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**PROFESSIONAL SERVICES CONTRACT AE**  
**with [Consultant]**

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*(Project No: )*

This contract is made and entered into this \_\_\_ day of \_\_, \_\_\_\_, by and between the , hereinafter referred to as AGENCY, and [Consultant], hereinafter referred to as CONSULTANT, regarding CONSULTANT's performance of the work and services described in Exhibit A hereto (the "Work"). CONSULTANT, or a principal of the firm, is registered, licensed or certified by the State of California as a [Registration], number [number].

In consideration of the mutual promises contained herein and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

**1. Scope of Work; Standard of Performance**

AGENCY hereby retains CONSULTANT to perform the Work described in Exhibit A hereto. The Work shall be performed in accordance with the terms and conditions of this contract and the County of Ventura Public Works Agency Consultant's Guide to Ventura County Procedures ("Guide") as amended from time to time, which is on file in the office of the Public Works Agency, and which by reference is made a part hereof. This contract shall take precedence over the Guide in case of conflicting provisions; otherwise they shall be interpreted together. In performing the Work CONSULTANT shall exercise the degree of skill and care customarily exercised by professionals in the State of California when providing similar services with respect to similarly complex work and projects.

**2. Time Schedule**

All Work and any portion thereof separately identified shall be completed within the time provided in the "Time Schedule" attached hereto as Exhibit B. AGENCY will issue a suspension of the contract time if CONSULTANT is delayed by any public agency reviewing documents produced by CONSULTANT under this contract, or solely due to acts or omissions of AGENCY, provided that CONSULTANT promptly notifies AGENCY in writing of such delays.

**3. Fees and Payments**

Payment shall be made monthly, or as otherwise provided, on presentation of a completed AGENCY Consultant Services Invoice Form in accordance with the "Fees and Payment" provisions attached hereto as Exhibit C.

**4. Termination**

AGENCY retains the right to terminate this contract for any reason prior to completion of the Work upon five days written notice to CONSULTANT. Upon termination, AGENCY shall pay CONSULTANT for all Work performed prior to such termination, provided however, that such charges shall not exceed the maximum fee specified in Exhibit C for completion of any separately identified task/phase of the Work which, at the time of termination, has been started by request of AGENCY, plus the outstanding amount of contract retention withheld to date.

**5. Right to Review**

AGENCY shall have the right to review the Work at any time during AGENCY's usual working hours. Review, checking, approval or other action by the AGENCY shall not relieve CONSULTANT of CONSULTANT's responsibility for the accuracy and completeness of the Work.

**6. Work Product**

On completion or termination of the contract, AGENCY shall be entitled to immediate possession of, and CONSULTANT shall promptly furnish, on request, all reports, drawings, designs, computations, plans,

specifications, correspondence, data and other work product prepared or gathered by CONSULTANT arising out of or related to the Work (collectively, "Work Product"). AGENCY has a royalty-free nonexclusive and irrevocable right to reproduce, publish, or otherwise use, and authorize others to use, Work Product for government purposes. CONSULTANT may retain copies of the Work Product for its files. Work Product prepared by CONSULTANT pursuant to this contract shall not be modified by AGENCY unless CONSULTANT's name, signatures and professional seals are completely deleted. CONSULTANT shall not be responsible for any liabilities to AGENCY for the use of such Work Product that is modified by persons other than CONSULTANT. CONSULTANT is authorized to place the following statement on the drawings, specifications and other Work Product prepared pursuant to this contract:

"This drawing [or These specifications], including the designs incorporated herein, is [are] an instrument of professional service prepared for use in connection with the project identified hereon under the conditions existing on [date]. Any use, in whole or in part, for any other project without written authorization of [CONSULTANT's name] shall be at the user's sole risk."

### **7. Errors and Omissions**

Without limiting AGENCY's other available remedies, if a construction change order is required for the subject project as a proximate result of an error or omission of CONSULTANT in the preparation of the construction or survey documents pursuant to this contract, regardless of whether or not such error or omission was the result of negligence, the necessary amendment or supplement to the construction documents required for such change order shall be made by CONSULTANT at no additional charge to AGENCY.

