

September 1, 2026

Various Projects

Board of Supervisors
Kern County Administrative Center
1115 Truxtun Avenue
Bakersfield, California 93301

**PROPOSED ENGINEERING SERVICES AGREEMENT WITH AP ARCHITECTS, TO
PROVIDE ARCHITECTURAL CONSULTING SERVICES FOR MAJOR MAINTENANCE
AND CAPITAL PROJECTS THROUGHOUT KERN COUNTY FROM
SEPTEMBER 1, 2026 TO DECEMBER 31, 2029; ALL DISTRICTS
(Fiscal Impact: \$300,000; Budgeted; Discretionary)**

Attached for your Board's approval is the proposed Engineering Services Agreement ("Agreement") with AP Architects ("Consultant") in an amount not to exceed \$300,000, to provide architectural consulting services for major maintenance and capital projects throughout Kern County. Services are accomplished by issuing a series of individual Work Authorizations to the Consultant for Board-authorized projects from September 1, 2026 through December 31, 2029.

On April 15, 2026, General Services released a Request for Qualifications (RFQ) for multi-year architectural consulting services. The RFQ was issued for various major maintenance and capital projects.

The Agreement will require the Consultant to provide a variety of support services which may include the development of design sketches and drawings; review services for contractor submittals; development or revision of drawings; development or revision of planning and economic studies; issue calculations and technical memorandum; prepare project plans and specifications; cost estimates; perform telephone and on-site meetings and/or collaborations/investigations with County staff; and perform other ancillary professional services on an "as needed, when called" basis.

The attached Agreement has been approved as to content by the General Services Division and AP Architects, and has been approved as to form by the Office of County Counsel.

Board of Supervisors
September 1, 2026
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Therefore, IT IS RECOMMENDED, that your Board: 1) approve the Engineering Services Agreement with AP Architects, to provide architectural consulting services for major maintenance and capital projects throughout Kern County from September 1, 2026 to December 31, 2029, in an amount not to exceed \$300,000; and 2) authorize Chairman to sign.

Sincerely,



Michelle Burns-Lusich
Chief General Services Officer

MBL:BP;nr:th:yz
Attachments
cc: County Administrative Office
County Counsel,
File
AP Architects, 3434 Truxtun Avenue, Suite 240, Bakersfield, CA 93301

**KERN COUNTY
ENGINEERING SERVICES AGREEMENT
SCHEDULE TO MASTER TERMS AND CONDITIONS
ESA-WAF-003**

I. This **SCHEDULE** ("Schedule") shall be effective on _____ ("Effective Date") and shall terminate no later than December 31, 2029 ("Termination Date").

Kern County Department: General Services ("Responsible County Department")

Located at: 1115 Truxtun Ave., 3rd Floor, Bakersfield, CA 93301

Service Provider: **AP Architects** ("Consultant")

Located at: 3434 Truxtun Ave, Suite 240, Bakersfield, CA 93301

Consultant Email for signature: pfogarty@aparchitects.net

Consultant is (select one):
☐ Sole Proprietorship
☒ Incorporated in the State of California
☐ Other (specify) Click or tap here to enter text.

II. Consultant shall provide the services and products described in **Exhibit A** ("Services"). This excludes travel and other expenses described in Section III. County shall compensate Consultant for those services and products in an amount not to exceed \$300,000.

III. Travel and all other expenses. Select one of the following:
☐ County **shall not** reimburse Consultant for any travel or other expenses incurred by Consultant.
☒ County **shall** reimburse Consultant for all travel and/or other necessary and reasonable actual expenses incurred on behalf of County. If the reimbursable expenses include travel, the travel expenses must be reasonable and necessary, approved in advance in writing by the Responsible County Department, and shall not exceed the federal mileage rate and federal diem rate for the location of the services. County shall reimburse Consultant in an amount not to exceed: \$ the amount specified in the individual Work Authorizations.

IV. Total Amount Payable Under Agreement (Compensation for Services/Products, Plus Travel and Other Expenses)
 County shall compensate Consultant for the Services and Products (amount stated in Section II) and reimburse Consultant for expenses, including travel, if applicable (amount stated in Section III). The total amount payable under this agreement shall not exceed \$300,000 (Section II + Section III).

V. Consultant shall be required to have the following insurance coverages which are marked, on the terms provided in the Master Terms and Conditions. The insurance coverages shall be in the amounts specified, unless another amount is shown (select all that apply):

- ☒ Workers' Compensation: As required by California Labor Code Section 3700
- ☒ Commercial General Liability (\$1,000,000/Occurrence; \$2,000,000/Aggregate) or other amounts: \$____.
- ☒ Automobile Liability (\$1,000,000/Occurrence) or other amount: \$____.
- ☒ Professional Liability (\$1,000,000/Claim; \$2,000,000/Aggregate) or other amounts: \$____.

Note: If a lesser amount is shown, the Responsible County Department must obtain the prior written approval of the County Risk Manager.

If there are any conflicts between the terms and conditions contained in this Schedule and the Master Terms and Conditions, this Schedule shall control.

The Parties have executed this Schedule, including the Master Terms and Conditions, which constitute the Agreement, on the Effective Date.

