipients shall certify and disclose accordingly.

1.13 Debarment and Suspension Certification: The Consultant's signature affixed herein, shall constitute a certification under penalty of perjury under the laws of the State of California, that the Consultant has complied with Title 49, Code of Federal Regulations, Part 29, Debarment and Suspension Certificate, which certifies that he/she or any person associated therewith in the capacity of owner,

partner, director, officer, or manager, is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency; has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years; does not have a proposed debarment pending; and has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct with the past three (3) years. Any exceptions to this certification must be disclosed to the County.

Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining Consultant responsibility. Disclosures must indicate to who exceptions apply, initiating agency, and dates of actions.

2.0 CONTRACT DOCUMENTS

Contract documents consist of the following documents, including all changes, addenda, and modifications thereto:

1. Agreement and all attachments
 - a. Exhibit A – Fee Schedule
 - b. Exhibit B – Insurance Requirements
2. County's Request for Proposal
3. Consultant's Response

3.0 COMPENSATION AND BILLING

3.1 Compensation: For each task or project let under this Agreement Consultant shall be paid in accordance with the fee schedule set forth in Exhibit "A", attached hereto and made a part of this Agreement (the "Fee Schedule"). Consultant will be compensated on a time and materials basis, based on the hours worked by the Consultant's employees or subconsultants at the hourly rates specified in the Fee Schedule. Fee Schedule rates shall include direct salary costs, employee benefits, and overhead. The rates stated in the Fee Schedule are not adjustable during the term of this Agreement. Consultant's compensation under this Agreement shall in no case exceed Five Hundred Thousand Dollars (\$500,000) during the term of this Agreement. The County may retain five percent of all periodic or progress payments made to the Consultant until completion and acceptance of all work tasks and County shall have right to withhold payment from Consultant for any unsatisfactory service until such time service is performed satisfactorily.

3.2 Reimbursements: In addition to the aforementioned fees, Consultant will be reimbursed for any expenses specifically set forth in a Project Scope of Work. All such reimbursement amounts are limited to those costs and expenses that are reasonable, necessary and actually incurred by the Consultant in connection with the services provided. The County shall not pay a mark up on any item of reimbursement. The County shall not pay for any item of overhead such as telephone, facsimile, postage, etc. All requests for reimbursement shall be accompanied by a copy of the original invoice.

3.3 Additional Services: Consultant shall not receive compensation for any services provided outside the scope of services specified in the County's ("RFP") and the Consultant's ("Response") and also as specified in each Project Scope of Services unless the County or the Project Manager for the Project, prior to Consultant performing the additional services, approves such additional services in writing. It is specifically understood that oral requests and/or approvals of such additional services or additional compensation shall be barred and are unenforceable.

3.4 Method of Billing: Consultant may submit invoices to County's Project Manager for approval on a progress basis, but no more often than once each calendar month. Said invoice shall be based on the total of all Consultants' services that have been completed to County's sole satisfaction. County shall pay Consultant's invoice within forty-five (45) days from the date County receives said invoice. Each invoice shall describe in detail, the services performed and the associated percentage of tasks completed. Any additional services approved and performed pursuant to this Agreement shall be designated as "Additional Services" and shall identify the number of the authorized change order, where applicable, on all invoices.

3.5 Records and Audits: Records of Consultant's services relating to this Agreement shall be maintained in accordance with generally recognized accounting principles and shall be made available to County, its Project Manager, The State, State Auditor, FHWA, or any duly authorized representative of the Federal Government for inspection and/or audit at mutually convenient times for a period of three (3) years from the termination of this Agreement.

3.6 Extension of Term of Agreement: The original Fee Schedule shall apply to the extension of the term of the agreement unless renegotiated and approved by both parties in writing.

3.7 Cost Principles: The Consultant agrees that the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., shall be used to determine the allowability of cost individual items.