### **8. Correction of Work**

If any Work performed by CONSULTANT does not conform to the requirements and professional standards of this contract, AGENCY may require CONSULTANT to correct the Work until it conforms to said requirements and standards at no additional cost to AGENCY. AGENCY may withhold payment for disputed Work until CONSULTANT correctly performs the Work or the dispute is otherwise resolved in accordance with this contract. When the Work to be performed is of such a nature that CONSULTANT cannot correct its performance, AGENCY may reduce the CONSULTANT's compensation to reflect the reduced value of the Work received by AGENCY. If CONSULTANT fails to promptly correct non-conforming Work, AGENCY may have the Work performed by a third party in conformance with the requirements and professional standards of this contract and charge CONSULTANT, or withhold from payments due CONSULTANT, any costs AGENCY incurs that are directly related to the performance of the corrective work. AGENCY shall not unreasonably withhold or reduce payment for CONSULTANT's Work under this section.

### **9. Subconsulting**

With the prior written consent of AGENCY, CONSULTANT may engage the professional services of subconsultants for the performance of a portion of the Work ("Subconsultants"). CONSULTANT shall be fully responsible for all Work performed by Subconsultants which must be performed in accordance with all terms and conditions of this contract. All insurance requirements set forth in section 13 below, "Insurance Requirements," shall apply to each Subconsultant, except to the extent such requirements are modified or waived in writing by AGENCY. CONSULTANT shall ensure that each Subconsultant obtains and keeps in force and effect during the term of this contract the required insurance.

### **10. Independent Contractor**

a. No Employment Relationship. CONSULTANT is an independent contractor, and no relationship of employer and employee is created by this contract. Neither CONSULTANT nor any of the persons performing services for CONSULTANT pursuant to this contract, whether said person be a principal, member, partner, officer, employee, agent, volunteer, associate, Subconsultant or otherwise of

CONSULTANT, will have any claim under this contract or otherwise against AGENCY for any salary, wages, sick leave, vacation pay, retirement, social security, workers' compensation, disability, unemployment insurance, federal, state or local taxes, or other compensation, benefits or taxes of any kind. AGENCY is not required to make any deductions from the compensation payable to CONSULTANT under the provisions of this contract. CONSULTANT shall be solely responsible for self-employment Social Security taxes, income taxes and any other taxes levied against self-employed persons. CONSULTANT does not assign such obligation to AGENCY for collection or administration except as may be required by federal and state law.

b. No AGENCY Control of Means and Methods of Performance. Except as otherwise provided in this contract, AGENCY will have no control over the means or methods by which CONSULTANT will perform services under this contract, provided, however, that CONSULTANT will perform services hereunder and function at all times in accordance with approved methods of practice in the professional specialty of CONSULTANT.

c. Third Parties Employed by CONSULTANT. If, in the performance of this contract, any third parties (including, without limitation, Subconsultants) are employed by CONSULTANT, such third parties will be entirely and exclusively under the direction, supervision and control of CONSULTANT. All terms of employment, including hours, wages, working conditions, discipline, hiring and discharging, and other applicable requirements of law will be the responsibility of and determined by CONSULTANT, and AGENCY will have no right or authority over such third parties or the terms of such employment, except as provided in this contract.

d. Compliance with Workers' Compensation Laws. CONSULTANT will comply with all applicable provisions of the Workers Compensation Insurance and Safety Act of the State of California (codified as amended commencing at Labor Code section 3200), including, without limitation, divisions 4 and 5 of the California Labor Code, and all amendments thereto, and all applicable similar state and federal acts or laws, and will indemnify and hold harmless AGENCY from and against all Third Party Claims (defined elsewhere herein) presented, brought or recovered against AGENCY, for or on account of any liability under any of said laws which may be incurred by reason of any services to be performed under this contract.