COUNTY OF KERN

By _____
 Chairman, Board of Supervisors

Responsible County Department
 By Bill Potter
 Bill Potter, Deputy Chief General Services Officer

AP ARCHITECTS

By J. Patrick Fogarty
 J. Patrick Fogarty, AIA, SARA, Principal Architect
 "Consultant"

Office of the County Counsel
 By Brian Van Wyk
 Brian Van Wyk, Deputy



EXHIBIT A SERVICES

Consultant shall provide the Services shown below for the Responsible County Department based on the payment schedule and the Services set forth in each completed Work Authorization Form, the form of which is attached as **Exhibit B**. Refer to **Exhibit C** for Schedule of Fees.

1. Full description of Services:

1.1 GENERAL SERVICES OF CONSULTANT

- A. Consultant shall provide Architectural/Engineering Services for major maintenance and capital projects for Kern County facilities at intermittent intervals and shall be prepared to render services at any time and for any period County may require. Consultant shall provide services pursuant to the issuance of a "Work Authorization" (the form of which is attached hereto and incorporated herein as Exhibit B) as required by County's Construction Services Division.
- B. Services shall be provided on an as-needed basis with dates to be determined by County pursuant to a fully completed and properly executed Work Authorization Form. No work shall be initiated under this Agreement unless specifically approved by the Construction Services Division.
- C. All services performed by Consultant shall be in conformity with this Agreement and shall be performed to the satisfaction of the Chief General Services Officer or his designee ("Director"). All work not conforming to all requirements will be reported to Consultant for resolution by Consultant.
- D. Consultant shall coordinate all correspondence and communications regarding services to be provided under this Agreement through County's General Services Department or their designee.

1.2 DESIGN SERVICES OF CONSULTANT

A. Schematic Design Phase:

Consultant shall consult with County to ascertain project requirements.

Consultant shall prepare for County's review and approval Schematic Design Studies and a general project description as it pertains to the architectural/engineering discipline(s) to be performed by Consultant.

Consultant shall estimate probable project construction cost, subject to revision at the Design Development Phase.

B. Design Development Phase:

Consultant shall prepare (from the approved Schematic Design Documents) Design Development Documents, and technical outline specifications. These documents shall include standards for and kinds of materials and include standards for compliance with the current California Building Code, National Electrical Code, Uniform Plumbing Code, Uniform Mechanical Code, Uniform Fire Code, California Administrative Code Titles 15, 19 and 24 and all State laws and County ordinances, rules of the State or County Health Departments, rules of the National Board of Fire Underwriters and National Fire Protection Associations, and local power company regulations as required for the architectural/engineering discipline(s) to be performed by Consultant.

Based on the County approved plans developed in the Schematic Design Phase, the Consultant shall refine the design documents.

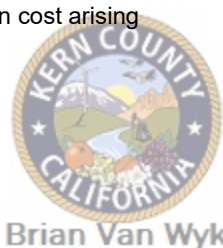
Consultant shall assist County with submissions required for project approvals from appropriate public agencies. Consultant shall incorporate all modifications, changes or comments generated by these agencies in the Design Development Phase drawings. Consultant shall return corrections, changes, etc., to County within fifteen (15) days of receipt, or pursuant to such specific, written authorization from County to exceed the fifteen (15) day response time.

C. Construction Document Phase:

Consultant and its subconsultants, if applicable, shall prepare, from the approved Design Development Documents, working drawings and specifications, setting forth in detail the work to be done, the materials, workmanship, finishes, and equipment required for the project assignment.

Consultant shall assist County with submissions required for project approvals from appropriate public agencies. Consultant shall incorporate all modifications, changes or comments generated by these agencies in the Construction Document Phase drawings.

Consultant shall notify County when an adjustment is necessary from previous estimates of the project construction cost arising from market fluctuations or approved changes in the Project's scope.



D. Construction Phase:

Consultant, following County's approval of the Construction Documents, shall assist County in obtaining bids from contractors including, but not limited to, responding to inquiries and preparing and responding to addenda requisite to obtaining bids and awarding the construction contract or contracts.

Consultant shall provide technical assistance and guidance to a Project Inspector to be employed by and be responsible to County.

Consultant shall take reasonable precautions to secure the contractor's compliance with the contract requirements but does not guarantee the performance of contractor's contracts.

Consultant shall provide general administration of the Construction Contract, including attendance at construction meetings on site and such periodic visits at the site as County deems necessary to assist in obtaining compliance with Contract Documents and endeavor to protect County against defects or deficiencies in the work of the contractor; make regular reports as required by applicable public agencies; keep County informed of construction progress; review and check schedules and shop drawings for compliance with design; review and make recommendations to County for proposed substitutions of materials, equipment, products and systems; review and make recommendations to County for submittal of product data and samples proposed for use; and review and forward to County, within fifteen (15) working days after receipt, submittal of contractor's shop drawings of fabrication and installation details proposed for use, provided such submittals were requested in Construction Document working drawings and specifications.

Consultant shall not be responsible for construction means, methods, techniques, sequences or procedures, the safety precautions and programs in connection with the work, or the contractor's failure to carry out the work in accordance with the Contract Documents.

Consultant's services shall continue throughout the Construction Phase, notwithstanding any delays in construction of the Project. Consultant, as part of Consultant's services to County, shall attempt to expedite the progress of the construction work by means of oral and written communications and by reference to agreed and accepted schedules. Consultant is not responsible for delays in construction occasioned by actions of the general contractor, or by anyone performing work for the contractor, pursuant to subcontracts or otherwise. County will not pay additional compensation to the Consultant, or reimburse Consultant, for any expenses incurred as a result of construction delays.

