MERCED COUNTY

DEPARTMENT OF PUBLIC WORKS
Road Division

Dana S. Hertfelder
Director

345 W. 7th Street
Merced, CA 95341
(209) 385-7601
(209) 722-7690
www.co.merced.ca.us

Equal Opportunity Employer

DATE: **MAY 24, 2017**

TO: **ALL INTERESTED CONSTRUCTION COMPANIES**

SUBJECT: **REQUEST FOR PROPOSAL FOR ON-CALL POTHOLE REPAIR SERVICES FOR MERCED COUNTY DEPARTMENT OF PUBLIC WORKS – ROAD DIVSION.**

Attached please find a Request for Proposal to provide On-Call Pothole Repair Services.

The selected Construction Company will be invited to execute an agreement for Special Services with Merced County to provide On-Call Pothole Repair for the next one year.

Due to the scope and specialization of the needed services, we request each interested Construction Company to closely assess their qualifications as they relate to the following:

1. The Construction Company shall have the ability to provide the material, labor and equipment necessary to meet the demands for the services required.
2. The Construction Company shall have sufficient capacity to provide the requested services in a cost effective, timely and professional manner.
3. The Construction Company shall have knowledge of providing Traffic Control in compliance with the latest edition of the California Manual on Uniform Traffic Control Device (CA MUTCD) guidelines.
4. The Construction Company shall abide by all applicable local, state and federal laws and regulations for working in the road right of way and shall comply with all related Cal/OSHA safety regulations and requirements.

In order to receive consideration from the Department of Public Works, all requested information identified in the Request for Proposal must be submitted and received by the Department of Public Works on or before **5:00 PM, June 23, 2017.**

The successful applicant will be required to execute an Agreement for Special Services with Merced County.

Should you have any questions, please contact Alvaro Buenrostro, Sr. Engineer Associate (209) 385-7601.

R:\WP\RFPS\FILES\2017\Pothole Repair Services (On Call).docx

NOTICE TO CONSTRACTORS

PROPOSALS will be received until **5:00 PM, Friday, June 23, 2017**, at the Department of Public Works located at 345 W. 7th Street, Building A, Merced, California 95341 for construction companies to perform Pothole Repair Services on roads located within Merced County.

Proposals, in order to receive consideration, shall be made and submitted in accordance with the requirements and conditions set forth in the Request for Proposals dated May 24, 2017, and any such Addenda thereto as may be issued prior to the submittal date. Partial or contingent PROPOSALS may be rejected at the discretion of the County.

The proposal of any contractor who has previously violated the terms of Federal Labor Laws, and who has not been cleared of such violations, will not be considered. Also, any sub-contractor under him under the same circumstances will not be accepted for consideration.

The Department of Public Works hereby notifies all applicants that it will affirmatively insure that in any contract entered into pursuant to this advertisement, minority business enterprises will be afforded full opportunity to submit proposals in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

To receive a more in-depth description and the requirements for this project, contact the County of Merced Department of Public Works for a copy of the formal Request for Proposal.

All correspondence or communications in reference to the project and the Request for Qualifications shall be directed to:

Alvaro Buenrostro, Sr. Engineer Associate
Merced County DPW
715 Martin Luther King Jr. Way
Merced, CA 95340-6041
Phone: (209) 385-7601
e-mail: abuenrostro@co.merced.ca.us

The Board of Supervisors of Merced County reserves the right to reject any or all Proposals and to waive any informalities or irregularities.

By order of the Board of Supervisors, County of Merced, Merced, California.

Dana S. Hertfelder, Director
Department of Public Works

REQUEST FOR PROPOSAL

May 24, 2017

SUBJECT: REQUEST FOR PROPOSAL FOR ON-CALL POTHOLE REPAIR SERVICES FOR MERCED COUNTY DEPARTMENT OF PUBLIC WORKS – ROAD DIVSION.

