
PROFESSIONAL SERVICES AGREEMENT

**ENGINEERING DESIGN ASSOCIATED
WITH THE PHASE I FINAL CLOSURE
OF THE ROCK CREEK LANDFILL**

March 24, 2009

**PROFESSIONAL SERVICE AGREEMENT
FOR ENGINEERING DESIGN ASSOCIATED WITH PHASE I FINAL CLOSURE
OF THE ROCK CREEK LANDFILL**

THIS AGREEMENT (Agreement) is made and entered into this _____ day of March 2009, by and between the County of Calaveras, a political subdivision of the State of California (County) and _____ (Consultant).

WITNESSETH

WHEREAS, the County is authorized by Government Code Section 23004 to make contracts as necessary for the exercise of its powers; and

WHEREAS, the County is authorized by Government Code Section 31000 to contract with persons specially trained, experienced, expert and competent to perform special services such as _____; and

WHEREAS, the County wishes to obtain a consultant to provide such services, and

WHEREAS, the Consultant has represented to the County that it has the necessary training, experience, expertise and competency to provide the services, goods and materials that are described in the Agreement, at a cost to the County as herein specified; that it will be able to perform the herein described services at minimum cost to the County by virtue of its current and specialized knowledge of relevant data, issues, and conditions; and that it will do so in a manner consistent with the furthering of the goals of the County; and

WHEREAS, Consultant understands that the County is relying upon those representations in entering into this Agreement.

NOW, THEREFORE, the County and the Consultant agree as follows:

SECTION 1 BASIC SERVICES

On an as-needed basis, the Consultant shall furnish and perform a variety of services as requested by and in a manner satisfactory to the Director of Public Works or his/her designee (for the purposes of this Agreement, this individual shall be referred to as the "County Contract Manager") including, but not limited to, _____, as more fully described in Exhibit A.

The Consultant will provide all facilities, equipment, personnel, labor and materials necessary to provide the foregoing services in accordance with this agreement.

In the event of any conflict between any provisions of this Agreement (including Exhibits), the provision that requires the highest level of performance from the Consultant for the County's benefit shall prevail.

The County Contract Manager may approve modifications of the term, scheduling, billing rates, and allocation of funds between the tasks and subtasks (if any) set forth above, provided that there is no increase in the total compensation as set forth in Section 2 of this Agreement. Modifications to the terms, billing rates, and allocation of funds between tasks and subtasks which result in a change to the total compensation must be approved in writing by the Calaveras County Public Works Director.

SECTION 2 COMPENSATION AND REIMBURSEMENT OF EXPENSES

- A. For the services described in Section 1 above, and subject to the condition that the specified task has been completed in a manner satisfactory to the County Contract Manager. Consultant shall be compensated at the rates as set forth in Exhibit B provided, however, that the total amount of compensation to be paid Consultant for the services described in Section 1 shall not exceed _____ thousand, ____hundred, and _____ dollars (\$_____) as summarized in Exhibit B.
- B. The Consultant shall not be entitled to reimbursement for any expenses other than those described in Section 1 above and as identified in Exhibit B.

SECTION 3 METHOD OF PAYMENT

- A. Not more frequently than monthly, the Consultant shall submit an invoice detailing the services provided during the preceding month, including but not limited to the Task (as identified in Section 1) the amount of time spent providing the services calculated to the one-half of an hour and the rate per hour charged for which reimbursement is requested. If requested by the County, the Consultant shall provide any further documentation to verify the compensation and reimbursement sought by the Consultant.
- B. Within fifteen (15) calendar days of the receipt of the Consultant’s detailed invoice, the County Contract Manager shall either authorize payment or advise Consultant in writing of any concerns that the County Contract Manager has with the invoice or any need for further documentation.
- C. Within thirty (30) calendar days of authorization by the County Contract Manager for payment of an invoice, the County Auditor-Controller shall either authorize payment of the compensation sought and/or payment of the reimbursement of expenses sought or advise the Consultant in writing of any concerns that the County Auditor-Controller has with the request or any need for further documentation.

