

June 2, 2006

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# REQUEST FOR PROPOSALS

**Professional Transportation and Economic  
Consulting Services**  
Establishment of Road Improvement Fee  
Program – San Andreas Benefit Basin

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**Closing Date: Friday, June 30, 2006 at 4:30 p.m.**



**CALAVERAS COUNTY  
DEPARTMENT OF  
PUBLIC WORKS**

891 MOUNTAIN RANCH RD  
SAN ANDREAS, CA 95249

ROB HOUGHTON, PE, DIRECTOR  
209-754-6402

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## REQUEST FOR PROPOSALS

### Professional Transportation and Economic Consulting Services Establishment of Road Improvement Fee Program - San Andreas Benefit Basin

#### ***OVERVIEW***

The Calaveras County Department of Public Works (County) is soliciting proposals from consulting firms to provide professional transportation and economic consulting services associated with the creation of a benefit basin program to finance transportation improvements in and around the town of San Andreas.

Services are requested for the preparation and development of a traffic impact mitigation fee program to be called the San Andreas Benefit Basin. Interested firms are invited to submit proposals for the subject work in accordance with the requirements outlined herein. Based on the stated selection criteria, a single firm will be asked to enter into a formal agreement for the subject services. This solicitation in no way obligates the County to award a contract for the services described herein, nor will the County assume any liability for the costs incurred in the preparation and transmittal of proposals in response to this solicitation. Questions regarding this solicitation should be directed to Nathaniel Atherstone at [natherstone@co.calaveras.ca.us](mailto:natherstone@co.calaveras.ca.us) or (209) 754-6402.

#### ***PROJECT CONCEPT AND STATUS***

Calaveras County is experiencing significant development pressure in the San Andreas community. In part because of this growth and in part because of existing deficiencies, the road system either has or will soon reach its capacity and levels of service are or will soon be degraded to unacceptable conditions. In anticipation of continued growth, the County intends to adopt a benefit basin that imposes fees on all new development to fund measures to mitigate traffic impacts. Collectively, these fees are intended to bring all significant local roadways up to current standards and to provide for anticipated transportation needs through the foreseeable future.

The County is currently in the process of updating two other traffic impact mitigation fee programs in Valley Springs and Copperopolis. Copies of the implementing legislation for those programs can be found on the County's website:

[http://www.co.calaveras.ca.us/departments/public\\_works.asp](http://www.co.calaveras.ca.us/departments/public_works.asp).

The County has also implemented a development fee for the regional road system, *Road Impact Mitigation (RIM) Fee*. Copies of the implementing legislation are also available on the County's website [http://www.co.calaveras.ca.us/departments/public\\_works.asp](http://www.co.calaveras.ca.us/departments/public_works.asp).

It is anticipated that the effort to implement the San Andreas Benefit Basin program will be carried out in four tasks. The first phase consists of conducting the legally-required technical analyses needed to establish a fee program. This includes growth forecast analysis, traffic modeling, identifying local and sub-regional transportation needs, developing an appropriate capital improvement program (CIP) along with implementation schedule and cost estimates. The second phase of the development of this basin is determination of the fee to be imposed on the development based on the cost estimates and determination of development impact on a project by project basis. The third phase shall include a determination of funding alternatives to account for the costs of the existing deficiencies that cannot be legally attributed to new development.

## ***SCOPE OF SERVICES***

The anticipated scope of work is divided into four distinct but related tasks to develop and implement the fee program: Task 1 – Traffic Study, Task 2 – Allocation of Costs between Existing Deficiencies and Growth-induced Impacts, Task 3 – Development of Impact Fees, and Task 4 – Assessment District Formation. These services should be provided in a manner consistent with the following goals:

- On-time project delivery;
- Coordination and cooperation with staff and other consultants;
- Outreach and consensus development with affected communities;
- Compliance with Government Code Section 66000 et seq and other applicable laws and regulations;
- Legally-defensible programs meeting the applicable requirements;
- Compliance with the Calaveras County General Plan

### ***Task 1. Traffic Study***

The contractor will be expected to prepare and present a thorough traffic study and analysis of the San Andreas community including existing roadway capacities, existing roadway volume, existing roadway deficiencies, growth forecasting, identifying local and sub-regional transportation needs, identification of future development projects, developing an appropriate capital improvement program (CIP) along with implementation schedule and detailed cost estimates. It is anticipated that the project manager will initially identify all project related data needs and coordinate with County staff to obtain all pertinent information prior to beginning this task.

