

RECITALS

A. CONSULTANT has been selected to prepare an Environmental Impact Report described in the Master Consultant Agreement Cover Sheet which is incorporated herein in its entirety.

B. COUNTY is the lead agency for the Project and its Planning Department ("Planning Department") is responsible for the planning documents prepared for the Project.

AGREEMENT

1. **DUTY OF CONSULTANT.**

1.01 **General Duties.** CONSULTANT shall prepare for COUNTY an Environmental Impact Report (EIR) consisting of an administrative draft EIR, a draft and final EIR for that project described in the Master Consultant Cover Sheet.

CONSULTANT shall set forth in the administrative draft, draft and final EIR all of the mandatory elements specified by State Statutes, the State CEQA Guidelines (Title 14 Cal. Code of Regs. section 15000, et seq.), Madera County Ordinances and the Madera County Environmental Guidelines.

In the event a question arises concerning the EIR process, the question shall be submitted in writing to the Madera County Resource Management Agency Director for decision. The decision of the Director shall be final and shall thereafter govern CONSULTANT's performance under this Agreement.

1.02 **Work Product Format.** CONSULTANT shall provide all work product to COUNTY in the following electronic formats, in the version specified in the Master Cover Sheet: Reports shall be in Microsoft Word, spreadsheets shall be in Microsoft Excel, presentations shall be in Microsoft PowerPoint, schedules shall be in Microsoft Project or other COUNTY approved software and databases shall be in Microsoft Access.

All work product that CONSULTANT shall deliver to COUNTY hereunder shall be performed according to the Scope of Work and in the timelines set forth in the Master Consultant Cover Sheet.

- 1.03 **Key Personnel.** CONSULTANT shall provide its services through the Key personnel listed in the Master Consultant Cover Sheet. Notwithstanding anything else stated to the contrary in this Agreement, it is understood that CONSULTANT may not replace the aforementioned key person(s) without the prior, express written approval of COUNTY.

Subject to any express limitations established by COUNTY as to the degree of care and amount of time and expense to be incurred and any other limitations expressly contained in this Agreement, CONSULTANT shall perform the services under this Agreement with that level of due care and skill ordinarily exercised by other qualified professional contractors in the field of CONSULTANT's expertise under similar circumstances at the time the services are being performed.

- 1.04 **Sub-Consultant Team.** CONSULTANT may contract with such subconsultants as appear on the Master Consultant Cover Sheet. It is understood that CONSULTANT shall be COUNTY'S sole point of contact in the performance of the services covered in this Agreement.

2. **DUTY OF COUNTY.**

- 2.01 COUNTY shall provide for the following items and services:

- Preparing and distributing a Notice of Preparation (NOP);
- Preparing a notice of completion and notice of availability;
- Noticing public hearings, circulation in the local newspaper, mailing to property owners within three hundred (300) feet, and providing written requests for notification; and
- Providing copies of all application materials from applicant.

3. **COMPENSATION.**

- 3.01 **Services.** For the services performed by CONSULTANT pursuant to this Agreement, COUNTY shall pay CONSULTANT in accordance with the schedule set forth in the Master Consultant Cover Sheet.

3.02 **Conditions Precedent to COUNTY's Obligation.** The advance of sufficient funds by APPLICANT to COUNTY for the compensation of all services prior to such services being performed, and CONSULTANT's confirmation with the Planning Department that such sums have been received, shall be conditions precedent to COUNTY's obligation to compensate CONSULTANT for such services. In the event that CONSULTANT performs any services under this Agreement and such conditions precedent are not met, COUNTY shall not be obligated to compensate CONSULTANT for the performance thereof.

3.03 **Consultant to Bear Expenses.** It is understood that CONSULTANT has budgeted for expenses in this agreement and except as stated in the contract shall bear all expenses incidental to the performance of his obligations under this Agreement.