e. Indemnity for Claims of Employer-Employee Relationship. CONSULTANT agrees to defend, through attorneys approved by AGENCY, indemnify and hold harmless AGENCY and its boards, agencies, departments, officers, employees, agents and volunteers from and against any and all Third-Party Claims (defined elsewhere herein) made against AGENCY based upon any contention by any third party that an employer-employee relationship exists by reason of this contract. CONSULTANT further agrees to hold AGENCY harmless from and to compensate AGENCY for any Third-Party Claims against AGENCY for payment of state or federal income or other tax obligations relating to CONSULTANT's compensation under the terms of this contract. CONSULTANT will not settle or otherwise compromise a Third-Party Claim covered by this subsection without AGENCY's advance written approval. This subsection does not apply to any penalty imposed by any governmental agency that is not caused by or the fault of CONSULTANT.

**11. Duty of Loyalty; Conflicts of Interest**

- a. CONSULTANT owes AGENCY a duty of undivided loyalty in performing the Work under this contract, including the obligation to refrain from having economic interests and participating in activities that conflict with AGENCY's interests with respect to the Work and subject project. CONSULTANT shall take reasonable measures to ensure that CONSULTANT and its principals, officers, employees, agents and Subconsultants do not possess a financial conflict of interest with respect to the Work and subject project. CONSULTANT shall promptly inform AGENCY of any matter that could reasonably be interpreted as creating a conflict of interest for CONSULTANT with respect to the Work and subject project. This section is not intended to modify the standard of performance as set forth in Section 1.

- b. CONSULTANT acknowledges that the California Political Reform Act ("Act"), Government Code section 81000 et seq., provides that principals, officers, employees and agents of consultants retained by a public agency may be deemed "public officials" subject to the Act if they make or advise AGENCY on decisions or actions to be taken by AGENCY. To the extent AGENCY determines that the Act applies to CONSULTANT or its principals, officers, employees or agents, each designated person shall abide by the Act, including the requirement for public officials to prepare and file statements disclosing specified economic interests, as directed by AGENCY. In addition, CONSULTANT acknowledges and shall abide by the contractual conflict of interest restrictions imposed on public officials by Government Code section 1090 et seq.
- c. During the term of this contract CONSULTANT shall not employ or compensate AGENCY's current employees.

## **12. Defense and Indemnification**

CONSULTANT agrees to defend, through attorneys approved by AGENCY, indemnify and hold harmless AGENCY and the County of Ventura (if not defined as AGENCY), and their boards, agencies, departments, officers, employees, agents and volunteers (collectively, "Indemnitee") from and against any and all claims, lawsuits, judgments, debts, demands and liability (including attorney fees and costs) (collectively, "Third Party Claims"), including, without limitation, those arising from injuries or death of persons and/or damage to property, that arise out of, pertain to, or relate to the negligence, recklessness or willful misconduct of CONSULTANT or its principals, officers, employees, agents or Subconsultants in the performance of this contract. This indemnity provision does not apply to Third Party Claims arising from the sole negligence or willful misconduct of Indemnitee or to the extent caused by the active negligence of Indemnitee. CONSULTANT is not responsible for costs of defense that exceeds its proportionate percentage of fault and to the extent CONSULTANT paid costs of defense in excess of its proportionate percentage of fault before such percentage was determined, it is entitled to reimbursement in accordance with Civil Code section 2782.8, subdivision (a). CONSULTANT shall not settle or otherwise compromise a Third-Party Claim covered by this section without AGENCY's advance written approval.