Consultant shall provide advice to County on apparent deficiencies in project construction, which are discovered within one (1) year after the date of the Notice of Completion.

1.3 ADDITIONAL SERVICES OF THE CONSULTANT

The additional professional services listed in this section are not part of the basic services Consultant is to render pursuant to this Agreement.

Consultant agrees to render such of these additional services as the County directs in a written authorization which shall include mutually agreed upon terms and conditions, including payment provisions, for rendering them; provided, however, that if the need for the additional services is caused by error, omission or neglect of Consultant or persons employed by Consultant in the rendition of the services required by this Agreement, Consultant shall render the directed additional services without charge or cost to County:

- A. Revisions and changes in approved documents except those which are required by public agencies other than County as conditions for project approvals and are included within the requirements of the design development and construction document phases stated above.
- B. Plan preparation for portions of Project construction work to be let on a segregated bid basis.
- C. Services for repair of damage to the Project.
- D. If directed by County, the employment of special consultants and preparation of special delineations and models.
- E. Providing detailed quantity surveys or inventories of materials, equipment, and labor.

2. Dates and location where the Services will take place (include time schedule and/or milestone dates if appropriate):

The Services will be provided on an as-needed basis to be determined by the County, in its sole discretion, according to a fully completed and properly executed Work Authorization Form.

3. If training is involved, the hours per day that are included in the training and minimum/maximum number of staff/trainees allowed to attend the training:
N/A



4. Training materials, equipment, facilities, manuals, study guides, etc., will be provided as indicated to assist Consultant in provision of the Services, unless specifically required of Consultant pursuant to the Work Authorization.

By County:

- A. County shall be responsible for submission to all governing agencies for approvals.
- B. County shall provide information about the requirements for the Project, including realistic budget limitations and scheduling.
- C. County shall provide all necessary materials testing such as compaction tests and material sampling.
- D. County shall pay any required fees of public agencies having jurisdiction over approving the Project.
- E. County shall review documents submitted by Consultant and shall promptly render decisions pertaining thereto to avoid unreasonable delay in the progress of the Project.
- F. County shall provide bid and contract administration services.
- G. County shall furnish inspection services.
- H. County shall furnish copies of available existing information.

By Consultant:

As needed to provide the Services.



EXHIBIT B
KERN COUNTY
WORK AUTHORIZATION FORM
(To be Completed and Signed Before Work Commences)

1. Number: _____ Contract Number: _____.

2. Date Prepared: ____ / ____ / ____ Prepared By: _____.

3. Narrative Description of Work to be Performed:

_____.

_____.

_____.

_____.

_____.

_____.

4. Narrative Description of Deliverable Product or Service:

_____.

_____.

_____.

_____.

_____.

_____.

5. Direct Costs:

<u>Positions Assigned/Person</u>	<u>Hourly Rate</u>	<u>Hours</u>	<u>Cost Extension</u>
_____	_____	_____	_____.
_____	_____	_____	_____.
_____	_____	_____	_____.
_____	_____	_____	_____.
TOTAL: _____.			

6. Other Direct Costs:

<u>Description and Justification</u>	<u>Cost Extension</u>
_____	_____.
_____	_____.
_____	_____.
TOTAL: _____.	



7. Work Authorization Schedule:

Start Date: ____ / ____ / ____

Completion Date: ____ / ____ / ____

8. Payment Schedule:

Consultant shall provide the Services shown below for the Responsible County Department based on the following payment schedule: (Select one of the following options)

___ Consultant shall invoice monthly for hours expended over the prior 30 days; County shall retain 20% of all invoiced amounts until final County acceptance of the Services.

___ Consultant shall invoice upon the successful completion of milestones:
(insert percentages next to applicable milestones)

___ % Upon completion of hardware installation _____.

___ % Upon completion of software installation _____.

___ % Upon completion of training _____.

___ % Other Milestone (describe) _____.

___ % Other Milestone (describe) _____.

___ % Other Milestone (describe) _____.

___ % Other Milestone (describe) _____.

___ % Upon completion and County acceptance of the Services

___ Consultant shall invoice County as follows: (describe in detail any payment schedule, milestone payments, percentages and retention as applicable)

9. Signatures:

The Parties have executed this Work Authorization on the preparation date referenced above.

APPROVED:

Responsible County Department

Consultant



FEE & RATES

Fee Exclusions

- LEED Certification
- Testing and Inspection Services
- Physical Models
- BIM Models
- Record Drawings beyond review and scanning of Contractor provided field mark-ups
- Agency Application Fees
- California Geologic Survey application fees
- Fire Department hydrant flow testing
- System Commissioning
- Hard copy document printing and distribution beyond those identified in the proposed agreement

Additional Services

Additional services may include but not be limited to: Owner scope changes, unforeseen site conditions, transfer of any Owner responsibilities to Design Team (surveys, geotechnical reports, agency review fees, FFE, etc.), rebidding through no fault of the Design Team and extension of project duration beyond reasonable expectations.