The Consultant also agrees to comply with federal procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

Any costs for which payment has been made to Consultant that are determined by subsequent audit to be unallowable under 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., are subject to repayment by Consultant to the County.

All subcontracts in excess of \$25,000 shall contain the above provisions.

4.0 TIME OF PERFORMANCE

4.1 Commencement and Completion of Work: The professional services to be performed pursuant to this Agreement shall commence within five (5) days after County delivers its Notice to Proceed for each separately approved Project. Said services shall be performed in strict compliance with the Project Schedule approved by County as set forth in each Project Scope of Services. Each Project Schedule may be amended by mutual agreement of the parties. Failure to commence work in a timely manner and/or diligently pursue work to completion may be grounds for termination of this Agreement.

4.2 Excusable Delays: Neither party shall be responsible for delays or lack of performance resulting from acts beyond the reasonable control of the party or parties. Such acts shall include, but not be limited to, acts of God, fire, strikes, material shortages, compliance with laws or regulations, riots, acts of war, or any other conditions beyond the reasonable control of a party.

5.0 TERM OF CONTRACT AND TERMINATION

5.1 Term: This Agreement shall commence on the date of the award of this agreement and shall continue for a period of thirty-six months, or until all work on each project let during the thirty-six

month period is completed, unless previously terminated as provided herein or as otherwise agreed to in writing by the parties. Additionally, the term of this agreement may be extended for an additional twenty-four months by the parties mutual agreement.

5.2 Notice of Termination: The County reserves and has the right and privilege of canceling, suspending or abandoning the execution of all or any part of the work contemplated by this Agreement, with or without cause, at any time, by providing written notice to Consultant. The termination of this Agreement shall be deemed effective upon receipt of the notice of termination. In the event of such termination, Consultant shall immediately stop rendering services under this Agreement unless directed otherwise by the County.

5.3 Compensation: In the event of termination, County shall pay Consultant for reasonable costs incurred and professional services satisfactorily performed up to and including the date of County's written notice of termination. Compensation for work in progress shall be prorated as to the percentage of work completed as of the effective date of termination in accordance with the fees set forth in Exhibit "A". In ascertaining the professional services actually rendered hereunder up to the effective date of termination of this Agreement, consideration shall be given to both completed work and work in progress, to complete and incomplete drawings, and to other documents pertaining to the services contemplated herein whether delivered to the County or in the possession of the Consultant.

5.4 Documents: In the event of termination of this Agreement, all documents prepared by Consultant in its performance of this Agreement including, but not limited to, finished or unfinished design, development and construction documents, data studies, drawings, maps and reports, shall be delivered to the County within ten (10) days of delivery of termination notice to Consultant, at no cost to County. Any use of uncompleted documents without specific written authorization from Consultant shall be at County's sole risk and without liability or legal expense to Consultant.

6.0 INSURANCE REQUIREMENTS

6.1 Coverage Required: Contractor shall obtain, and maintain at all times during the term of this Agreement, insurance coverage in the amounts and coverage specified in the attached "Exhibit B".

7.0 INDEMNIFICATION

7.1 Indemnification: To the fullest extent allowed by law, Consultant shall defend, indemnify, and hold harmless the County and its officers, directors, officials, agents, employees, volunteers and representatives (collectively, "Indemnitee") from and against any and all claims, suits, actions, losses, injuries, damages or expenses of every name, kind, and description, including litigation costs and reasonable attorney's fees incurred, (collectively, "losses") which are founded upon, arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, the alleged negligence, recklessness, or willful misconduct of Consultant, its officers, agents, employees, volunteers, representatives, contractors and subconsultants, excluding, however, such liabilities caused in part by the sole negligence, active negligence or willful misconduct of the County, its agents, employees, and representatives. These indemnification obligations shall not be limited by any assertion or finding that (1) the person or entity indemnified is liable by reason of non-delegable duty, or (2) the losses were caused in part by the negligence of, breach of contract by, or violation of law by Indemnitee. Nothing in this Agreement, including the provisions of this paragraph, shall constitute a waiver or limitation of any rights which Indemnitee may have under applicable law, including without limitation, the right to implied indemnity.