## **13. Insurance Requirements**

- a. Without limiting CONSULTANT's duty to defend and indemnify AGENCY as required herein, CONSULTANT shall, at CONSULTANT's sole cost and expense and throughout the term of this contract and any extensions hereof, carry one or more insurance policies that provide at least the following minimum coverage:
  - i. Commercial general liability insurance shall provide a minimum of \$1,000,000.00 coverage for each occurrence and \$2,000,000.00 in general aggregate coverage.
  - ii. Automobile liability insurance shall provide a minimum of either a combined single limit (CSL) of \$1,000,000.00 for each accident or all of the following: \$250,000.00 bodily injury (BI) per person, and \$500,000.00 bodily injury per accident, and \$100,000.00 property damage (PD). Automobile liability insurance is not required if CONSULTANT does no traveling in performing the Work.
  - iii. Workers' compensation insurance in full compliance with California statutory requirements for all employees of CONSULTANT in the minimum amount of \$1,000,000.00. This workers' compensation insurance requirement may only be waived by AGENCY in writing if CONSULTANT is a sole proprietor with no employees and CONSULTANT provides AGENCY with evidence of such before commencing any work under the contract.
  - iv. Professional liability (errors and omissions) insurance shall provide a minimum of \$1,000,000.00 coverage per claim and \$2,000,000.00 in annual aggregate coverage.

If CONSULTANT maintains higher limits than the minimums shown above, AGENCY requires and shall be entitled to coverage for the higher limits maintained by CONSULTANT. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to AGENCY.

- b. With respect to any coverage written on a "claims made" basis, CONSULTANT shall, for three years after the date when this contract is terminated or completed, maintain such policy with a retroactive date that is on or before the start date of contract services or purchase an extended reporting period endorsement (tail coverage). AGENCY may withhold final payments due until satisfactory evidence of the continued maintenance of such policy or the tail coverage is provided by CONSULTANT to AGENCY. Such policy shall allow for reporting of circumstances or incidents that may give rise to future claims.
- c. CONSULTANT shall notify AGENCY immediately if CONSULTANT's general aggregate of insurance is exceeded by valid litigated claims in which case additional levels of insurance must be obtained to maintain the above-stated requirements. All required insurance shall be written by a financially responsible company or companies authorized to do business in the State of California. CONSULTANT shall notify AGENCY of any and all policy cancellations within three working days of the cancellation.
- d. The commercial general liability policy shall name AGENCY and the County of Ventura (if not defined as AGENCY) and their respective officials, employees, and agents as additional insureds ("Additional Insureds"). All required insurance shall be primary coverage as respects the Additional Insureds, and any insurance or self-insurance maintained by Additional Insureds shall be in excess of CONSULTANT's insurance coverage and shall not contribute to it. Coverage shall apply separately to each insured, except with respect to the limits of liability, and an act or omission by one of the named insureds shall not reduce or avoid coverage to the other named insureds. Additional Insured coverage shall include both ongoing and completed operations. In the case of policy cancellation, AGENCY shall be notified by the insurance company or companies as provided for in the policy.
- e. CONSULTANT hereby waives all rights of subrogation against AGENCY, the County of Ventura, all special districts governed by the Board of Supervisors, and each of their boards, directors, employees and agents for losses arising directly or indirectly from the activities or Work under this contract. The commercial general liability, automobile liability and workers' compensation policies shall contain a provision or endorsement needed to implement CONSULTANT's waiver of these rights of subrogation.
- f. Prior to commencement of the Work, CONSULTANT shall furnish AGENCY with certificates of insurance and endorsements effecting all coverage required hereunder. Copies of renewal certificates and endorsements shall be furnished to AGENCY within 30 days of the expiration of the term of any required policy. CONSULTANT shall permit AGENCY at all reasonable times to inspect any policies of insurance required hereunder.
- g. Each insurance policy required above shall state that coverage shall not be canceled except with notice to AGENCY.