### ***Task 2. Allocation of Costs between Existing Deficiencies and Growth-induced Impacts***

Using the analysis of the existing roadway deficiencies identified in the first task, the Contractor will be able to allocate the estimated cost of road improvements between those attributable to existing development and those attributable to growth-induced impacts. Allocation shall be completed in a manner consistent with the project goals and as may be necessary to complete Tasks 3 and 4.

### ***Task 3. Development Impact Fees***

The third task of work required to implement the Local Traffic Impact Mitigation Fee Program for San Andreas consists of a thorough review of existing programs and completing the appropriate nexus studies to develop and to support any refinement and update of those programs. Work will include but may not be limited to: finalizing project priorities, calculating a proposed fee schedule or establishing a methodology for determining a fee by land use, preparing the required legal nexus findings under AB 1600 (Government Code Section 66000), developing implementation guidance for staff, establishing administrative procedures, and drafting implementing ordinance and resolution. As a part of proposed services, preliminary and final products will be assembled in a manner that supports review by County staff and the public and the subsequent adoption proceedings by the County Board of Supervisors. This effort will require working closely with County staff in a variety of areas, including quantifying the amount and type of new development over which the costs will be spread and creating the legal documents needed to implement the fee program. It is anticipated that the project manager will initially

identify all project related data needs and coordinate with County staff to obtain all pertinent information prior to beginning this task.

Once a final project list and cost estimate are established and costs allocated between existing and new development, new impact fees by land use can be established. The cost allocation involves three sequential steps. The first step is to establish the percentage of each improvement cost that can be proportionately allocated to new development using rational nexus methods; second, distribute those costs to the General Plan land use categories; and third, calculate the actual fee schedule that will be applied to individual development permits.

A Technical Report that documents the assumptions and methodology and establishes the required nexus for the impact fees will be required. The subject report shall be prepared to establish a development impact fee program in accordance with the procedural guidelines established in AB 1600 which is codified in California Government Section 66000 et seq. This code section sets forth the procedural requirements for establishing and collecting development impact fees. Specifically, the Technical Report will demonstrate how the following AB 1600 conditions for a local agency imposing a fee have been satisfied:

- Identify the purpose of the fee;
- Identify how the fee is to be used;
- Determine how a reasonable relationship exists between the fee's use and the type of development project on which the fee is imposed;
- Determine how a reasonable relationship exists between the need for the public facility and the type of development project on which the fee is imposed; and,
- Demonstrate a reasonable relationship between the amount of the fee and the cost of public facility or portion of the public facility attributable to the development on which the fee is imposed.

The Technical Report will include copies of all data, models, and other materials used in the analysis and will be included in a set of appendices. An administrative draft report for County review will be required prior to scheduling a study session before the Board of Supervisors. Based on comments received on the draft report, a final report will be prepared for the Board. Meetings with the development community to explain the benefits of the program are essential to this process.

The final part of this task will be to develop a draft Ordinance. The Ordinance will establish and commit the County to annual review of the fees and an accounting regarding how fee funds have been appropriated and expended. Included in this will be a set of fee administration guidelines, consistent with the new fee(s) and the County's existing building permit application procedures. The administrative program will establish annual review procedures, update and escalation factors, accounting procedures, reimbursement policies and procedures, and other reporting requirements.

#### ***Task 4. Assessment District Formation***

The scope of work outlined herein presumes that the formation of an assessment district is the likely means of funding the necessary road improvements. However, in outlining this scope of work, it is not our intent to exclude other options that may be available for such funding. Furthermore, the scope of work as outlined herein is intended to serve as an example of the involvement we seek from our consultant. It is not intended to be

exhaustive. Proposers are encouraged to critically review the proposed scope of work and provide input directed toward meeting the project goals in an effective and cost efficient manner.