7.2 Duty to Defend: The duty of Consultant to indemnify and save harmless as set forth herein, shall include both the duty to indemnify and at Consultant's own cost and expense the duty to defend as set forth in Section 2778 of the California Civil Code and as limited in section 2782.8 of the California Civil Code. This duty to defend arises immediately when such claim is made and shall be independent of any finding of negligence and shall arise regardless of any claim or assertion that Indemnatee caused or contributed to the Losses. Consultant shall provide legal counsel acceptable to the County.

7.3 Duty to Cooperate: Each party shall notify the other party within ten (10) days in writing of any claim or damage related to activities performed under this Agreement. The parties shall cooperate with each other in the investigation and disposition of any claim arising out of the activities under this Agreement. Specifically, Consultant shall take all steps necessary to assist the County in the defense of any claim brought by a contractor hired to construct the Project regarding any errors, flaws, and/or omissions in the plans or specifications of the Project.

7.4 Patent Rights: Consultant represents that professional services provided by Consultant pursuant to this Agreement does not infringe on any other copyrighted work. Consultant shall defend, indemnify and hold harmless the County from all loss, cost, damage, expense, liability or claims, including attorneys' fees, court costs, litigation expenses and expert consultant or witness fees, that may at any time arise for any infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark or any other proprietary right of any person or persons in consequence of the use by the County of any articles or services supplied under this agreement.

The foregoing provisions in this section "Indemnification" shall survive the term and termination of this Agreement.

8.0 GENERAL PROVISIONS

8.1 Entire Agreement: This Agreement constitutes the entire Agreement between the parties with respect to any matter referenced herein and supersedes any and all other prior writings and oral negotiations. This Agreement may be modified only in writing, and signed by the parties in interest at the time of such modification. The terms of this Agreement shall prevail over any inconsistent provision in any other contract document appurtenant hereto, including exhibits to this Agreement.

8.2 Representatives: The Director of the Stanislaus County Department of Public Works, or his designee, shall be the representative of County for purposes of this Agreement and may issue all consents, approvals, directives and agreements on behalf of the County, called for by this Agreement, except as otherwise expressly provided in this Agreement. Consultant shall designate a representative for purposes of this Agreement who shall be authorized to issue all consents, approvals, directives and agreements on behalf of Consultant called for by this Agreement, except as otherwise expressly provided in this Agreement.

8.3 Project Managers: County shall designate a Project Manager to work directly with Consultant in the performance of this Agreement. Consultant shall designate a Project Manager who shall represent it and be its agent in all consultations with County during the term of this Agreement. Consultant or its Project Manager shall attend and assist in all coordination meetings called by County.

8.4 Designated Personnel: A material covenant of this agreement is that the Consultant shall assign the individuals designated below to perform the functions designated so long as they continue in the employ of the Consultant. The designated individuals shall, so long as their performance continues to

be acceptable to County, remain in charge of the services for the Project from beginning through completion of services.

- a. Project Manager: Scott Shortlidge, PLS, Senior Project Manager
- b. Lead/Manager: n/a

8.5 Removal of Personnel or Sub-Consultants: If the County, in its sole discretion at any time during the term of this agreement, desires the removal of any person or sub-consultant assigned by Consultant to perform services, then the Consultant shall remove such person or consultant immediately upon receiving notice from the County.

8.6 Notices: Any notices, documents, correspondence or other communications concerning this Agreement or the work hereunder may be provided by personal delivery, facsimile or mail and shall be addressed as set forth below. Such communication shall be deemed served or delivered: a) at the time of delivery if such communication is sent by personal delivery; b) at the time of transmission if such communication is sent by facsimile; and c) 48 hours after deposit in the U.S. Mail as reflected by the official U.S. postmark if such communication is sent through regular United States mail.