SECTION 4 REPORTS

The County shall provide the Consultant with all information pertinent to the services required of the Consultant by this Agreement which is requested by the Consultant and which is within the County’s possession. No charges for these materials will be made.

SECTION 5 RECORDS RETENTION

All records, documents, and general correspondence relating to the project in possession of the Consultant shall be delivered to the county upon completion of the task.

Consultant shall not be liable for any modifications to documents prepared by Consultant which are made without Consultant' advice after delivery of such documents to Owner, nor shall Consultant be liable for their use by Owner without Consultant' consent in projects other than the Project.

SECTION 6 DISPUTES

Before any dispute or controversy arising or out or relating to this project or this agreement is taken to a court of law, the parties may engage in discussion to resolve the dispute through mediation or arbitration. The parties shall share equally all mediation or arbitration costs, excluding the parties' own attorneys fees. This agreement and dispute resolution is governed by California Law. Only the party prevailing on all issues submitted, either to a court of law or arbitrator shall be entitled to reasonable attorneys fees.

SECTION 7 TERM AND TERMINATION

- A. The term of this Agreement shall run for a period of six months commencing from the date of execution of this Agreement. This Agreement may be extended upon mutual consent of both parties and at the discretion of the Public Works Director.
- B. All deliverables and products of this Agreement shall be completed and submitted to the County Contract Manager in accordance with the schedule outlined in Exhibit A.
- C. Should either party fail to substantially perform its obligations in accordance with this Agreement, the other party may notify the defaulting party of such default in writing and provide not less than fifteen (15) calendar days to cure the default. Such notice shall describe the default, and shall be deemed a forfeiture or termination of this Agreement. If such default is not cured within said fifteen (15) day period (or such longer period as is specified in the notice or agreed to by the parties), the party that gave notice of default may terminate this Agreement upon not less that fifteen (15) calendar days advance written notice. The foregoing notwithstanding, neither party waives the right to recover damages against the other for breach of this Agreement.
- D. Either party may terminate this Agreement for any reason at any time during its term, by giving fifteen (15) calendar days written notice to the other party.
- E. Upon termination of this Agreement or suspension of work by either County or Consultant, Consultant shall furnish to County all documents and drawings prepared under this Agreement, whether complete or incomplete. In the event of termination for any reason, reproducible copies of all finished or unfinished documents, drawings, maps, models, photographs, and reports prepared by Consultant shall become the sole and exclusive property of Calaveras County subject to the terms and conditions of section V.

Records Retention and Consultant shall be entitled to receive compensation for any work completed on such documents and other materials determined by the County Contract Manager to be of satisfactory quality and within the terms and conditions of this Agreement. All creative work undertaken by Consultant such as sketches, copy, mock-ups and all preparatory work for which Consultant is not compensated by the County shall remain the sole and exclusive property of the Consultant.

SECTION 8 APPLICABLE LAWS

In the performance of the services required by this Agreement, Consultant shall take reasonable care to comply with all applicable Federal, State, and County statutes, ordinances, regulations, directives and laws. This Agreement shall be deemed to be executed within the State of California and construed in accordance with and governed by the laws of the State of California.

SECTION 9 NON-DISCRIMINATION IN SERVICES AND BENEFITS

Consultant certifies that any service provided pursuant to this Agreement shall be without discrimination based on color, race, creed, national origin, religion, sex, age, sexual preferences, or physical or mental disability in accordance with all applicable Federal, State and County laws and regulations and any administrative directives established by the county Board of Supervisors or the County Administrative Officer. For the purpose of this Agreement, distinctions on the grounds of color, race, creed, national origin, religion, sex, age, sexual preferences, or physical or mental disability include but are not limited to the following: denying a participant any service or benefit which is different, or is provided in a different manner or at a different time from that provided to other participants under this Agreement; subjecting a participant to segregation or separate treatment in any way in the enjoyment or any advantage or privilege enjoyed by others receiving any service or benefit; treating a participant differently from others in determining whether the participant has satisfied any admission, enrollment quota, eligibility, membership, or other requirement or condition which individuals must meet in order to be provided any service or benefit; and the assignment of times or places for the provision of services.