The scope of work for assessment district formation is anticipated to include, but would not be limited to, the following tasks:

1. Determine the feasibility of establishing an assessment district or any alternative to the proposed assessment district that would provide for the correction of existing deficiencies as identified by the Task 2. A milestone under this task will be to present those funding alternatives to the Board of Supervisors in a study session. At that time, it is anticipated that the Board provide direction as to the preferred alternative.
2. Develop, implement, and document a process that actively engages all potential assessees, to include (at a minimum) property owners, property management businesses, community leaders, and elected officials to educate and build a consensus for the establishment of the assessment district.
3. Create, implement, and execute communication and marketing programs aimed at developing a consensus of support for the establishment of the assessment district.
4. Assist the Public Works through the legislative and other County processes necessary for the establishment of the assessment district, if an assessment district is determined to be feasible.
5. Preparation of a detailed Engineer's Report under direction of registered professional engineer, relying upon the results of Task 1 and 2, identifying the costs of correcting existing deficiencies will then be spread over the types of land uses within the basin, which:
  - a. Is a complete and stand-alone document;
  - b. Provides a map and a description of the assessment district boundaries as required by California Streets & Highways Code Section 36622 or other applicable laws;
  - c. Identifies all parcels that will have a special benefit conferred upon them and upon which an assessment will be imposed;
  - d. Identifies with particularity any County properties contained in the proposed assessment district;
  - e. Separates the general from the special benefits conferred on each parcel;
  - f. Provides evidentiary support for all assessments to be imposed on each parcel;
  - g. Identifies all formulas used to calculate assessments for each parcel;
  - h. Provides clear and convincing evidence to support any finding or conclusion that publicly-owned parcels actually receive no benefit, and are therefore exempt from assessment;
  - i. Demonstrates that the assessment imposed on each parcel does not exceed the reasonable cost of the proportional special benefit conferred;
  - j. Identifies the percentage of the total assessment County will pay under the proposed assessment district;
  - k. Specifies the total assessment amount County will pay for each proposed year of assessment district operation.

6. Develop a District Management Plan that includes, but is not limited to:
  - a. The proposed assessment district's Governance/Management structure;
  - b. Assessment formula and methodology, including the formulas and methods used to assess any specified County-owned property within the assessment district, if applicable, supported and accompanied by the Engineer's Report;
  - c. Assessor Parcel Numbers, supported and accompanied by, if applicable, the Engineer's Report;
  - d. Appeal process, if applicable;
  - e. Annual budget for each year of operation;
  - f. Initial year operating budget;
  - g. Assessment district improvements and activities;
  - h. Assessment boundary and benefit zone map(s), in accordance with California Streets & Highways Code Section 36622 or other applicable laws, if applicable, supported and accompanied by the Engineer's Report.
  
7. Submit drafts of the following documents to County staff for review, and refrain from releasing any of these documents to non-County personnel without written County approval:
  - a. Engineer's Report, if applicable;
  - b. Management Plan;
  - c. Petition;
  - d. Assessment Ballot;
  - e. Any other documentation required for formation.
  
8. Coordinate and attend all necessary meetings.
  
9. Prepare and deliver, in a form acceptable to the County Treasurer, property assessment data or other information required by the County Treasurer to bill for any assessments that may be imposed.
  
10. Create and manage the proposed assessment district petition campaign and assessment ballot drive.
  
11. Provide additional periodic status reports or intermittent progress reports in a timely fashion as requested.
  
12. Assist in the creation of appropriate organization to administer the assessment district, in accordance with California Streets and Highways Code § 36614.5 or other applicable laws.

***SERVICES PROVIDED BY THE COUNTY***

With the exception of the following items, the Consultant shall provide the necessary resources and services to execute the work scope described above. In coordination with the selected Consultant, the County will:

1. Designate a County staff engineer or planner to be the primary contact person who will provide associated project documents and administer the subject professional services agreement.
2. Provide coordination assistance in obtaining appropriate forecasting from the Calaveras County Traffic Model (2006 update) as maintained by the Calaveras Council of Governments through Fehr & Peers.

If the Consultant assumes that the County will provide any services other than those specifically indicated above, those assumptions should be clearly stated and highlighted in its proposal.

### ***SCHEDULE***

While no specific deadline has been established for adoption of new Ordinances, it is our desire to complete such work in a timely fashion. The following schedule is anticipated for consultant selection and contract award.