If to County: Stanislaus County Public Works
Attn: Chris Brady, Deputy Director
1716 Morgan Road
Modesto, CA 95358

If to Consultant: SANDIS
Attn: Andrew Chafer, PLS, Associate Principal
1640 W. Yosemite Avenue, Ste. 2
Manteca, CA 95337

8.7 Attorneys' Fees: In the event that litigation is brought by any party in connection with this Agreement, the prevailing party shall be entitled to recover from the opposing party all costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party in the exercise of any of its rights or remedies hereunder or the enforcement of any of the terms, conditions, or provisions hereof.

8.8 Claims Filed by County's Construction Contractor: If claims are filed by County's construction contractor relating to work performed by Consultant's personnel, and additional information or assistance from Consultant's personnel is required in order to evaluate or defend against such claims; Consultant agrees to make its personnel available for consultation with County's construction contract administration and legal staff and for testimony, if necessary, at depositions and at trial or arbitration proceedings.

Consultant's personnel that County considers essential to assist in defending against construction contractor claims will be made available on reasonable notice from County. Consultation or testimony will be reimbursed at the same rates, including travel costs that are being paid for Consultant's personnel services under this contract.

8.9 Governing Law: This Agreement shall be governed by and construed under the laws of the State of California without giving effect to that body of laws pertaining to conflict of laws. In the event of any legal action to enforce or interpret this Agreement, the parties hereto agree that the sole and exclusive venue shall be a court of competent jurisdiction located in Stanislaus County, California.

8.10 Assignment: Consultant shall not voluntarily or by operation of law assign, transfer, sublet or encumber all or any part of Consultant's interest in this Agreement without County's prior written consent. Any attempted assignment, transfer, subletting or encumbrance shall be void and shall constitute a breach of this Agreement and cause for termination of this Agreement. Regardless of County's consent, no subletting or assignment shall release Consultant of Consultant's obligation to perform all other obligations to be performed by Consultant hereunder for the term of this Agreement.

8.11 Independent Contractor: Consultant is and shall be acting at all times as an independent contractor and not as an employee of County. Consultant shall secure, at his expense, and be responsible for any and all payment of Income Tax, Social Security, State Disability Insurance Compensation, Unemployment Compensation, and other payroll deductions for Consultant and its officers, agents, and employees, and all business licenses, if any are required, in connection with the services to be performed hereunder. 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.

8.12 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.

Permission to Disclose information on one occasion, or public hearing held by the County relating to the contract, shall not authorize the Consultant to further disclose such information, or disseminate the same on any other occasion.

The Consultant shall not comment publicly to the press or any other media regarding the contract or the County's actions on the same, except to the County's staff, Consultant's own personnel involved in the performance of this contract, at public hearings or in response to questions from a Legislative committee.

The Consultant shall not issue any news release or public relations item of any nature, whatsoever, regarding work performed or to be performed under this contract without prior review of the contents thereof by the County, and receipt of the County's written permission.

Any subcontract entered into as a result of this contract shall contain all of the provisions of this Article.

8.13 National Labor Relations Board Certification: In accordance with Public Contract Code Section 10296, Consultant hereby states under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against Consultant with the immediately preceding two-year period, because of Consultant's failure to comply with an order of a federal court that orders Consultant to comply with an order of the National Labor Relations Board.

8.14 Ownership of Documents: Any interest, including copyright interests, of Consultant or its contractors or subconsultants in studies, reports, memoranda, computational sheets, drawings, plans or any other documents, including electronic data, prepared in connection with the Services, shall be the property of County. To the extent permitted by law, work product produced under this Agreement shall be deemed works for hire and all copyrights in such works shall be the property of the County. In the event that it is ever determined that any works created by Consultant or its subconsultants under this Agreement are not works for hire, Consultant hereby assigns to County all copyrights to such works. With the County's prior written approval, Consultant may retain and use copies of such works for reference and as documentation of experience and capabilities.