BASIC SERVICES INCLUDED IN FEE

Our fee rates are the same for all of the following: Architectural, Civil, Landscape, Mechanical, Electrical, Plumbing, Fire Alarm, Telecommunications Cabling, Low Voltage Raceways/Power, and Cost Estimating. Fees for services may be computed on the basis of a percentage of construction cost or other standard fee schedules, or as a fixed flat rate fee or stipulated sum, or on an hourly basis, all as the parties may have agreed. These fee schedules include time and expenses for travel, as well as the fees for all applicable sub-consultants engaged by AP Architects.

FEE STRUCTURE

•GROWTH PROJECT

First \$500,000	8% of the total construction cost
Next \$500,000	7.5% of the total construction cost
Next \$1,000,000	7% of the total construction cost
Next \$4,000,000	6% of the total construction cost
Next \$4,000,000	5% of the total construction cost
Over \$10,000,000	4% of the total construction cost

•MODERNIZATION PROJECT

First \$500,000	11% of the total construction cost
Next \$500,000	10.5% of the total construction cost
Next \$1,000,000	10% of the total construction cost
Next \$4,000,000	9% of the total construction cost
Next \$4,000,000	8% of the total construction cost

•MODULAR/RELOCATABLE PROJECT

Sitework for Modular Project:	8% of Sitework Cost
Modular Building(s):	4% of Modular Building(s) Cost

•HOURLY RATES (AP Architects hourly rate schedule; effective January 1, 2026 is as indicated below)

Principal	\$290.00
Senior Architect	\$210.00
Project Architect	\$195.00
Project Manager	\$195.00
CADD Drafter	\$125.00
Clerical / Administrative Assistant	\$95.00
Graphic Designer	\$150.00

**KERN COUNTY
ENGINEERING SERVICES AGREEMENT
MASTER TERMS AND CONDITIONS
ESA-WAF-003**

THIS AGREEMENT (this "**Agreement**") is entered into effective on the Effective Date shown on the attached Schedule, by and between the **COUNTY OF KERN**, a political subdivision of the State of California, ("**County**"), with its principal location at 1115 Truxtun Avenue, 3rd Floor, Bakersfield, CA 93301, and **CONSULTANT** identified on the Schedule ("**Consultant**"). County and Consultant are individually referred to as a "**Party**" and collectively as the "**Parties**."

RECITALS

A. Government Code sections 31000 and 53060 permit the County Board of Supervisors to contract for the furnishing of special services with individuals specially trained and experienced and competent to perform those services.

B. The County's Department identified on the Schedule as the Responsible County Department requires those services which are specified in **Exhibit A**.

C. County desires to engage Consultant to provide the services and Consultant, by reason of its qualifications, experience, and facilities for doing this type of work, has offered to provide the required services on the terms set forth in this Agreement.

D. The Purchasing Agent has been authorized by the Board of Supervisors to contract for services in accordance with Government Code section 25502.5. Contracts in excess of the amount specified therein may be approved by the Board of Supervisors.

AGREEMENT

1. Services to be Rendered.

a. **General.** Consultant shall provide the services and products described in **Exhibit A ("Services")**. The scope of services shall be monitored by the Director of the Responsible County Department or designee ("**Director**"). All work not conforming to requirements shall be reported to Consultant for resolution by Consultant. All services shall be in conformity with this Agreement and shall be performed to the sole satisfaction of the Director.

b. **Authorization for Service.**

i. **Work Authorization Form.** No Services shall be performed or commenced before the Work Authorization Form, as set forth in **Exhibit B**, Kern County Work Authorization Form, has been completed and signed by Consultant and Director.

ii. **Time and Cost Authorized by Work Authorization Form.** Consultant shall perform the Services in accordance with the narrative description in the Work Authorization Form to the sole satisfaction of Director. Consultant shall complete the Services no later than the completion date listed on the Work Authorization Form. Consultant's compensation for the Services shall not exceed the Total Cost listed on the Work Authorization Form. However, any Work Authorization Form may be amended by a writing executed by the Director and Consultant.

2. Compensation to Consultant. County shall compensate Consultant in accordance with the compensation selection(s) shown on the Schedule. These rates represent the total compensation to Consultant. No additional compensation shall be paid for secretarial, clerical support staff, overhead or any other costs incurred by Consultant by providing the Services to County.

3. Reimbursement Policy and Billing Requirements. All invoices for payment shall be submitted in triplicate in a form approved by County based upon the payment schedule selected on **Exhibit B**, shall contain an itemization of all costs and fees broken down monthly (including an itemization of all reimbursable expenses incurred, including travel if applicable) and shall be stated as a cumulative total. Invoices shall be sent for review and processing to the Responsible County Department. Consultant shall also provide an informational copy to the County. Payment shall be made to Consultant within 30 days of receipt and approval of the invoice by the Responsible County Department.

4. Term. This term of this Agreement ("**Term**") shall start on the Effective Date and shall terminate on the Termination Date, unless sooner terminated as provided in this Agreement.

5. Assignment. Consultant shall not assign, transfer or encumber this Agreement, or any part, and Consultant shall not assign any monies due or which become due to Consultant under this Agreement, without the prior written consent of the County.

6. **Audit, Inspection and Retention of Records.** Consultant shall maintain and make available to County accurate books and records relative to the Services under this Agreement. Consultant shall permit County to audit, examine and make excerpts and transcripts from its records and to conduct audits of all invoices, materials, records of personnel or other data related to the Services under this Agreement. Consultant shall maintain its data and records in an accessible location and condition for a period of not less than three years from the date of final payment under this Agreement, or until after the conclusion of any audit, whichever occurs last. The State of California and/or any federal agency having an interest in the subject of this Agreement shall have the same rights as County.