- June 30, 2006 - Proposals Due
- July 12, 2006 - Interviews (if necessary)
- July 19, 2006 - Contract Award
- July 26, 2006 - Kick-off Meeting

### ***COMPENSATION***

The Consultant will be compensated on a time and expenses basis in accordance with a negotiated fee schedule and within a negotiated not-to-exceed fee limit that will be based on the "level of effort" identified by the Consultant in its proposal. Note that compensation conditions specified by the County standard agreement include retention of ten percent of all progress payments and advance written authorization to modify the not-to-exceed limit. Retention will be released in full at the completion of each task and following County acceptance of all required Consultant submittals.

## ***PROPOSAL REQUIREMENTS***

### ***Pre-Proposal Conference***

No pre-proposal conference has been scheduled.

### ***Submittals***

Interested firms are invited to submit three (3) copies of their proposal to the following address:

Calaveras County  
Department of Public Works  
891 Mountain Ranch Road  
San Andreas, CA 95249  
Attn: Rob Houghton, Director

To be considered, proposals must be received no later than the time and date shown on the cover sheet. Clearly mark the submittal as follows:

### ***Proposal Contents***

At a minimum, your proposal should contain the following information and conform to the prescribed format. Additional information that the consultant deems relevant to the selection process may be included.

*Firm Background.* In two pages or less, provide a brief overview of the firm that will assume all contract responsibilities and identify all proposed sub-consultants.

*Project Team.* Provide an organization chart that identifies the individuals and sub-consultants (if applicable) assigned to and responsible for the key elements of the work scope and their relationship to the other elements. Under the "Level of Effort" section described below you will be requested to indicate the number of hours each member will be assigned to the project. As a specific contract provision the proposed project team will be committed to this assignment.

*Individual Qualifications.* Provide resumes for each key staff member and demonstrate how the experience and background of each key staff member relate to the proposed assignment on the proposed project. Only include resumes for staff who are specifically assigned and whose assignment accounts for at least two percent of the total allocated hours.

*Individual Experience.* Briefly describe the applicable experience of the personnel proposed for this project. Include all sub-consultant personnel. Provide three examples of recent projects completed by the proposed personnel during the past three years that are relevant to the key elements of this project. Relevant project history in rural communities is a plus and should be provided. For each relevant project: indicate the firm's role and the staff members who were responsible for the cited project work; describe the responsibility of the proposed personnel; completion date; and include the name, title and phone number of a client reference.

*Statement of Understanding and Scope of Work.* Proposals should provide a statement of your understanding of the project by highlighting the dominant issues, articulating your strategy

for achieving the project goals, and outlining your approach toward addressing the project requirements. Proposals should provide a detailed description of the work scope anticipated to achieve the cited objectives. By submitting a proposal it is understood that the Consultant has reviewed the existing programs and applicable program documents, and that based on that review the Consultant is satisfied with the applicable conditions and requirements expressed in those documents unless otherwise stated. In this regard, any recommendations regarding changes to any of the applicable conditions or requirements should be emphasized in your proposal and would be a clear means of demonstrating your understanding of the project requirements.

*Level of Effort.* Consultants are requested to provide a work proposal that presents the estimated level of effort for each assigned staff and that is organized in a manner consistent with the proposed scope of work. Sufficient information should be provided to justify the proposed level of effort and to serve as a basis for negotiating a contract and any Supplemental Agreements that may be warranted for out of scope services.

*Schedule.* Proposals should present a project schedule showing milestones (including data collection and completion of all identified tasks), deliverable dates, and the duration of each task at a sufficient level of detail to demonstrate that the project goals can be achieved.

*Cost accounting and tracking.* Provide a copy of firm's standard fee schedule. Describe the means by which you intend to monitor and control costs to conform to the negotiated not to exceed budget.

*Bonus / Penalty Incentives.* Provide a clause describing acceptable liquidated damages and provisions to reward/penalize performance relative to adherence with the project schedule.

*Format.* The County prefers that all proposals be produced as double-sided copies on recycled paper.

### ***Consultant Selection***

Consultant selection will conform to the process outlined herein and will be based on the cited criteria. The firm considered best suited to meet the requirements of the County will be asked to open negotiation for the described work.