8.15 Reuse of Design Documents: Should the County desire to reuse the documents specified above and not use the services of the Consultant, then the County agrees to require the new consultant to assume any and all obligations for the reuse of the documents, and the County releases Consultant and its subconsultants from all liability associated with the reuse of such documents.

8.16 Public Records Act Disclosure: Consultant has been advised and is aware that all reports, documents, information and data including, but not limited to, computer tapes, discs or files furnished or prepared by Consultant, or any of its subconsultants, and provided to County may be subject to public disclosure as required by the California Public Records Act (California Government Code Section 6250 et. seq.). Exceptions to public disclosure may be those documents or information that qualifies as trade secrets, as that term is defined in the California Government Code Section 6254.7, and of which Consultant informs County of such trade secret. The County will endeavor to maintain as confidential all information obtained by it that is designated as a trade secret. The County shall not, in any way, be liable or responsible for the disclosure of any trade secret including, without limitation, those records so marked if disclosure is deemed to be required by law or by order of the Court.

8.17 Responsibility for Errors: Consultant shall be responsible for its work and results under this Agreement. Consultant, when requested, shall furnish clarification and/or explanation as may be required by the County's representative, regarding any services rendered under this Agreement at no additional cost to County. In the event that an error or omission attributable to Consultant occurs, then Consultant shall, at no cost to County, provide all necessary design drawings, estimates and other Consultant professional services necessary to rectify and correct the matter to the sole satisfaction of County and to participate in any meeting required with regard to the correction.

8.18 Order of Precedence: In the event of inconsistency among any of the Contract Documents, the following order of precedence applies:

1. This agreement shall prevail over all other documents;
2. The attachments to this agreement shall prevail over the RFP and Response;
3. The RFP shall prevail over the Response.

8.19 Costs: Each party shall bear its own costs and fees incurred in the preparation and negotiation of this Agreement and in the performance of its obligations hereunder except as expressly provided herein.

8.20 No Third Party Beneficiary Rights: This Agreement is entered into for the sole benefit of County and Consultant and no other parties are intended to be direct or incidental beneficiaries of this Agreement and no third party shall have any right in, under or to this Agreement.

8.21 Construction: The parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises with respect to this Agreement, this Agreement shall be construed as if drafted jointly by the parties and in accordance with its fair meaning. There shall be no presumption or burden of proof favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

8.22 Amendments: This Agreement may be amended only by a writing executed by the parties hereto or their respective successors and assigns.

8.23 Waiver: The delay or failure of either party at any time to require performance or compliance by the other of any of its obligations or agreements shall in no way be deemed a waiver of

those rights to require such performance or compliance. No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought. The waiver of any right or remedy in respect to any occurrence or event shall not be deemed a waiver of any right or remedy in respect to any other occurrence or event, nor shall any waiver constitute a continuing waiver.

8.24 Severability: If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable in any circumstance, such determination shall not affect the validity or enforceability of the remaining terms and provisions hereof or of the offending provision in any other circumstance. Notwithstanding the foregoing, if the value of this Agreement, based upon the substantial benefit of the bargain for any party is materially impaired, which determination as made by the presiding court or arbitrator of competent jurisdiction shall be binding, then both parties agree to substitute such provision(s) through good faith negotiations.

8.25 Counterparts: This Agreement may be executed in one or more counterparts, each of which shall be deemed an original. All counterparts shall be construed together and shall constitute one agreement.