7. **Authority to Bind County.** It is understood that Consultant, in Consultant's performance of any Services under this Agreement, except as otherwise provided in this Agreement, has no authority to bind County to any agreements or undertakings.

8. **Indemnification.**

a. **General.** Consultant shall defend, indemnify, and hold harmless County and County's board members, elected and appointed officials, officers, employees, agents, volunteers and authorized representatives ("**County Indemnified Parties**") from any losses, liabilities, charges, damages, claims, liens, causes of action, awards, judgments, costs (including attorneys' fees of County Counsel and outside counsel retained by County, expert fees, costs of staff time, and investigation costs) ("**Claims**") which arise out of or relate to any act or omission of Consultant or Consultant's officers, employees, agents and subcontractors of any tier hired by Consultant to perform the Services ("**Consultant Representatives**"). This indemnification obligation shall include bodily and personal injury or death to any person; damage to any property, regardless of where located, including the property of County; and any workers' compensation Claim arising from or relating to any Services.

b. **Immigration Reform and Control Act.** Consultant acknowledges that Consultant and Consultant Representatives are aware of and understand the Immigration Reform and Control Act ("**IRCA**"). Consultant is and shall remain in compliance with the IRCA and shall ensure that any Consultant Representatives are and shall remain in compliance with the IRCA. In addition, Consultant shall defend, indemnify and hold harmless County and County Indemnified Parties from any Claims which arise out of or relate to any allegations that Consultant and Consultant Representatives are not authorized to work in the United States and/or any other allegations based upon alleged IRCA violations committed by Consultant or Consultant Representatives.

c. **Infringement Claim.** If any Claim is asserted or action or proceeding brought against County or County Indemnified Parties which alleges that all or any part of the Services in the form supplied by Consultant or County's use, infringes or misappropriates any United States or foreign patent or copyright, or any trade secret or other proprietary right, County shall give Consultant prompt written notice. Consultant shall defend any Claim with counsel of Consultant's choice and at Consultant's sole cost and shall indemnify County for any costs, including attorney's fees and damages actually incurred by County, including steps County may take to avoid entry of any default judgment or other waiver of County's rights. County shall cooperate fully with and may monitor Consultant in the defense of any claim, action or proceeding and shall make employees available as Consultant may reasonably request with regard to the defense, subject to reimbursement by Consultant of all costs incurred by County's cooperation in the defense.

d. **Remedy of Infringement Claim.** If the Services are, in Consultant's opinion, likely to become or do become the subject of a claim of infringement or misappropriation of a United States or foreign patent, copyright, trade secret or other proprietary right, or if a temporary restraining order or other injunctive relief is entered against the use of part or all of the Services, Consultant shall within 90 days:

1. **Replace.** Promptly replace the Services with compatible, functionally equivalent and non-infringing Services;

2. **Modify.** Promptly modify the Services to make them non-infringing without materially impairing County's ability to use the Services as intended;

3. **Procure Rights.** Promptly procure the right of County to continue using the Services; or

4. **Refund.** As a last resort, if none of these alternatives is reasonably available to Consultant, and County is enjoined or otherwise precluded legally from using the Services, Consultant shall, within 120 days of the judgment or other court action, promptly refund to County all fees and costs paid for the Services, and this Agreement shall terminate. All licensed products will be disposed of as ordered by the governing court at the sole cost of Consultant or as determined by County if the court does not so direct.

e. **Modification of Services.** This indemnification does not extend to modifications or additions to the Services made by County or any third party without the prior written consent of Consultant, or to any unauthorized use of the Services by County.

f. **Survival of Indemnification Obligations.** Upon completion of this Agreement, the provisions of this **Section 8** shall survive.

9. **Insurance.** Consultant, in order to protect County and County Indemnified Parties against Claims as a result of the performance of Consultant's obligations, as required in this Agreement, shall secure and maintain the following insurance. Consultant shall not perform any Services until Consultant has obtained all insurance required under this **Section 9** and the required certificates of insurance and all required endorsements have been filed with County's authorized insurance representative ("**Authorized Insurance Representative**"). Receipt of evidence of insurance that does not comply with all applicable insurance requirements shall not constitute a waiver of these insurance requirements. The required documents must be signed by the authorized representative of the insurance company shown on the certificate. Upon request, Consultant shall supply proof that the designated person is an authorized representative, and is authorized to bind the named underwriter(s) and their company to the stated coverage, limits and termination provisions. Consultant shall promptly deliver to Authorized Insurance Representative a certificate of insurance, and all required endorsements, with respect to each renewal policy, as necessary to demonstrate the maintenance of the required insurance coverage for the Term. The certificates and endorsements shall be delivered to Authorized Insurance Representative prior to the expiration date of any policy and bear a notation evidencing payment of the premium if so requested. Consultant shall immediately pay any deductibles and self-insured retentions under all required insurance policies upon the submission of any Claim by Consultant or County as an additional insured.