A) SCOPE OF SERVICES:

Acting upon instructions from Merced County Board of Supervisors, the Department of Public Works – Road Division has developed this Request for Proposals for the purpose of obtaining competitive bids from qualified applicants interested in providing Merced County with Pothole Repair Services. Therefore, Merced County is soliciting Request for Proposals (RFP) from reputable contractors to provide pothole repair services on roads located within Merced County. The successful applicant will be required to enter into an AGREEMENT FOR SPECIAL SERVICES (Agreement) for the Pothole Repair Services. Said Agreement shall include all labor, material, equipment, supervision, delivery, insurance, traffic control, safety items, and all other related expenses. Merced County does not guarantee any minimum amount of work with respect to the agreement. The services will only be required on an as needed basis and shall be provided as delegated by Merced County Road Department's management staff. **The County of Merced will supply the cold mix asphalt material to the contractor at no cost to the contractor.**

B) BACKGROUND INFORMATION:

The County of Merced is located in the Central Valley of California in between Stanislaus County and Fresno County. Merced County has approximately 1,700 miles of paved roads.

C) DESCRIPTION OF SERVICES & QUALIFICATIONS:

At the time of bid submission, and throughout the term of the contract, the Contractor shall possess a valid Class A or a combination of Class C licenses that makes up a majority of the work. The successful bidder will be required to obtain a Merced County Business License before execution of the contract at their own expense. Bids must be on an hourly rate for a 2-person crew, truck, tools and all equipment necessary to perform the work.

The successful bidder shall provide pothole repair services on an as-needed basis as assigned by authorized County of Merced personnel and in accordance with the terms and conditions stated herein. Contractor's services are limited to the following:

1. Contractor must provide services within two (2) weeks after being notified that pothole patching services are needed.
2. Contractor must be able to provide a truck with a minimum of 5 tons of asphalt hauling capacity.
3. Contractors shall provide all tools and equipment necessary to patch potholes including, but not limited to, shovels, rakes, leaf blowers, brooms, and hand tamps.

The County of Merced Road Department will provide the cold mix asphalt material which shall be picked up at either one of its corporation yard. The Merced yard is located at 880 Thornton Road in Merced and the Los Banos Yard is located on 20925 West Pioneer Road in Los Banos. The Contractor will be required to pick up and haul the cold mix material from the location closest to the job site.

4. The Contractor shall provide the bituminous tack coat material. The tack coat material shall be non-diluted, Grade SS1h in compliance with Section 94, "Asphaltic Emulsions," of the Caltrans Standard Specification. The Contractor shall provide a certificate of compliance for this material upon request.
5. The Contractor shall conduct these road repair operations in a manner that causes minimum obstruction and inconvenience to the public. The Contractor's traffic control shall be in compliance with the latest edition of the California Manual on Uniform Traffic Control Device (CA MUTCD) guidelines.
6. All of the contractor's vehicles used for this work shall be equipped and will utilize a safety beacons that must be visible 360 degrees.
7. The Contractor shall remove all loose material prior to patching the potholes. The pothole areas shall be shaped evenly with sloping sides to the depth of the patch. The bottom and sides shall be sprayed with the tack coat material (Grade SS1h) at a rate of 0.2 gal/yd^2.
8. The Contractor shall compact the material using the patch vehicle's tires or other approved method and ensure finished patch shall have a minimum of 1/4-inch crown for anticipated settlement and to reduce the chances of water ponding.
9. The Contractor shall keep a daily log of the patching operations including personnel names, hours worked at each location and the quantity of asphalt material used. This information shall be provided to the County on a daily basis. The contractor shall also provide a name and phone number of a supervisor who can be reached at any time by the County. The contractor's supervisor will be responsible for the completion of the daily log. Merced County will monitor the progress and perform daily inspections. Work will be evaluated for quality and consistency. Any work not meeting the above mentioned standards and specifications will be corrected at the contractor's expense.
10. The Contractor shall abide by all applicable local, state and federal laws and regulations for working in the road right of way and shall also comply with all related Cal/OSHA safety regulations and requirements.

D) SELECTION PROCEDURE:

All Proposals received will be reviewed by the Department of Public Work – Road Division on an immediate basis. The successful Contractor will be selected based upon a combination of factors including hourly rate for the services and client satisfaction.

E) AGREEMENT FOR SERVICES:

The successful applicant will be required to enter into an AGREEMENT FOR SPECIAL SERVICES with Merced County. A sample copy of the Agreement is attached in Exhibit B of this RFP in order to fully inform the applicant of the conditions of these agreements. Each applicant agrees that the Construction Company will be willing to enter into an Agreement with the County.

F) INSURANCE REQUIREMENTS:

Refer to the sample copy of the Agreement for Special Services included in this RFP for a listing of the insurance requirements.