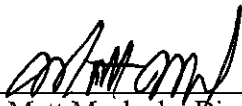
8.26 Corporate Authority: The persons executing this Agreement on behalf of the parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said parties and that by doing so the parties hereto are formally bound to the provisions of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by and through their respective authorized officers:

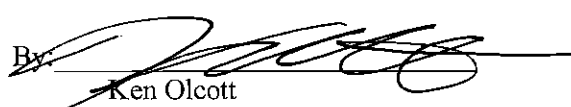
COUNTY OF STANISLAUS

SANDIS

By: _____


Matt Machado, Director
Department of Public Works

By: _____


Ken Olcott
President

APPROVED AS TO FORM:

John P. Doering
County Counsel

By: _____


Amanda DeHart
Deputy County Counsel

EXHIBIT A

FEE SCHEDULE



SANDIS STANDARD HOURLY CHARGE RATES
Effective September 1, 2016 through August 31, 2017

ENGINEERING SERVICES / QSD & QSP SERVICES		Hourly Rate
Project Accountant/Coordinator		\$90.00
Computer/Field/Engineer Technician	Level I	\$80.00
	Level II	\$90.00
	Level III	\$105.00
Design Engineer	Level I	\$90.00
	Level II	\$100.00
	Level III	\$115.00
Project Engineer/Traffic Engineer	Level I	\$120.00
	Level II	\$130.00
	Level III	\$140.00
Associate Project Manager		\$145.00
Project Manager		\$165.00
Associate Principal/Senior Project Manager/Senior Traffic Engineer		\$185.00
Principal		\$300.00
SURVEYING SERVICES		
Computer/Surveying Technician	Level I	\$90.00
	Level II	\$100.00
	Level III/Steel Draft Person	\$120.00
Project Surveyor	Level I	\$120.00
	Level II	\$130.00
	Level III/Steel Office Support	\$140.00
Senior Project Surveyor/Steel Office Support (LSIT)		\$175.00
Survey Manager/Steel Office Support (PLS)		\$185.00
Senior Field Survey Supervisor /AISC, Steel Supervisor		\$185.00
1-Person Survey Crew		\$200.00
2-Person Survey Crew		\$260.00
2 Person Survey Crew for Structural Steel Surveys and As-builts		\$295.00
2-Person Survey Crew with Apprentice		\$275.00
3-Person Survey Crew		\$325.00
Utility Locating Field Crew (1-Man Crew)		\$175.00
Utility Locating Field Crew (2-Man Crew)		\$225.00
HIGH DEFINITION SCANNING / 3-D MODELING SERVICES		
Laser Scanning Field: 2-Person Union Crew		\$260.00
Laser Scanning Field: 1-Person Union Crew		\$225.00
3-D Model/Scan Post Processing Project Manager		\$175.00
3-D Scanning Technician		\$145.00

REIMBURSABLE COSTS: Printing, monuments, materials, outside services and consultants, courier/delivery services, express/overnight mail, travel/per diem, agency fees advanced, etc., at cost plus 10%.

OVERTIME: All overtime charges are invoiced on the basis of one and one-half times the above rates. Double time invoiced at two times above rates.

ESCALATION: Escalation for future years shall be at a minimum of 3.5% increase per year.

Sandis at its sole discretion may utilize one or both of its subsidiaries (BSI & CTS) to perform the services presented in this proposal. Bryant Survey Inc. (BSI) to perform structural surveys and as-builts as specified in the "AISC 3003-10 "Code of Standard Practice for Steel Buildings and Bridges". CTS Inc. to perform BIM, Scanning and other 3D related services. Invoices by the subsidiaries will be rolled up and included with Sandis invoices.

EXHIBIT B

INSURANCE REQUIREMENTS

INSURANCE REQUIREMENTS

Minimum Scope and Limits of Insurance: Consultant, at its sole cost and expense, for the full term of this Agreement (and any extensions thereof), shall obtain and maintain, at minimum, compliance with all of the following insurance coverage(s) and requirements. If Consultant normally carries insurance in an amount greater than the minimum amount listed below, that greater amount shall become the minimum required amount of insurance for purposes of this Agreement. The insurance listed below shall have a retroactive date of placement prior to, or coinciding with, the date services are first provided that are governed by the terms of this Agreement:

- (a) Comprehensive general liability, including premises-operations, products/ completed operations, broad form property damage, blanket contractual liability, independent contractors, personal injury with a policy limit of not less than Two Million Dollars (\$2,000,000), combined single limits, per occurrence and aggregate. 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.
- (b) Automobile liability for owned vehicles, hired, and non-owned vehicles, with a policy limit of not less than One Million Dollars (\$1,000,000), combined single limits, per occurrence and aggregate.
- (c) Workers' compensation insurance as required by the State of California.
- (d) Professional errors and omissions ("E&O") liability insurance with policy limits of not less than Two Million Dollars (\$2,000,000), combined single limit for each occurrence. If Consultant cannot provide an occurrence policy, Consultant shall provide insurance covering claims made as a result of performance of Work on this Project and shall maintain such insurance in effect for not less than three years following Final Completion of the Project.

Endorsements: The Consultant shall obtain a specific endorsement to all required insurance policies, except Professional Liability insurance, naming the County of Stanislaus, its Officers, Directors, Officials, Agents, Employees and Volunteers as additional insureds for at least three years after the completion of the work to be performed under this Agreement, but, to the extent that any insurance issued to Consultant in effect after the expiration of three years provides additional insured coverage to parties Consultant agreed in writing to name as an additional insured, then Consultant shall have the obligation under this contract to obtain such additional insured coverage for the County, under any and all policies Consultant has 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 its subconsultants;
- (b) Ongoing 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.
- (e) 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.

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. 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.

Certificates of Insurance: At least ten (10) days prior to the date the Consultant begins performance of its obligations under this Agreement, Consultant 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 subconsultants 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.

Non-limiting: Nothing in this Section or the insurance described herein shall be construed as limiting in any way, the indemnification provisions contained in this Agreement, or the liability of Consultant and Consultant's officers, employees, agents, representatives or subconsultants for payments of damages to persons or property.

Primary Insurance: The Consultant's insurance coverage shall be primary insurance regarding the County of Stanislaus, its Officers, Directors, Officials, Agents, Employees and Volunteers. Any insurance or self-insurance maintained by the County of Stanislaus, its Officers, Directors, Officials, Agents, Employees and Volunteers shall be excess of the Consultant's insurance and shall not contribute with Consultant's insurance. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the County or its officers, 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. Any and all insurances cared by it shall be deemed liability coverage for any and all actions it performs in connection with this Contract.

Cancellation of Insurance: 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. Consultant shall maintain such coverage in effect for three years after substantial completion of the project to the extent it is commercially available at reasonable rates.

California Admitted Insurer: 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.

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



SANDIS STANDARD HOURLY CHARGE RATES

Effective September 1, 2016 through August 31, 2017

ENGINEERING SERVICES / QSD & QSP SERVICES		Hourly Rate
Project Accountant/Coordinator		\$90.00
Computer/Field/Engineer Technician	Level I	\$80.00
	Level II	\$90.00
	Level III	\$105.00
Design Engineer	Level I	\$90.00
	Level II	\$100.00
	Level III	\$115.00
Project Engineer/Traffic Engineer	Level I	\$120.00
	Level II	\$130.00
	Level III	\$140.00
Associate Project Manager		\$145.00
Project Manager		\$165.00
Associate Principal/Senior Project Manager/Senior Traffic Engineer		\$185.00
Principal		\$300.00
SURVEYING SERVICES		
Computer/Surveying Technician	Level I	\$90.00
	Level II	\$100.00
	Level III/Steel Draft Person	\$120.00
Project Surveyor	Level I	\$120.00
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2 Person Survey Crew for Structural Steel Surveys and As-builts		\$295.00
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Utility Locating Field Crew (2-Man Crew)		\$225.00
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3-D Model/Scan Post Processing Project Manager		\$175.00
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REIMBURSABLE COSTS: Printing, monuments, materials, outside services and consultants, courier/delivery services, express/overnight mail, travel/per diem, agency fees advanced, etc., at cost plus 10%.