4. **HOLD HARMLESS.** CONSULTANT shall defend all actions and hold COUNTY, its officers, employees, and designated agents harmless, and indemnify COUNTY, its officers, employees and designated agents, against the payment of any and all costs and expenses (including attorneys' fees and court costs), losses, damages, causes of action, lawsuits, and liability, including but not limited to, liability for bodily and personal injury to or death of any person and for damage to or loss or destruction of any property, resulting from CONSULTANT's performance or failure to perform any work, services or functions provided for in this Agreement, except where such loss, cost, expense, damage, claim or liability results from the sole negligence or willful misconduct of COUNTY, its officers, employees, or designated agents, in which case the rules of comparative negligence shall be applied.

5. **INSURANCE.** Without limiting COUNTY's right to obtain indemnification from CONSULTANT or any third parties, CONSULTANT, at its sole expense, shall maintain policies of insurance throughout the term of this Agreement: in the types and amounts specified by the Master Consultant Contract Cover Sheet and approved by the County's Risk Manager.

Prior to the commencement of performance of this Agreement, CONSULTANT shall provide certificates of insurance on the foregoing policies, as required herein, to COUNTY, stating that such insurance coverages, have been obtained and are in full force; that COUNTY, its officers and employees shall not be responsible for any

premiums on the policies; that such insurance (general liability and automobile liability only) names COUNTY, its officers and employees individually and collectively, as additional insureds, but only insofar as the operations under this contract are concerned; that such coverage for additional insureds shall apply as primary insurance and any other insurance, or self-insurance, maintained by COUNTY, its officers and employees shall be excess only and not contributing with insurance provided under CONSULTANT's policies herein; and that this insurance shall not be canceled or changed without a minimum thirty (30) days advance, written notice given to COUNTY.

In the event CONSULTANT fails to keep in effect at all times insurance coverage as herein required, COUNTY may, in addition to other remedies it may have, suspend or terminate this Agreement upon the occurrence of such event.

6. **TERMINATION BY COUNTY.**

6.01 This Agreement may be immediately terminated by COUNTY upon written notice to CONSULTANT with or without cause. In no event shall any payment by COUNTY constitute a waiver by COUNTY of any breach of this Agreement or any default which may then exist on the part of CONSULTANT. COUNTY's termination of this Agreement for cause due to CONSULTANT's breach thereof shall not limit the rights of COUNTY to seek other relief, including the recovery of damages.

6.02 If this Agreement is terminated as provided in this section, CONSULTANT shall be compensated for satisfactorily-performed services completed to the date of termination, based upon the compensation rates set forth in Exhibit "A," and subject to the total sum agreed to herein, together with such additional services satisfactorily performed by CONSULTANT after termination which are authorized by COUNTY to wind up the work performed to the date of termination.

7. **TERMINATION BY MUTUAL AGREEMENT.** The parties hereto may mutually agree to terminate this Agreement at any time, and in such case upon any terms as are mutually agreeable, provided that such agreement is made pursuant to a written amendment to this Agreement.

8. **TERMINATION BY CONSULTANT.** CONSULTANT shall have the right to terminate this Agreement if COUNTY defaults in the payment of any sum due to be paid to CONSULTANT hereunder or fails to perform any other of COUNTY's obligations

hereunder; and such default or failure to perform any other obligation hereunder continues for ninety (90) days after CONSULTANT has provided written notice of such default to the COUNTY.

9. **OWNERSHIP OF WORK PRODUCT.**

9.01 Any and all reports, studies, data, or other information, prepared or assembled by CONSULTANT under this Agreement shall not be provided to any person, association, corporation, or other organization during the term of this Agreement without the prior written consent of the Planning Department.

9.02 COUNTY shall have the unlimited authority to forever publish, disclose, distribute and otherwise use throughout the world, in whole or in part, and allow others to do so, any and all reports, studies, data, or other information prepared or assembled by CONSULTANT pursuant to this Agreement.

9.03 All documents prepared, assembled, or obtained by CONSULTANT pursuant to this Agreement shall become the exclusive property of COUNTY. Upon termination of this Agreement and prior to any compensation received from COUNTY for unpaid services, CONSULTANT shall surrender to COUNTY all work product created pursuant to this Agreement without any reservation of rights therein. CONSULTANT may retain such documents only for so long as COUNTY authorizes such work product to be retained to allow the completion of work as provided in this Agreement. CONSULTANT may retain copies of any documents prepared or obtained by CONSULTANT and designated as public records under the Public Records Act, and they may be used by CONSULTANT in any manner after this Agreement has been terminated.