SECTION 10 INDEMNIFICATION

- A. The Consultant shall indemnify and hold harmless County, its elected representatives, officers, agents, and employees from and against claims, demands, losses, defense costs (including reasonable attorney fees), expenses or liability of any kind or nature, for personal injury or property damage to the extent arising out of:
 - 1. Any negligent act, error or omission by Consultant, its officers, agents, or employees, in performing the services, responsibilities or duties required of County by this Agreement; or

2. Any breach of any statutory, regulatory, contractual or legal duty of any kind related, directly or indirectly, to the services, responsibilities or duties required of County by this Agreement.
- B. County shall indemnify and hold harmless, Consultant, their representatives, officers, agents, and employees from and against claims, demands, losses, defense costs (including reasonable attorney fees), expenses or liability of any kind or nature, for personal injury or property damage to the extent arising out of:
1. Any negligent act, error or omission by County, its officers, agents, or employees, in performing services, responsibilities or duties required of County by this Agreement; or
 2. Any breach of any statutory, regulatory, contractual or legal duty of any kind related, directly or indirectly, to the services, responsibilities or duties required of County by this Agreement.

Provided, however, that the County's indemnification obligations do not extend to or include any claims or other matters based in whole or in part upon any act or omission of the County in selecting, supervising or retaining Consultant, its officers, agents or employees.

In providing any defense under this Section, the indemnifying party shall use counsel reasonably acceptable to the indemnified party.

SECTION 11 OWNER'S RESPONSIBILITY

The County shall examine information submitted to the Consultant and shall promptly render decisions pertain there to on issues within County's responsibility.

SECTION 12 PUBLIC LIABILITY AND PROPERTY DAMAGE INSURANCE

- A. During the term of this Agreement, Consultant shall at all times maintain, at its expense, commercial general liability insurance, Workers' Compensation and Employers' Liability insurance as required by the State of California, and automobile liability insurance. The comprehensive general liability insurance shall include broad form property damage insurance.
1. The limits of such insurance shall be no less than \$1,000,000 per occurrence; \$2,000,000 in the aggregate for the commercial general liability insurance, \$1,000,000 for the Workers' Compensation/Employers' Liability insurance per accident for bodily injury or disease, and \$1,000,000 combined single limit for each accident for the automobile liability insurance.
 2. Said policies shall remain in force through the life of this Agreement and shall be payable on a "per occurrence" basis.

3. The County, its elected representatives, officers, agents, employees and volunteers shall be named as additional insured on the commercial general and automobile liability insurance policies.
 4. Retentions must be declared to and are subject to the approval of the County Risk Manager.
 5. Each insurance policy shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice, return receipt requested, has been given to the County Contract Manager.
 6. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-: VII, unless otherwise approved by the County Risk Manager.
 7. Any insurance maintained by the County shall apply in excess of, and not contribute with, insurance provided by Consultant's liability insurance policy.
- B. During the term of this Agreement, the Consultant shall at all times maintain, at its expense, professional errors and omissions liability insurance in an amount not less than \$1,000,000 per claim with a \$1,000,000 annual aggregate limit, covering negligent acts, errors or omissions which may be committed by the Consultant in the performance of its services under this Agreement.
- C. Prior to commencing services pursuant to this Agreement, Consultant shall furnish the County Contract Manager with certificates of insurance reflecting coverage required by this Agreement. The certificates are to be signed by a person authorized by that insurer to bond coverage on its behalf. All certificates are to be received by, and are subject to the approval of, the County Risk Manager before work commences. Consultant may use forms provided by the County Risk Manager or, as an alternative, may provide complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications.

During the term of this Agreement, Consultant shall furnish the County Contract Manager with original endorsements reflecting renewals, changes in insurance companies and any other documents reflecting the maintenance of the required coverage throughout the entire term of this Agreement. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf.