G) CONTENT OF PROPOSAL:

The proposal shall include all of the following:

1) Bidder shall provide a brief history of your company's background and services and include printed copy of their contractor license information from the CSLB website at: http://www.cslb.ca.gov, per the directions in the Description of Services & Qualifications outlined in this RFP.

2) Bidder shall provide an hourly rate for the services. Price must include all costs for material, labor, tool, equipment, compaction, and incidentals related to providing the service, as no additional compensation shall be endorsed throughout the duration of the awarded contract.

3) Bidder shall also provide references from a minimum of two (2) government agencies for which they have provided services similar to the Scope of Work outlined in this RFP. Each reference must include the agency's name, contact's name and title, contact's phone number or email address, and a description of the similar service provided.

H) UNIT PRICE FOR SERVICES:

Exhibit A shall be completed with the Contractor's unit prices for the required service.

I) SUBMITTAL AND ADDITIONAL INFORMATION:

1) All correspondence, communication and responses to this Request for Proposal shall be directed to the County's Contract Manager for this project:

Alvaro Buenrostro, Sr. Engineer Associate
Merced County Department of Public Works
715 Martin Luther King Jr. Way
Merced, CA 95341
Phone Number: (209) 385-7601
e-mail: abuenrostro@co.merced.ca.us

2) Proposers are required to submit three (3) copies of their proposal.

3) Costs of preparation of proposals will be borne by the proposer and the proposals received shall become the property of the County, whether accepted or rejected.

4) Selection of qualified proposers will be by County procedure, consistent with applicable laws and as previously described under Selection Procedures.

5) This Request for Proposal does not constitute an offer of employment nor to contract for services. The County reserves the right to reject any and all Proposals and to waive any informality, technical defect or clerical errors in any proposal as the interest of the County may require.

6) All proposals shall remain active for sixty (60) Calendar Days following the last day to receive proposals.

7) Each proposal shall be submitted in a sealed envelope or carton with the name of the Construction Company, proposal name and closing date printed on the outside.

8) **PROPOSAL DEADLINE:**

   ALL RESPONSES TO THIS REQUEST FOR PROPOSAL SHALL BE RECEIVED BY THE DEPARTMENT OF PUBLIC WORKS ON OR BEFORE 5:00 PM, on June 23, 2017.

   RESPONSES RECEIVED AFTER THIS DATE WILL NOT BE ACCEPTED.

END

EXHIBIT A

UNIT PRICES FOR THE POTHOLE REPAIR SERVICE

The undersigned proposes to furnish all labor, material, equipment, supervision, delivery, insurance, traffic control, safety items, and all other related expenses per the attached specification for the price indicated below.

The following Unit Price shall be valid through June 30, 2018*

Description	Hourly Rate
Pothole Repair Services	$

COMPANY: _____

ADDRESS: _____

CITY, STATE, ZIP: _____

SIGNATURE: _____

TITLE: _____

PHONE#: _____

FAX#: _____

EMAIL: _____

UNSIGNED PROPOSALS WILL NOT BE CONSIDERED

NOTE: COMPANY'S BRIEF HISTORY, SERVICES PROVIDED AND AGENCY REFERENCES SHALL BE INCLUDED ON A SEPARATE PIECE OF PAPER.

EXHIBIT B

SAMPLE AGREEMENT FOR SPECIAL SERVICES

AGREEMENT FOR SPECIAL SERVICES

MERCED COUNTY
DPW - CONTRACT NO. _____

THIS AGREEMENT, is made and entered into by and between the County of Merced, a political subdivision of the State of California, (hereinafter referred to as "County"), and _____, located at _____, (hereinafter referred to as "Contractor").

WHEREAS, County desires to contract with Contractor for special services pursuant to Public Contract Code Section 20395 which consist of pothole repair services; and

WHEREAS, Contractor is specially trained, experienced, and competent to perform such services in connection with pothole repairs services; and

WHEREAS, the parties desire to set forth herein the terms and conditions under which said services shall be furnished.

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

1. SCOPE OF SERVICES

Contractor shall provide all labor, materials, tools, equipment and incidentals needed to provide pothole repair services in accordance with the terms and conditions stated herein, and any specifically referenced attachments hereto. Contractors services include, but are not limited to, the following:

A. Pothole repair services on roads located within Merced County.

The following exhibits are specifically incorporated by reference, attached hereto, and made a part hereof, except when in conflict with this Agreement or modified herein:

Exhibit A - County's Request for Proposals for On-call Pothole Repair Services
Exhibit B - Contractors Responding Proposal

2. TERM

The term of this Agreement shall commence on the _____ day of _____, 2017, and continue until the 30th day of June, 2018, unless sooner terminated in accordance with the sections entitled "TERMINATION FOR CONVENIENCE" or "TERMINATION FOR CAUSE", as set forth elsewhere in this Agreement.