#### 14. Claims and Disputes

- a. Administrative Review. Prior to filing a complaint in arbitration against AGENCY seeking payment of money or damages regarding the Work, an extension of contract time, or an interpretation or adjustment of the terms of this contract, including "pass-through" claims asserted by CONSULTANT on behalf of a Subconsultant (collectively referred to hereinafter as "claim"), CONSULTANT shall first exhaust its administrative remedies by attempting to resolve the claim with AGENCY's staff in the following sequence: 1) Project Manager, 2) Deputy Director of Public Works ("Department Director") and 3) Director of Public Works Agency ("Agency

Director”). CONSULTANT shall initiate the administrative review process no later than 30 days after the claim has arisen by submitting to the Project Manager a written statement describing each claim and explaining why CONSULTANT believes AGENCY is at fault, as well as all correspondence and evidence regarding each claim. CONSULTANT may appeal the decision made by the Project Manager to the Deputy Director and may appeal the decision made by the Deputy Director to the Agency Director, provided that AGENCY receives such appeal in writing no later than seven days after the date of the decision being appealed. If CONSULTANT does not appeal a decision to the next level of administrative review within this seven-day period, the decision shall become final and binding and not subject to appeal or challenge.

- b. Arbitration. All CONSULTANT claims not resolved through the administrative review process stated above shall be resolved by arbitration unless AGENCY and CONSULTANT agree in writing, after the claim has arisen, to waive arbitration and to have the dispute litigated in a court of competent jurisdiction. Arbitration shall be pursuant to article 7.1 (commencing with section 10240) of chapter 1 of part 2 of the Public Contract Code and the regulations promulgated thereto, chapter 4 (commencing with section 1300) of division 2 of title 1 of the California Code of Regulations (collectively, “Rules for Public Works Contract Arbitrations”). Arbitration shall be initiated by a complaint in arbitration prepared, filed and served in full compliance with all requirements of the Rules for Public Works Contract Arbitrations. CONSULTANT consents and agrees that AGENCY may join it as a party to any arbitration involving third party claims asserted against AGENCY arising from or relating to any Work performed by CONSULTANT hereunder.

#### **15. Compliance with Laws and Regulations; Permits and Licenses**

CONSULTANT shall perform its obligations hereunder in compliance with all applicable federal, state, and local laws and regulations. CONSULTANT certifies that it possesses and shall continue to maintain or shall cause to be obtained and maintained, at no cost to AGENCY, all approvals, permissions, permits, licenses, and other forms of documentation required for it and its principals, officers, employees, agents and Subconsultants to comply with all applicable statutes, ordinances, and regulations, or other laws, that apply to performance of the Work. AGENCY is entitled to review and copy all such applications, permits, and licenses which CONSULTANT shall promptly make available upon AGENCY’s request.

#### **16. Prevailing Wage Requirements**

Certain work to be performed under this contract may be considered “public works” subject to prevailing wage, apprenticeship and other labor requirements of Labor Code division 2, part 7, chapter 1, section 1720 et seq. Such public works may include work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work. CONSULTANT is solely responsible for determining whether the Work, or any portion thereof, is subject to said requirements, and for complying with all such requirements that apply. All such public works projects are subject to compliance monitoring by the California Department of Industrial Relations (DIR). AGENCY has obtained from the DIR general prevailing wage determinations for the locality in which the Work is to be performed that are on file with AGENCY’s Public Works Agency and are available upon request. CONSULTANT is responsible for posting job site notices as prescribed by regulation pursuant to Labor Code section 1771.4(a)(2). CONSULTANT acknowledges that it is aware of state and federal prevailing wage and related requirements and shall comply with these requirements to the extent applicable to the Work, including, without limitation, Labor Code sections 1771 (payment of prevailing wage), 1771.1 (registration with DIR) and 1771.4 (submission of certified payrolls to Labor Commissioner).

#### **17. Miscellaneous**

- a. Entire Understanding. This contract is an integrated agreement and constitutes the final expression, and the complete and exclusive statement of the terms of, the parties’ agreement with respect to the subject matter hereof. This contract supersedes all contemporaneous oral and prior oral and written agreements, understandings, representations, inducements, promises, communications or warranties of any nature whatsoever, by either party or any agent, principal,

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officer, partner, employee or representative of either party, with respect to the subject matter hereof. Without limiting the foregoing, CONSULTANT acknowledges that no representation, inducement, promise or warranty not contained in this contract will be valid or binding against AGENCY.