SECTION 13 WORKERS' COMPENSATION

Consultant shall provide Workers' Compensation coverage as required by State law, and prior to commencing services pursuant to this Agreement shall file the following statement with the County Risk Manager in a form substantially as set forth below.

WORKERS' COMPENSATION CERTIFICATION

I am aware of the provisions of Paragraph 3700 of the Labor Code, which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing any services required by this Agreement.

The person executing this certificate on behalf of Consultant affirmatively represents that she has the requisite legal authority to do so on behalf of Consultant, both the person executing this Agreement on behalf of Consultant and Consultant understand that the County is relying on this representation in entering into this Agreement.

Initials: _____

SECTION 14 REPRESENTATIVES; NOTICE

A. Each party shall designate an officer, employee or other authorized representative to act on that party's behalf with respect to the work. This representative shall have the authority to approve changes in the scope of the work, provided that such are consistent with this Agreement, and shall be available during working hours and as often as may be required to render decisions and to furnish information in a timely manner. Each party has the right to change its representative at any time; provided, however, that a party wishing to change its designated representative shall endeavor to notify the other party in writing not less than ten (10) days before making any such change. At the time this Agreement is executed, the parties' designated representatives shall be as follows:

COUNTY: Michael H. Miller
Interim Director of Public Works

CONSULTANT: John Doe
Project Manager

B. All notices shall be deemed to have been given when made in writing and delivered or mailed to the respective representatives of County and Consultant at their respective address as follows:

CONSULTANT: ACE Engineering, Inc.
2020 Any Street
Any town, CA 95555
Attention:

COUNTY: Calaveras County
Public Works Department
891 Mountain Ranch Road
San Andreas, CA 95249
Attention: Michael H. Miller

C. In lieu of written notice to the above addresses, any party may provide notices through the use of facsimile machines provided confirmation of delivery is obtained at the time of

transmission of the notices and provided the following facsimile telephone numbers are used:

TO CONSULTANT: (555) 555-1212

TO COUNTY: (209) 754-6664

Any party may change the address or facsimile number to which such communications are to be given by providing the other parties with written notice of such change at least fifteen (15) calendar days prior to the effective date of the change.

- D. All notices shall be effective upon receipt and shall be deemed received through delivery if personally served or served using facsimile machines, or on the fifth (5th) day following deposit in the mail if sent by first class mail.

SECTION 15 CONFLICT OF INTEREST

- A. Consultant shall comply with the laws and regulations of the State of California and County regarding conflicts of interest, including, but not limited to, Article 4 of Chapter 1, Division 4, Title 1 of the California Government Code, commencing with Section 1090, and Chapter 7 of Title 9 of said Code, commencing with Section 87100 including regulations promulgated by the California Fair Political Practices Commission.
- B. Consultant 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 Consultant's obligations and responsibilities hereunder. Consultant further covenants that in the performance of this Agreement, Consultant will take reasonable care to ensure that no person having any such interest shall be employed. This covenant shall remain in force until Consultant completes performance of the services required of it under this Agreement.
- C. Consultant agrees that if any fact comes to its attention, which raises any question as to the applicability of any conflict of interest law or regulation, Consultant will immediately inform the County and provide all information needed for resolution of the question.

SECTION 16 COVENANT AGAINST CONTINGENT FEES

Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working for Consultant, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making this agreement. For breach or violation of this warranty, the County shall have the right to annul this agreement without liability, or in its discretion to deduct from the agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

SECTION 17 ASSIGNMENT AND SUBCONTRACTS

The services and obligations required of Consultant under this Agreement are not assignable in whole or in part. In addition, Consultant shall not subcontract any portion of the services required of Consultant by this Agreement without the express written consent of the County Contract Manager. If any portion of the services required of Consultant is subcontracted, the sub consultant(s) shall maintain the same insurance as required of Consultant by this Agreement and Consultant shall be fully responsible to the County for all work undertaken by sub consultant(s).