10. **TIME OF PERFORMANCE.** It is understood that weather and other factors beyond CONSULTANT's control may delay the completion of necessary field work. CONSULTANT will be allowed as many additional days as are necessary to compensate for days lost due to inclement weather. If additional time is needed because of delay caused by other factors beyond CONSULTANT's control, CONSULTANT shall timely request an extension of time in writing. The granting of such an extension shall be at the discretion of the Planning Department.

11. **INDEPENDENT CONTRACTOR.** In performance of the work, duties, and obligations assumed by CONSULTANT under this Agreement, it is mutually understood and agreed that CONSULTANT, including any and all of CONSULTANT's officers, agents and employees, will at all times be acting and performing as an independent contractor, and shall act in an independent capacity and not as an officer, agent, servant, employee, joint venturer, partner or associate of COUNTY. Furthermore, COUNTY shall have no right to control or supervise or direct the manner or method by which CONSULTANT shall perform its work and functions. However, COUNTY shall retain the right to administer this Agreement so as to verify that CONSULTANT is performing its obligations in accordance with the terms and conditions thereof. CONSULTANT and COUNTY shall comply with all applicable provisions of law and the rules and regulations, if any, of Governmental authorities having jurisdiction over matters the subject matter.

Because of its status as an independent contractor, CONSULTANT shall have absolutely no right to any or all employment rights and benefits available to COUNTY employees. CONSULTANT shall be solely liable and responsible for providing to or on behalf of its employees, all legally-required employee benefits. In addition, CONSULTANT shall be solely responsible and save COUNTY harmless from all matters relating to payment of CONSULTANT's employees, including compliance with Social Security, withholding, and all other regulations governing such matters. It is acknowledged that during the term of this Agreement, CONSULTANT may be providing services to others unrelated to COUNTY or to this Agreement.

12. **CONTACT BETWEEN CONSULTANT AND APPLICANT.** CONSULTANT understands and agrees that APPLICANT is not a party to this agreement and that, although it is the intent of COUNTY to authorize communications with APPLICANT which will make EIR preparation more efficient, no meetings, correspondence, or contacts, including but not limited to personal, telephonic or e-mail, shall take place except with the advance consent of COUNTY. In its discretion, COUNTY may elect to be present or to be copied on any correspondence or e-mail.

13. **CONFLICT OF INTEREST.** CONSULTANT and any of its sub-consultants shall employ no persons in connection with this Agreement who are officers, agents or employees of COUNTY, the Applicants or any affiliate, or any other local or regional public agency operating within the boundaries of Madera County. No officer or

employee of COUNTY shall have any financial interest in this Agreement in violation of California Government Code sections 1090 and following. CONSULTANT represents that CONSULTANT and its officers and employees have no present financial or other conflict of interest that would disqualify any or all of them from entering into or performing services under this Agreement. During the term of this Agreement CONSULTANT, its officers and employees shall not acquire any financial or other interest that would disqualify any or all of them from performing services under this Agreement.

14. **GOVERNING LAW.** The rights and obligations of the parties and all interpretations and performance of this Agreement shall be governed in all respects by the laws of the State of California.

Any controversy or claim arising out of or relating to this Agreement which cannot be amicably settled without court action shall be litigated in a state court for Madera County, California.

15. **AMENDMENTS.** Any changes to this Agreement requested either by COUNTY or CONSULTANT may only be effected if mutually agreed upon in writing by duly authorized representatives of the parties hereto. This Agreement shall not be modified or amended or any rights of a party to it waived except by such a writing.

16. **COMPLIANCE WITH LAW.** CONSULTANT shall comply with all federal, State, and local laws, ordinances and regulations applicable in the performance of its services.