- b. No modification, waiver, amendment or discharge of this contract shall be valid unless the same is in writing and signed by duly authorized representatives of both parties.
- c. Nonassignability. CONSULTANT will not assign this contract or any portion thereof to a third party without the prior written consent of AGENCY, and any attempted assignment without such prior written consent will be null and void and will be cause, at AGENCY's sole and absolute discretion, for immediate termination of this contract. AGENCY may withhold its consent to assignment at its discretion. In the event AGENCY consents to assignment, the obligations of CONSULTANT hereunder shall be binding on CONSULTANT's assigns.
- d. Third Party Beneficiaries. Except for indemnitees under sections 10.e and 12 above, this contract does not, and the parties to this contract do not intend to, confer a third party beneficiary right of action on any third party whatsoever, and nothing set forth in this contract will be construed so as to confer on any third party a right of action under this contract or in any manner whatsoever.
- e. Time limits stated herein are of the essence.
- f. Governing Law; Venue. This contract is made and entered into in the State of California and shall, in all respects, be interpreted, governed and enforced in accordance with the laws of the State of California applicable to contracts entered into and fully to be performed therein. The venue for any action, suit, arbitration, judicial reference or other proceeding concerning this contract shall be in Ventura County, California.
- g. All notices, requests, claims, and other official communications under the contract shall be in writing and transmitted by one of the following methods:
  - (1) Personal delivery.
  - (2) Courier where receipt is confirmed.
  - (3) Registered or certified mail, postage prepaid, return receipt requested.

Such notices and communications shall be deemed given and received upon actual receipt in the case of all except registered or certified mail; and in the case of registered or certified mail, on the date shown on the return receipt or the date delivery during normal business hours was attempted. All notices and communications shall be sent to CONSULTANT at the current address on file with AGENCY for contract payment purposes, and shall be sent to AGENCY as follows:

Public Works Agency  
County of Ventura L#1670  
800 South Victoria Avenue  
Ventura, CA 93009-1670

- Either party may change its contact information by providing written notice of the change to the other party in accordance herewith.
- h. Further Actions. The parties hereto agree that they will execute any and all documents and take any and all other actions as may be reasonably necessary to carry out the terms and conditions of this contract.
- i. Legal Representation. Each party warrants and represents that in executing this contract, the party has relied upon legal advice from attorneys of the party's choice (or had a reasonable opportunity to do so); that the party has read the terms of this contract and had their

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consequences (including risks, complications and costs) completely explained to the party by the party's attorneys (or had a reasonable opportunity to do so); and that the party fully understands the terms of this contract. Each party further acknowledges and represents that the party has executed this contract freely and voluntarily without the undue influence of any person, and the party has not relied on any inducements, promises or representations made by any person not expressly set forth in this contract.

- j. No Waiver. Failure by a party to insist upon strict performance of each and every term, condition and covenant of this contract shall not be deemed a waiver or relinquishment of the party's rights to enforce any term, condition or covenant.
- k. Partial Invalidity. If any provision of this contract is held by a court of competent jurisdiction to be invalid, void or unenforceable, the parties intend, and it shall be so deemed, that the remaining provisions of this contract shall continue in full force without being impaired or invalidated in any way. If such provision is held to be invalid, void or unenforceable due to its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.
- l. Interpretation of Contract. For purposes of interpretation, this contract shall be deemed to have been drafted by both parties, and no ambiguity shall be resolved against any party by virtue of the party's participation in the drafting of the contract. Accordingly, Civil Code section 1654 shall not apply to the interpretation of this contract. Where appropriate in the context of this contract, the use of the singular shall be deemed to include the plural, and the use of the masculine shall be deemed to include the feminine and/or neuter.
- m. Counterparts. This contract may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same contract.

**CONSULTANT:**

**AGENCY:**

County of Ventura

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Public Works Director or  
Deputy Purchasing Agent

\_\_\_\_\_  
Print Name and Title

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name and Title

XX-XXXXXXX  
Vendor Number  
\_\_\_\_\_