SECTION 18 STATUS OF CONSULTANT

- A. It is understood and agreed by all the parties hereto that Consultant is an independent Consultant and that no relationship of employer-employee exists between the County and Consultant. Neither Consultant nor Consultant's assigned personnel shall be entitled to any benefits payable to employees of the County. Consultant hereby indemnifies and holds the County harmless from any and all claims that may be made against the County based upon any contention by any third party that an employer-employee relationship exists by reason of this Agreement or any services provided pursuant to this Agreement.
- B. It is further understood and agreed by all the parties hereto that (1) except as specifically authorized by this Agreement, neither Consultant nor Consultant's assigned personnel shall have any right to act on behalf of the County in any capacity whatsoever as an agent; and (2) neither Consultant nor Consultant's assigned personnel shall have any right to bind the County to any obligation whatsoever.
- C. It is further understood and agreed by all the parties hereto that Consultant must issue any and all forms required by Federal and State laws for income and employment tax purposes, including W-2 and 941 forms, for all of Consultant's assigned personnel.
- D. There are no third party beneficiaries of this Agreement, and no one except the parties to this Agreement may seek to enforce its terms.

SECTION 19 STANDARDS

The County's Project Manager shall decide all questions which may arise as to the quality or acceptability of deliverables furnished and work performed by the Consultant.

SECTION 20 AMENDMENT

This Agreement may be amended only by written instrument signed by the County and Consultant.

SECTION 21 WAIVER

The waiver by the County or any of its officers, agents or employees or the failure of the County or its officers, agents or employees to take action with respect to any right conferred by, or any breach of any obligation or responsibility of this Agreement shall not be deemed to be a waiver of such obligation or responsibility, or subsequent breach of same, or of any terms, covenants or conditions of this Agreement.

SECTION 22 AUTHORIZED REPRESENTATIVE

The person executing this Agreement on behalf of Consultant affirmatively represents that she/he has the requisite legal authority to enter into this Agreement on behalf of Consultant and to bind Consultant to the terms and conditions of this Agreement. Both the person executing this Agreement on behalf of Consultant and Consultant understand that the County is relying on this representation in entering into this Agreement.

SECTION 23 PUBLIC RECORDS ACT

Upon its execution, this Agreement (including all Exhibits) shall be subject to disclosure pursuant to the California Public Records Act.

SECTION 24 ADDITIONAL PROVISIONS

- A. Where there is a doubt as to whether a provision of this document is a covenant or a condition, the provision shall carry the legal effect of both. Should the County choose to excuse any given failure of Consultant to meet any given condition, covenant or obligation (whether precedent or subsequent), that decision will not be or have the legal effect of, a waiver of the legal effect in subsequent circumstances of either that condition, covenant or obligation or any other found in this document. All conditions, covenants and obligations continue to apply no matter how often County may choose to excuse a failure to perform them.
- B. Except where specifically stated otherwise in this document, the promises in this document benefit the County and Consultant only. They are not intended to, nor shall they be interpreted or applied to, give any enforcement rights to any other person (including corporate) which might be affected by the performance or non-performance of this Agreement, nor do the parties hereto intend to convey to anyone any legitimate claim of entitlement with the meaning and rights that phrase has been given by case law.

SECTION 25 ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the County and Consultant and supersedes all prior negotiations, representations, or agreements, whether written or oral. In the event of a dispute between the parties as to the language of this Agreement or the construction or meaning of any term hereof, this Agreement shall be deemed to have been

drafted by the parties in equal parts so that no presumptions or inferences concerning its terms or interpretation may be construed against any party to this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year above set forth.

ACE, INC.

COUNTY OF CALAVERAS

By _____

By _____

Russ Thomas
Board Chair

Approved As To Form:
County Counsel

By _____

By _____

Robert C. Lawton
County Administrative Officer

SAMPLE

**EXHIBIT A.
SCOPE OF WORK AND
SCHEDULE**

SAMPLE

**EXHIBIT B.
BUDGET**

SAMPLE