OVERTIME: All overtime charges are invoiced on the basis of one and one-half times the above rates. Double time invoiced at two times above rates.

ESCALATION: Escalation for future years shall be at a minimum of 3.5% increase per year.

Sandis at its sole discretion may utilize one or both of its subsidiaries (BSI & CTS) to perform the services presented in this proposal. Bryant Survey Inc. (BSI) to perform structural surveys and as-builts as specified in the "AISC 3003-10 "Code of Standard Practice for Steel Buildings and Bridges". CTS Inc. to perform BIM, Scanning and other 3D related services. Invoices by the subsidiaries will be rolled up and included with Sandis invoices.

EXHIBIT B

INSURANCE REQUIREMENTS

INSURANCE REQUIREMENTS

Minimum Scope and Limits of Insurance: Consultant, at its sole cost and expense, for the full term of this Agreement (and any extensions thereof), shall obtain and maintain, at minimum, compliance with all of the following insurance coverage(s) and requirements. If Consultant normally carries insurance in an amount greater than the minimum amount listed below, that greater amount shall become the minimum required amount of insurance for purposes of this Agreement. The insurance listed below shall have a retroactive date of placement prior to, or coinciding with, the date services are first provided that are governed by the terms of this Agreement:

- (a) Comprehensive general liability, including premises-operations, products/ completed operations, broad form property damage, blanket contractual liability, independent contractors, personal injury with a policy limit of not less than Two Million Dollars (\$2,000,000), combined single limits, per occurrence and aggregate. 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.
- (b) Automobile liability for owned vehicles, hired, and non-owned vehicles, with a policy limit of not less than One Million Dollars (\$1,000,000), combined single limits, per occurrence and aggregate.
- (c) Workers' compensation insurance as required by the State of California.
- (d) Professional errors and omissions ("E&O") liability insurance with policy limits of not less than Two Million Dollars (\$2,000,000), combined single limit for each occurrence. If Consultant cannot provide an occurrence policy, Consultant shall provide insurance covering claims made as a result of performance of Work on this Project and shall maintain such insurance in effect for not less than three years following Final Completion of the Project.

Endorsements: The Consultant shall obtain a specific endorsement to all required insurance policies, except Professional Liability insurance, naming the County of Stanislaus, its Officers, Directors, Officials, Agents, Employees and Volunteers as additional insureds for at least three years after the completion of the work to be performed under this Agreement, but, to the extent that any insurance issued to Consultant in effect after the expiration of three years provides additional insured coverage to parties Consultant agreed in writing to name as an additional insured, then Consultant shall have the obligation under this contract to obtain such additional insured coverage for the County, under any and all policies Consultant has 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 its subconsultants;
- (b) Ongoing 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.
- (e) 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.

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. 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.

Certificates of Insurance: At least ten (10) days prior to the date the Consultant begins performance of its obligations under this Agreement, Consultant 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 subconsultants 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.

Non-limiting: Nothing in this Section or the insurance described herein shall be construed as limiting in any way, the indemnification provisions contained in this Agreement, or the liability of Consultant and Consultant's officers, employees, agents, representatives or subconsultants for payments of damages to persons or property.

Primary Insurance: The Consultant's insurance coverage shall be primary insurance regarding the County of Stanislaus, its Officers, Directors, Officials, Agents, Employees and Volunteers. Any insurance or self-insurance maintained by the County of Stanislaus, its Officers, Directors, Officials, Agents, Employees and Volunteers shall be excess of the Consultant's insurance and shall not contribute with Consultant's insurance. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the County or its officers, 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. Any and all insurances cared by it shall be deemed liability coverage for any and all actions it performs in connection with this Contract.

Cancellation of Insurance: 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. Consultant shall maintain such coverage in effect for three years after substantial completion of the project to the extent it is commercially available at reasonable rates.

California Admitted Insurer: 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.

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