SAMPLE

3. COMPENSATION

County agrees to pay Contractor an hourly rate of _____($____) per hour for hours actually engaged in the performance of such work, as are more specifically set forth under Section “SCOPE OF SERVICES”, whether said work be performed at County premises or elsewhere, but such compensation shall not be paid for time necessary to travel from Contractors location to County premises. This fee includes, but is not limited to, Contractors time on-site, preparation time associated with this Agreement, and all out-of-pocket expenses. No other fees or expenses of any kind shall be paid to Contractor in addition to those rates or expenses listed herein. In no event shall the total services to be performed by Contractor hereunder exceed a Total Contract Price of $250,000.00. This fee may be subject to withholding for State of California income tax.

Any and/or all payments made under this Agreement shall be paid by check, payable to the order of the Contractor and be mailed to Contractor at:

Name:
Address:
City/State/Zip:

Contractor may request that County mail the check to Contractor to such other address as Contractor may from time to time designate to County. Such request must be made in writing in accordance with the procedures as outlined under Section “NOTICES”.

4. PRICING CONDITIONS

County agrees to pay Contractor for all services required herein as prescribed, fixed at the submitted pricing, which shall include reimbursement for all expenses incurred. No other expenses shall be paid to Contractor without formal approval of the County’s Board of Supervisors or its authorized agent. In no event shall the total services to be performed hereunder exceed $250,000.00.

County shall not be responsible for any charges or expenses incurred by Contractor, his/her agents, employees or independent Contractors, other than those listed herein, in connection with the performance of services hereunder unless authorized in advance in writing by County.

5. TERMS OF PAYMENT

Payment shall be only for full and complete satisfactory performance of the services required to be provided herein and as set forth under Section "SCOPE OF SERVICES." Payment shall be made in the following manner:

SAMPLE

Contractor shall submit monthly itemized invoices, or alternate documentation as deemed appropriate in advance by County, for services it has provided and for the amount owed under this Agreement. In addition to the invoices submitted by the Contractor for payment, Contractor must complete and submit to the County, Form W-9, "A Request for Taxpayer Identification Number and Certification". (www.irs.gov/pub/irs-pdf/fw9.pdf) Both invoices and the W-9 form shall be forwarded to the County at the County address indicated under Section "NOTICES" of this Agreement.

Each invoice or approved alternate documentation must:

A. Detail by task the service performed by Contractor.

B. Detail the daily labor cost (number of hours) attributed to each task.

C. Show the cumulative cost for all tasks performed to date.

D. Provide any additional information and data requested by County as deemed necessary by County to properly evaluate or process Contractors claim.

Upon approval by County, the fee due hereunder shall be paid to Contractor within thirty (30) days following receipt of a proper invoice.

6. NO PAYMENT FOR SERVICE PROVIDED FOLLOWING EXPIRATION / TERMINATION OF AGREEMENT

Contractor shall have no claim against County for payment of any kind whatsoever for any services provided by Contractor which were provided after the expiration or termination of this Agreement.

7. NOTICES

All notices, requests, demands or other communications under this Agreement shall be in writing. Notice shall be sufficiently given for all purposes as follows:

A. Personal Delivery. When personally delivered to the recipient, notice is effective upon delivery.

B. First Class Mail. When mailed first class to the last address of the recipient known to the party giving notice, notice is effective three mail delivery days after deposit in a United States Postal Service office or mailbox.

C. Certified Mail. When mailed by certified mail, return receipt requested, notice is effective upon receipt, if delivery is confirmed by a return receipt.

SAMPLE

D. Overnight Delivery. When delivered by an overnight delivery service, charges prepaid or charged to the sender's account, notice is effective on delivery, if delivery is confirmed by the delivery service.

E. Facsimile Transmission. When sent by fax to the last fax number of the recipient known to the party giving notice, notice is effective upon receipt, provided that: a) a duplicate copy of the notice is promptly given by first class mail or certified mail or by overnight delivery, or b) the receiving party delivers a written confirmation of receipt. Any notice given by fax shall be deemed received on the next business day if received after 5:00 P.M. (recipient's time) or on a non-business day.