a. **Workers' Compensation and Employer's Liability Insurance Requirement.** If Consultant has employees who may perform any Services under this Agreement, Consultant shall submit written proof that Consultant is insured against liability for workers' compensation in accordance with the provisions of California Labor Code Section 3700. Consultant shall require any Consultant Representatives to provide workers' compensation for any of the Consultant Representative's employees, unless the employees are covered by the insurance carried by Consultant. If any class of employees engaged in Services is not covered by California Labor Code Section 3700, Consultant shall provide and/or require each Consultant Representative to provide adequate insurance for the coverage of employees not otherwise covered. Consultant shall also maintain employer's liability insurance with limits of \$1,000,000 for bodily injury or disease.

b. **Liability Insurance Requirements.**

1. **Types of Liability Insurance.** Consultant shall maintain in full force and effect, during the Term, the following types of liability insurance:

A. **Commercial General Liability Insurance,** including Contractual Liability Insurance (specifically covering the indemnification provisions of this Agreement), Products-Completed Operations Hazard, Personal Injury (including bodily injury and death), and Property Damage for liability arising out of Consultant's performance of Services. The Commercial General Liability insurance shall contain no exclusions or limitations for Consultant Representatives working on the behalf of the named insured. Consultant shall maintain the Products-Completed Operations Hazard coverage for the longest period allowed by Applicable Law following termination of this Agreement. The amount of the insurance coverage required by this Agreement shall be the policy limits, which shall be no less than the amount specified on the Schedule.

B. **Automobile Liability Insurance,** against claims of Personal Injury (including bodily injury and death) and Property Damage covering any owned, leased, hired and non-owned vehicles used in the performance of the Services with insurance coverage equal to the policy limits, which shall be no less than the amount specified on the Schedule.

C. **Professional Liability (Errors and Omissions) Insurance,** for liability arising out of or related to the performance of the Services, with insurance coverage equal to the policy limits, which shall be no less than the amount specified on the Schedule.

2. **Endorsements.** The Commercial General Liability and Automobile Liability Insurance required in this **Section 9** shall include an endorsement naming County and County Indemnified Parties as additional insureds for liability arising out of this Agreement and any related operations. The endorsement shall be provided using one of the following three options: (i) on ISO form CG 20 10 11 85; or (ii) on ISO form CG 20 37 10 01 plus either ISO form CG 20 10 10 01 or CG 20 33 10 01; or (iii) on other forms which provide coverage at least equal to or better than form CG 20 10 11 85.

3. **Claims-Made Insurance.** If any of the insurance coverages required under this Agreement is written on a claims-made basis, Consultant, at Consultant's option, shall either (i) maintain the coverage for at least three years following the termination of this Agreement with coverage extending back to the Effective Date; (ii) purchase an extended reporting period of not less than three years following the termination of this Agreement; or (iii) acquire a full prior acts provision on any renewal or replacement policy.

c. **Insurance Companies.** All insurance shall be issued by a company or companies admitted to do business in California and listed in the current "Best's Key Rating Guide" publication with a minimum rating of A-; VII. Any exception to these requirements must be approved in writing by the County Risk Manager.

d. **Self-Insurance.** If Consultant is, or becomes during the Term, self-insured or a member of a self-insurance pool, Consultant shall provide coverage equivalent to the required insurance coverages and endorsements. County will not accept the coverages unless the County Risk Manager determines, in its sole discretion and by written acceptance, that the coverages proposed to be provided by Consultant are equivalent to the required coverages. Any self-insured retentions in excess of \$100,000 must be declared on the Certificate of Insurance or other documentation provided to County and must be approved in writing by the County Risk Manager.

e. **Primary Insurance; Waiver of Subrogation.** All insurance carried by Consultant shall be primary to and not contributing to any insurance or self-insurance maintained by County. An endorsement shall be provided on all policies, except professional liability/errors and omissions, which shall waive any right of recovery (waiver of subrogation) against County.

f. **Insurance Does Not Replace Indemnification.** Maintenance of the insurance coverages in the minimum specified amounts shall not be construed to relieve Consultant for any liability, whether within, outside, or in excess of the coverage, and regardless of solvency or insolvency of the insurer that issues the coverage; nor shall it preclude the County from taking other actions as are available to it under this Agreement or under Applicable Law.

g. **Failure to Maintain Insurance.** Failure by Consultant to maintain all insurance in effect at all times required by this Agreement shall be a material breach of this Agreement by Consultant. County, at its sole option, may terminate this Agreement and obtain damages from Consultant resulting from the breach. Alternatively, County may purchase the required insurance coverage, and without further notice to Consultant, County shall deduct from sums due to Consultant any premiums and associated costs advanced or paid by County for the insurance. If the balance of monies owed to Consultant under this Agreement is insufficient to reimburse County for the premiums and any associated costs, Consultant shall reimburse County for the premiums and pay for all costs associated with the purchase of the insurance. Any failure by County to take this alternative action shall not relieve Consultant of its obligation to obtain and maintain the insurance coverages required by this Agreement.

h. **Cancellation of Insurance.** The insurance coverages required to be maintained by Consultant shall be maintained until the completion of all of the Services except as otherwise stated in this Agreement. Each insurance policy supplied by Consultant shall not be terminated, suspended, voided, canceled, non-renewed or reduced in coverage or in limits except after 10 days prior written notice to Consultant in the case of non-payment of premiums, or 30 days prior written notice in all other cases. This notice requirement does not waive these insurance requirements. Consultant shall immediately obtain replacement coverage for any insurance policy that is terminated, suspended, voided, canceled, reduced in coverage, or whose policy limits have been exhausted or upon insolvency of the insurer that issued the policy.