17. **AUDITS AND INSPECTIONS.** CONSULTANT shall at any time during business hours, and as often as COUNTY may deem necessary, make available to COUNTY for examination all of its records and data with respect to the matters covered by this Agreement. CONSULTANT shall, upon request by COUNTY, permit COUNTY to audit and inspect all of such records and data necessary to ensure CONSULTANT's compliance with the terms of this Agreement.

Because this contract exceeds Ten Thousand Dollars (\$10,000.00) CONSULTANT shall be subject to the examination and audit of the Auditor General for a period of three (3) years after final payment under contract (Government Code section 10532).

18. **ENTIRE AGREEMENT.** This Agreement and Master Contract Cover Sheet, and any exhibits specified in the Master Contract Cover Sheet and attached thereto and incorporated by reference, shall constitute the entire agreement between CONSULTANT and COUNTY with respect to the subject matter hereof and supersedes in its entirety all previous negotiations, proposals, commitments, writings, advertisements, publications, and understandings of any nature whatsoever unless expressly included in this Agreement. No other agreement, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind either of the parties hereto.

19. **NOTICES.** The persons and their addresses having authority to give and receive notices under this Agreement are as set forth in the Master Consultant Cover Sheet.

Any and all notices between COUNTY and CONSULTANT provided for or permitted under this Agreement or by law shall be in writing and shall be deemed duly served when personally delivered to one of the parties, or in lieu of such personal service, when deposited in the United States Mail, postage prepaid, addressed to such party.

20. **POLITICAL ACTIVITY PROHIBITED.** None of the funds, materials, property, or services provided under this Agreement shall be used for any political activity, or to further the election or defeat of any candidate for public office contrary to federal or state laws, statutes, regulations, rules, or guidelines.

21. **LOBBYING PROHIBITED.** None of the funds provided under this Agreement shall be used for publicity, lobbying, or propaganda purposes designed to support or defeat legislation before the Congress of the United State of America or the Legislature of the State of California.

22. **TIME OF ESSENCE.** It is understood that COUNTY is subject to the time limits in the Public Resources Code and the California Code of Regulations for preparation of an environmental impact report for the project and that COUNTY could be subject to mandate proceeding for failure to meet those time limits. For that reason time is of the essence in this contract.

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23. **BINDING UPON SUCCESSORS.** This Agreement, including all covenants and conditions maintained herein, shall be binding upon and inure to the benefit of the parties, including their respective successors-in-interest, assigns, and legal representatives.

24. **SEVERABILITY.** In the event that any one or more provisions contained in this Agreement shall for any reason be held to be unenforceable in any respect by a court of competent jurisdiction, such holding shall not affect any other provisions of this Agreement, and the Agreement shall then be construed as if such unenforceable provisions are not a part hereof.

25. **CONSULTANT'S LEGAL AUTHORITY.** Each individual executing or attesting this Agreement on behalf of CONSULTANT hereby covenants, warrants, and represents: (i) that he or she is duly authorized to execute or attest and deliver this Agreement on behalf of CONSULTANT and (ii) that this Agreement is binding upon such CONSULTANT.

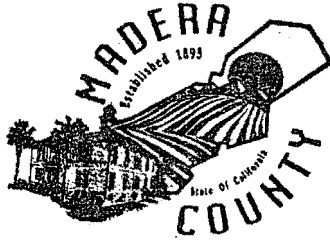
26. **WAIVER.** No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach. All remedies afforded in this Agreement shall be taken and construed as cumulative, that is, in addition to every other remedy provided therein or by law. The failure of a party to enforce at any time any of the provisions of this Agreement or to require at any time performance by the other party of any of the provisions therefore, shall in no way be construed to be a waiver of such provisions nor in any way affect the validity of this Agreement or any part thereof or the right of such party to thereafter enforce each and every such provision.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above-written.

COUNTY OF MADERA



ATTEST:

Vanessa D. Boyd
Clerk, Board of Supervisors

[Signature]
Chairman, Board of Supervisors
3/17/2009

Approved as to Form:
RISK MANAGEMENT

By: [Signature]

Approved as to Legal Form:
COUNTY COUNSEL

By: [Signature]

ACCOUNT NUMBER(S)