Any correctly addressed notice that is refused, unclaimed or undeliverable because of an act or omission of the party to be notified shall be deemed effective as of the first date that the notice was refused, unclaimed or deemed undeliverable by the postal authorities, messengers or overnight delivery service.

Information for notice to the parties to this Agreement at the time of endorsement of this Agreement is as follows:

County of Merced c/o	Contractor
Alvaro Buenrostro	_____
Merced County DPW	_____
715 Martin Luther King Jr. Way	_____
Merced, CA 95341	_____
(209) 385-7601	_____

Any party may change its address or fax number by giving the other party notice of the change in any manner permitted by this Agreement.

8. CONDITION SUBSEQUENT/NON-APPROPRIATION OF FUNDING

The compensation paid to CONTRACTOR pursuant to this Agreement is based on COUNTY'S continued appropriation of funding for the purpose of this Agreement, as well as the receipt of local, county, state and/or federal funding for this purpose. The parties acknowledge that the nature of government finance is unpredictable, and that the rights and obligations set forth in this Agreement are therefore contingent upon the receipt and/or appropriation of the necessary funds. In the event that funding is terminated, in whole or in part, for any reason, at any time, this Agreement and all obligations of the COUNTY arising from this Agreement shall be immediately discharged. COUNTY agrees to inform CONTRACTOR no later than ten (10) calendar days after the COUNTY determines, in its sole judgment, that funding will be terminated and the final date for which funding will be available. Under these circumstances, all billing or other claims for compensation or reimbursement by CONTRACTOR arising out of

SAMPLE

performance of this Agreement must be submitted to COUNTY prior to the final date for which funding is available. In the alternative, COUNTY and CONTRACTOR may agree, in such circumstance, to a suspension or modification of either party's rights and obligations under this Agreement. Such a modification, if the parties agree thereto, may permit a restoration of previous contract terms in the event funding is reinstated. Also in the alternative, the COUNTY may, if funding is provided to the COUNTY in the form of promises to pay at a later date, whether referred to as “government warrants”, “IOUs”, or by any other name, the COUNTY may, in its sole discretion, provide similar promises to pay to the CONTRACTOR, which the CONTRACTOR hereby agrees to accept as sufficient payment until cash funding becomes available.

9. TERMINATION FOR CONVENIENCE

This Agreement, notwithstanding anything to the contrary herein above or hereinafter set forth, may be terminated by County at any time without cause or legal excuse by providing the other party with thirty (30) calendar days written notice of such termination.

Upon effective date of termination, County shall have no further liability to Contractor except for payment for actual services incurred during the performance hereunder. Such liability is limited to the time specified in said notice and for services not previously reimbursed by County. Such liability is further limited to the extent such costs are actual, necessary, reasonable, and verifiable costs and have been incurred by Contractor prior to, and in connection with, discontinuing the work hereunder.

10. TERMINATION FOR CAUSE

The County may terminate this Agreement and be relieved of making any payments to Contractor, and all duties to Contractor should the Contractor fail to perform any material duty or obligation of the Agreement. Notice shall be given as otherwise provided herein. In the event of such termination the County may proceed with the work in any manner deemed proper by the County. All costs to the County shall be deducted from any sum otherwise due the Contractor and the balance, if any, shall be paid to the Contractor upon demand. Such remedy is in addition to such other remedies as may be available to the County provided by law.

11. MODIFICATION OF THE AGREEMENT

Notwithstanding any of the provisions of this Agreement, the parties may agree to amend this Agreement. No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto. No oral understanding or agreement not incorporated herein shall be binding on any of the parties hereto

SAMPLE

12. INSURANCE

A. Prior to the commencement of work, and as a precondition to this contract, Contractor shall purchase and maintain the following types of insurance for the stated minimum limits indicated during the term of this Agreement. Contractor shall provide a certificate of insurance and endorsements naming County as an additional insured on each policy. The insurance carrier shall be required to give County notice of termination at least 10 days prior to the intended termination of any specified policy. Each certificate of insurance shall specify if Contractor has a SIR, and if so, Contractor shall be required to provide the entire policy of insurance with which it has a SIR and/or deductable.