10. **Consultant Representations.** Consultant makes the following representations, which the Parties agree are material to and form a part of the inducement for this Agreement:

a. **Expertise and Staff.** Consultant has the expertise, support staff, and facilities necessary to provide the Services; and

b. **No Adverse Interests.** Consultant does not have any actual or potential interests adverse to County, nor does Consultant represent a person or firm with an interest adverse to County relating to the subject of this Agreement; and

c. **Timeliness.** Consultant shall diligently provide the Services in a timely and professional manner in accordance with the terms and conditions in this Agreement.

11. **Ownership of Documents.** All reports, documents and other items generated or gathered in the course of providing the Services are and shall remain the property of County, and shall be returned to County upon full completion of the Services or termination of this Agreement, whichever first occurs.

12. **Rights to Contracted Products.**

a. **Belong to County.** For no additional fee or charge, products developed, prepared, generated, or gathered by Consultant or Consultant's Representatives under this Agreement, shall be considered creative works for hire and shall be delivered to and become the exclusive property of County and may be used by County in any way it may deem appropriate. Consultant shall have no rights in the products, except the right to use the products for the exclusive purpose of providing the Services, and Consultant shall not copy or disclose to any third party any product, except as is expressly set forth in this Agreement or by separate written agreement between the Parties. These provisions do not apply to Consultant's original licensed software or administrative communications and records, which shall remain the exclusive property of Consultant,

b. **Use by County.** The ideas, concepts, know-how, and techniques developed during the course of this Agreement may be used by County in any way it may deem appropriate, so long as that use does not violate any term in this Agreement or any Applicable Law.

c. **No Publication.** Consultant or Consultant's Representatives shall not publish or disseminate information gained through participation in this Agreement without the specific prior review and written consent by County.

d. **Delivery to County.** Upon termination or expiration of this Agreement, Consultant shall immediately deliver to County all County-owned programs and documentation developed under this Agreement. In addition, Consultant grants to County a perpetual, royalty-free, non-exclusive, irrevocable, and non-transferable license to use, solely for County purposes, any Consultant-owned program, including system software, utilized by Consultant in performance of the Services.

e. **Survival of Covenants.** Upon completion of this Agreement, the provisions of this **Section 12** shall survive.

13. **Termination.** The County may at its election, without cause, terminate this Agreement by written notice ("**Notice of Termination**"). The Notice of Termination will be deemed effective 15 days after personal delivery, or 20 days after mailing by regular U.S. Mail, postage prepaid. In addition, either Party may immediately terminate this Agreement if the other Party fails to substantially perform in accordance with the terms and conditions of this Agreement through no fault of the Party initiating the termination. In the event this Agreement is terminated by either Consultant or the County, Consultant shall submit to the Responsible County Department all files, memoranda, documents, correspondence and other items generated in the course of performing the Services, within 15 days after the effective date of the Notice of Termination. If either Party terminates this Agreement as provided in this **Section 13**, County shall pay Consultant for all satisfactory Services rendered by Consultant prior to the effective date of Notice of Termination in an amount not to exceed the maximum dollar amount shown on the Schedule.

14. **Choice of Law/Venue.** The Parties agree that the provisions of this Agreement shall be construed under the laws of the State of California. This Agreement has been entered into and is to be performed in the County of Kern. Accordingly, the Parties agree that the venue of any action relating to this Agreement shall be in the County of Kern.

15. **Compliance with Applicable Law.** Consultant shall observe and comply with all applicable County, state, and federal laws, ordinances, rules, and regulations now in effect or later enacted ("**Applicable Law**"), each of which is made a part of this Agreement.

16. **Confidentiality.** Consultant shall not, without the prior written consent of the County, communicate confidential information, designated in writing or identified in this Agreement as confidential, to any third party and shall protect confidential information from inadvertent disclosure to any third party in the same manner that it protects its own confidential information, unless disclosure is required in response to a validly issued subpoena or other process of law. Upon completion of this Agreement, the provisions of this **Section 16** shall continue to survive.

17. **Conflict of Interest.** Consultant has read and is aware of the provisions of Government Code Section 1090 et seq. and Section 87100 et seq. relating to conflict of interest of public officers and employees. Consultant acknowledges that it is unaware of any financial or economic interest of any public officer or employee of County relating to this Agreement. If it is further understood and agreed that if a financial interest does exist at the inception of this Agreement, County may immediately terminate this Agreement by giving written notice. Consultant shall comply with the requirements of Government Code Section 1090 et seq. and 87100 et seq. during the Term.

18. **Enforcement of Remedies.** No right or remedy conferred on or reserved to a Party is exclusive of any other right or remedy under law, equity or statute, but each shall be cumulative of every other right or remedy now or in the future existing under law, equity or statute, and may be enforced concurrently or from time to time.

19. **Negation of Partnership.** In the performance of the Services, Consultant shall be, and acknowledges that Consultant is, in fact and law, an independent contractor and not an agent or employee of County. Consultant has and retains the right to exercise full supervision and control of the manner and methods of providing the Services. Consultant retains full supervision and control over the employment, direction, compensation and discharge of all persons assisting Consultant in the provision of the Services. With respect to Consultant's employees, if any, Consultant shall be solely responsible for payment of wages, benefits, and other compensation, compliance with all occupational safety, welfare and civil rights laws, tax withholding, and payment of employee taxes, whether federal, state, or local, and compliance with any Applicable Law regulating employment.