1. Commercial General Liability: $1,000,000 per occurrence and $2,000,000 annual aggregate covering bodily injury, personal injury and property damage. The County and its officers, employees and agents shall be endorsed to above policies as additional insured, using ISO form CG2026 or an alternate form that is at least as broad as form CG2026, as to any liability arising from the performance of this Agreement.

2. Automobile Liability: $1,000,000 per accident for bodily injury and property damage, or alternatively split limits of $500,000 per person and $1,000,000 per accident for bodily injury with $250,000 per accident for property damage.

3. Workers Compensation: Statutory coverage, if and as required according to the California Labor Code, including Employers' Liability limits of $1,000,000 per accident. The policy shall be endorsed to waive the insurer's subrogation rights against the County.

B. Insurance Conditions

1. Insurance is to be placed with admitted insurers rated by A.M. Best Co. as A:VII or higher. Lower rated, or approved but not admitted insurers, may be accepted if prior approval is given by the County's Risk Manager.

2. Each of the above required policies shall be endorsed to provide County with 30 days prior written notice of cancellation. County is not liable for the payment of premiums or assessments on the policy. No cancellation provisions in the insurance policy shall be construed in derogation of the continuing duty of Contractor to furnish insurance during the term of this Agreement.

SAMPLE

13. INDEMNIFICATION

Contractor has the contracted duty (hereinafter "the duty") to indemnify, defend and hold harmless, COUNTY, its Board of Supervisors, officers, employees, agents and assigns from and against any and all claims, demands, liability, judgments, awards, interest, attorney's fees, costs, experts' fees and expenses of whatsoever kind or nature, at any time arising out of or in any way connected with the performance of this Agreement, whether in tort, contract or otherwise. This duty shall include, but not be limited to, claims for bodily injury, property damage, personal injury, and contractual damages or otherwise alleged to be caused to any person or entity including, but not limited to employees, agents and officers of Contractor.

Contractor's liability for indemnity under this Agreement shall apply, regardless of fault, to any acts or omissions, willful misconduct or negligent conduct of any kind, on the part of the Contractor, its agents, sub-Contractors and employees. The duty shall extend to any allegation or claim of liability except in circumstances found by a jury or judge to be the sole and legal result of the willful misconduct of County. This duty shall arise at the first claim or allegation of liability against County. Contractor will on request and at its expense defend any action suit or proceeding arising hereunder. This clause for indemnification shall be interpreted to the broadest extent permitted by law.

14. INDEPENDENT CONTRACTOR

It is mutually understood and agreed that Contractor is an independent Contractor in the performance of the work duties and obligations devolving upon Contractor under this Agreement. County shall neither have, nor exercise any control or direction over the methods by which Contractor shall perform the assigned work and functions. The contractual interest of County is to assure that the services covered by this Agreement shall be performed and rendered in a competent, efficient and satisfactory manner.

It is agreed that no employer-employee relationship is created and Contractor shall hold County harmless and be solely responsible for withholding, reporting and payment of any federal, state or local taxes; any contributions or premiums imposed or required by workers' compensation; any unemployment insurance; any social security-income tax; and any other obligations from statutes or codes applying to Contractor, or its sub-Contractors and employees, if any.

It is mutually agreed and understood that Contractor, its sub-Contractors and employees, if any, shall have no claim under this Agreement or otherwise against the County for vacation pay, sick leave, retirement or social security benefits, occupational or non-occupational injury, disability or illness, or loss of life or income, by whatever cause.

SAMPLE

Contractor shall insure that all its personnel and employees, sub-Contractors and their employees, and any other individuals used to perform the contracted services are aware and expressly agree that County is not responsible for any benefits, coverage or payment for their efforts.

15. RECORDS, INFORMATION AND REPORTS

Contractor shall maintain full and accurate records with respect to all matters covered under this Agreement. To the extent permitted by law, County shall have free access at all proper times or until the expiration of four (4) years after the furnishing of services to such records, and the right to examine and audit the same and to make transcripts therefrom, and to inspect all data, documents, proceedings, and activities pertaining to this Agreement.

To the extent permitted by law, Contractor shall furnish County such periodic reports as County may request pertaining to the work or services undertaken pursuant to this Agreement. The costs and obligations incurred or to be incurred in connection therewith shall be borne by the Contractor.

16. OWNERSHIP OF DOCUMENTS

To the extent permitted by law, all technical data, evaluations, plans, specifications, reports, documents, or other work products developed by Contractor hereunder are the exclusive property of County and upon request of County shall be delivered to County upon completion of the services authorized hereunder. In the event of termination, all finished or unfinished documents and other materials, if any, at the option of County, and to the extent permitted by law, shall become the property of the County. Contractor may retain copies thereof for its files and internal use.

Any publication of information directly derived from work performed or data obtained in connection with services rendered under this Agreement must be first approved by County.

17. QUALITY OF SERVICE

Contractor shall perform its services with care, skill, and diligence, in accordance with the applicable professional standards currently recognized by such profession, and shall be responsible for the professional quality, technical accuracy, completeness, and coordination of all reports, designs, drawings, plans, information, specifications, and/or other items and services furnished under this Agreement.

Contractor shall, without additional compensation, correct or revise any errors or deficiencies immediately upon discovery in its reports, drawings, specifications, designs, and/or other related items or services.

SAMPLE

18. PERSONAL SATISFACTION AS A CONDITION PRECEDENT

The obligations of County as provided in this Agreement are expressly conditioned upon Contractor's compliance with the provisions of this Agreement to the personal satisfaction of the County. County shall determine compliance in good faith as a reasonable person would under the circumstances.

19. ENTIRE AGREEMENT

This Agreement and any additional or supplementary document or documents incorporated herein by specific reference contain all the terms and conditions agreed upon by the parties hereto, and no other contracts, oral or otherwise, regarding the subject matter of this Agreement or any part thereof shall have any validity or bind any of the parties hereto.

20. COUNTY NOT OBLIGATED TO THIRD PARTIES

County shall not be obligated or liable hereunder to any party other than Contractor.

21. LAWS, LICENSES, PERMITS AND REGULATIONS

Contractor and County agree to comply with all State laws and regulations that pertain to construction, health and safety, labor, minimum wage, fair employment practice, equal opportunity, and all other matters applicable to Contractor and County, their sub-grantees, Contractors, or sub-Contractor, and their work.

Contractor shall possess and maintain all necessary licenses, permits, certificates and credentials required by the laws of the United States, the State of California, County of Merced and all other appropriate governmental agencies, including any certification and credentials required by County. Failure to maintain the licenses, permits, certificates, and credentials shall be deemed a breach of this Agreement and constitutes grounds for the termination of this Agreement by COUNTY.

22. LIMITED AFFECT OF WAIVER OR PAYMENT

In no event shall the making, by County, of any payment to Contractor constitute, or be construed as, a waiver by County of any breach of covenant, or any default which may then exist, on the part of Contractor. The making of any such payment by County while any such breach or default shall exist, shall not be construed as acceptance of substandard or careless work or as relieving Contractor from its full responsibility under this Agreement.

No waiver by either party of any default, breach or condition precedent shall be valid unless made in writing and signed by the parties hereto. No oral waiver of any default, breach or condition precedent shall be binding on any of the parties

SAMPLE

hereto. Waiver by either party of any default, breach or condition precedent shall not be construed as a waiver of any other default, breach or condition precedent, or any other right hereunder.

23. PERSONNEL

Contractor represents that it has, or will secure at its own expense, all personnel required in performing the services under this Agreement. All of the services required hereunder will be performed by Contractor or under its supervision, and all personnel engaged in the work shall be qualified to perform such services.

24. APPLICABLE LAW; VENUE

All parties agree that this Agreement and all documents issued or executed pursuant to this Agreement as well as the rights and obligations of the parties hereunder are subject to and governed by the laws of the State of California in all respects as to interpretation, construction, operation, effect and performance. No interpretation of any provision of this Agreement shall be binding upon County unless agreed in writing by County and counsel for County.

Notwithstanding any other provision of this Agreement, any disputes concerning any question of fact or law arising under this Agreement or any litigation or arbitration arising out of this Agreement, shall be tried in Merced County, unless the parties agree otherwise or are otherwise required by law.

25. BREACH OF CONTRACT

Upon breach of this Agreement by Contractor, County shall have all remedies available to it both in equity and/or at law.

26. REMEDY FOR BREACH AND RIGHT TO CURE

Notwithstanding anything else in this Agreement to the contrary, if Contractor fails to perform any obligation of this Agreement, the County may itself perform, or cause the performance of, such agreement or obligation. In that event, Contractor will, on demand, fully reimburse County for all such expenditures. Alternatively, County, at its option, may deduct from any funds owed to Contractor the amount necessary to cover any expenditures under this provision. This is in addition to any other remedies available to the County by law or as otherwise stated in this Agreement.