20. **Non-collusion Covenant.** Consultant represents and agrees that (i) it has in no way entered into any contingent fee arrangement with any firm or person concerning the obtaining of this Agreement with County and (ii) it has received from County no incentive or special payments and no considerations not related to the provision of the Services.

21. **Non-discrimination.** Neither Consultant, nor any Consultant Representative, shall discriminate in the treatment or employment of any individual or groups of individuals on the grounds of race, color, religion, national origin, age, sex, or any other classification protected by Applicable Law, either directly, indirectly, or through contractual or other arrangements.

22. **Non-waiver.** No covenant or condition of this Agreement can be waived except by the written consent of County. Forbearance or indulgence by County shall not constitute a waiver of the covenant or condition to be performed by Consultant. County

shall be entitled to invoke any remedy available to County under this Agreement or by Applicable Law despite the forbearance or indulgence.

23. Notices. All notices under this Agreement shall be provided to the County at the address indicated in the opening section of this Agreement and to the Consultant and Responsible County Department at the addresses shown on the Schedule. Delivery shall be by personal delivery or deposit in the U.S. Mail, postage prepaid, registered or certified mail, addressed as specified above. Notices delivered personally shall be deemed received upon receipt; mailed or expressed notices shall be deemed received five days after deposit. A Party may change the address to which notice is to be given by giving notice as provided above. Nothing in this Agreement shall be construed to prevent or render ineffective delivery of notices under this Agreement by leaving the notice with the receptionist or other person of like capacity employed in Consultant's office, or the receptionist for the Kern County General Services Department.

24. Captions and Interpretation. Section headings in this Agreement are used solely for convenience, and shall be wholly disregarded in the construction of this Agreement. No provision of this Agreement shall be interpreted for or against a Party because that Party or its legal representative drafted the provision. This Agreement is the product of negotiation and both Parties are equally responsible for its authorship. California Civil Code Section 1654 shall not apply to the interpretation of this Agreement.

25. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document.

26. Modifications of Agreement. This Agreement may be modified in writing only, signed by the parties in interest at the time of the modification.

27. Severability. If any term or provision of this Agreement is determined by a court to be in conflict with any Applicable Law, or otherwise be unenforceable or ineffectual, the validity of the remaining terms or provisions shall be deemed severable and shall not be affected, provided that the remaining terms or provisions can be construed in substance to constitute the agreement which the Parties intended to enter into on the Effective Date.

28. Signature Authority. Each Party has full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each Party has been properly authorized and empowered to enter into this Agreement.

29. Sole Agreement. This Agreement, including the Schedule and Exhibits, contains the entire agreement of the Parties relating to the Services, rights, obligations, and covenants contained in this Agreement and assumed by the Parties. No inducements, representations, or promises have been made, other than those stated in this Agreement. No oral promise, modification, change, or inducement shall be effective or given any force or effect.

30. Time of Essence. Time is expressly declared to be of the essence of this Agreement and of each provision, and each provision is declared to be a material, necessary, and essential part of this Agreement.

31. No Third Party Beneficiaries. The Parties understand and agree that the enforcement of these terms and conditions and all rights of action relating to enforcement, shall be strictly reserved to County and Consultant. Nothing contained in this Agreement shall give or allow any claim or right of action by any other third person. It is the express intention of County and Consultant that any person or entity, other than County or Consultant, receiving services or benefits under this Agreement shall be deemed an incidental beneficiary only.

32. Gender/Plural. References to feminine, masculine or neutral include the other, and references to the singular or plural include the other.

33. Recitals. Each of the recitals is incorporated in this Agreement, is deemed to be the agreement and a reflection of the intent of the Parties, and is relied upon by the Parties in agreeing to the provisions of this Agreement and in interpreting its provisions.

34. Exhibits. All exhibits attached to this Agreement are incorporated into this Agreement by reference.

35. Corporate Qualifications. If Consultant is a corporation incorporated outside the state of California transacting intrastate business within the meaning of California Corporations Code section 191, then Consultant shall, within five business days of the execution of this Agreement, provide County with a copy of the certificate of qualification issued by the California Secretary of State indicating that Consultant is currently qualified to do business in the state of California under California Corporations Code section 2105. If Consultant is a limited liability company formed outside the state of California transacting intrastate business within the meaning of California Corporations Code section 191, then Consultant shall, within five business days of the execution of this agreement, provide to County a copy of the certificate of registration issued by the California Secretary of State indicating that Consultant is currently qualified to do business in the state of California under California Corporations Code section 17708.02. Any

corporation or limited liability company, whether or not incorporated in the state of California, must be in good standing to qualify to do business with County. Failure to provide County with the current certificates is grounds for County to terminate the Agreement.

36. Political/Religious Activity. No person performing any service or providing any goods designated under this Contract shall participate in any political or religious activity on County time or in any manner involving the use of county property or expenditure of public funds nor conveying the implication of County endorsement or support for a candidate for local, state, or federal office. Notwithstanding the foregoing, nothing in this Contract shall be construed to unlawfully limit an individual's Constitutional rights. Accordingly, the limitations contained in this section are for the sole purpose of preventing proselytizing and politicking while engaged in the performance of services under this Contract.