27. SUCCESSORS IN INTEREST

All the terms, covenant, and conditions of this Agreement shall be binding and in full force and effect upon any successors in interest and assigns of the parties

SAMPLE

hereto. This paragraph shall not be deemed as a waiver of any of the conditions against assignment set forth herein.

28. CONFLICT OF INTEREST

Contractor covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of this Agreement. Contractor shall ensure that no conflict of interest exists between its officers, employees, or sub-Contractors, and the County. Contractor shall ensure that no County officer or employee in a position that enables them to influence this Agreement will have any direct or indirect financial interest resulting from this Agreement. Contractor shall ensure that no County employee shall have any relationship to the Contractor or officer or employee of the Contractor, nor that any such person will be employed by Contractor in the performance of this Agreement without immediate divulgence of such fact to the County.

29. NONDISCRIMINATION IN EMPLOYMENT, SERVICES, BENEFITS AND FACILITIES

Contractor and any sub-Contractors shall comply with all applicable federal, state, and local Anti-discrimination laws, regulations, and ordinances and shall not unlawfully discriminate, deny family care leave, harass, or allow harassment against any employee, applicant for employment, employee or agent of County, or recipient of services contemplated to be provided or provided under this Agreement, because of race, ancestry, marital status, color, religious creed, political belief, national origin, ethnic group identification, sex, sexual orientation, age (over 40), medical condition (including HIV and AIDS), or physical or mental disability. Contractor shall ensure that the evaluation and treatment of its employees and applicants for employment, the treatment of County employees and agents, and recipients of services are free from such discrimination and harassment.

Contractor represents that it is in compliance with and agrees that it will continue to comply with the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.), the Fair Employment and Housing Act (Government Code §§ 12900 et seq.), and ensure a workplace free of sexual harassment pursuant to Government Code 12950; and regulations and guidelines issued pursuant thereto.

Contractor agrees to compile data, maintain records and submit reports to permit effective enforcement of all applicable antidiscrimination laws and this provision.

Contractor shall include this nondiscrimination provision in all subcontracts related to this Agreement and when applicable give notice of these obligations to labor organizations with which they have Agreements.

SAMPLE

30. CAPTIONS

The captions of each paragraph in this Agreement are inserted as a matter of convenience and reference only, and in no way define, limit, or describe the scope or intent of this Agreement or in any way affect it.

31. SUBCONTRACTS - ASSIGNMENT

Contractor shall not subcontract or assign this Agreement, or any part thereof, or interest therein, directly or indirectly, voluntarily or involuntarily, to any person without obtaining the prior written consent by County. Contractor remains legally responsible for the performance of all contract terms including work performed by third parties under subcontracts. Any subcontracting will be subject to all applicable provisions of this Agreement. Contractor shall be held responsible by County for the performance of any subcontractor whether approved by County or not.

Contractor hereby assigns to the County all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from the purchase if goods, materials, or services by the Contractor for sale to the County pursuant to this Agreement.

32. SEVERABILITY

If a court of competent jurisdiction holds any provision of this Agreement to be illegal, unenforceable or invalid, in whole or in part, for any reason, the validity and enforceability of the remaining provisions, or portion of them, will not be affected. Compensation due to Contractor from the County may, however, be adjusted in proportion to the benefit received despite the removal of the effected provision.

33. DUPLICATE COUNTERPARTS

This Agreement may be executed in duplicate counterparts, each of which shall be deemed a duplicate original. The Agreement shall be deemed executed when it has been signed by both parties.

34. LICENSE AND PERMITS

Contractor shall possess and maintain all necessary licenses, permit, certificates and credentials required by the laws of the United States, the State of California, County of Merced and all other appropriate governmental agencies, including any certification and credentials required by County. Failure to maintain the licenses, permits, certifictes, and credentials shall be deemed a breach of this Agreement and constitutes ground for the termination of this Agreement by County.

SAMPLE

County of Merced

By _____
Dana S. Hertfelder
Director of Public Works

_____
Dated

Contractor

By _____
(Name)
(Title)

_____
Dated

APPROVED AS TO LEGAL FORM
JAMES N. FINCHER
MERCED COUNTY COUNSEL

By _____

_____
Dated

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SAMPLE