## *Process*

County policy stipulates that the selection of professional services for contracts to exceed \$10,000 shall be based upon written proposals submitted to the appropriate review board consistent with the written request soliciting such offer of service. Selection will conform to the following process:

1. The purpose of this Request for Proposals (RFP) is to enable the County to select the most qualified firm for the subject project.
2. This project will utilize the “qualifications based” selection process.
3. A review board shall be formed, composed of professional members of the Department and at least one professional member not in employ of the Department. Selection of the review board shall be at the option of the Department Head.
4. Submittals will be opened in private to assure confidentiality and avoid disclosure of the contents to competing respondents during the review, evaluation and negotiation process.
5. The review board shall, in a professional manner, review each proposal and rate them in an acceptable manner using the criteria outlined below to identify and rank the proposals in a selection order.
6. The County, at its sole discretion, may choose to conduct oral interviews of the firms deemed most suitable to meet the County’s needs. Prior to final consultant selection, a shortlist of qualified and responsive consulting firms may be requested to participate in an interview. The purpose of the interview will be to provide an opportunity for each consulting firm to present their qualifications and proposals in person and to answer any questions that the County may have regarding the consultants' submittals. If interviews will be held, the time and place of interviews will be arranged after the shortlist is completed. It is anticipated that a shortlist and interview date will be determined within two weeks following the closing date of this solicitation.
7. Alternatively, the review board may proceed with an interview with the top-ranking firm to negotiate a price within an acceptable range established by them. If the negotiation process is not successful, the next firm will be consulted and this procedure followed until a mutual agreement can be attained.
8. This project is subject to review and approval by the Calaveras County Board of Supervisors. Final selection including the terms and conditions of any agreements, and authority to proceed with the project will be at the discretion of the Board of Supervisors.

## *Criteria*

Consideration of proposals and subsequent award will be based on, but not limited to, the following criteria:

*Understanding of the Required Services.* Responsiveness to this Request for Proposals will be a primary criterion, including clarity and efficacy of the approach to achieve the cited objectives, and thoroughness of the proposed work scope. Focused and concise proposals that provide specific responses to the County's needs including schedule will be considered favorably.

*Experience and Qualifications.* Demonstrated capabilities and technical expertise of the **project team** in the specialized work disciplines required for this project.

*Regulatory and Legal Insight.* Knowledge of the applicable regulations and case law with a proven ability to satisfy the applicable requirements.

*Rural Public Agency Experience.* Familiarity with and recent project experience with rural public agencies.

*Level of Effort.* Reasonableness of the level of effort associated with the proposed work scope.

*Other.* Other factors that may be indicative of anticipated work performance.

Minority and women business enterprises (MBE and WBE) are encouraged to respond.

### ***Contract Provisions***

A copy of the County's standard agreement for professional services is appended (Attachment A). Unless indicated otherwise, submission of a proposal indicates that the contractor accepts the terms of the standard agreement.

**ATTACHMENT A**  
**STANDARD AGREEMENT FOR PROFESSIONAL SERVICES**

**PROFESSIONAL SERVICE AGREEMENT**  
TRAFFIC ENGINEERING AND TRANSPORTATION ANALYSIS

THIS AGREEMENT (Agreement) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2005, by and between the County of Calaveras, a political subdivision of the State of California (County) and \_\_\_\_\_, a California corporation (Contractor).

**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 Traffic Engineer and Transportation Analysis; and

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

WHEREAS, the Contractor has submitted a proposal which is attached as Attachment A; and

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

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

**I. BASIC SERVICES**

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

Traffic Engineering and Transportation Analysis as described more fully in Attachment A.

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

The complete contract shall include the following Attachment attached hereto and incorporated herein:

Attachment A: – Scope of Work

In the event of any conflict between any provisions of this Agreement (including Attachments), the provision that requires the highest level of performance from the Contractor 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 Article II 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.

## **II. COMPENSATION AND REIMBURSEMENT OF EXPENSES**

- A. For the services described in Article I above, and subject to the condition that the specified task has been completed in a manner satisfactory to the County Contract Manager or his/her designee. Contractor shall be compensated at the rates as set forth in Attachment A provided, however, that the total amount of compensation to be paid Contractor for the services described in Article I shall not exceed sixty-seven thousand, two hundred and forty, (\$67,240) billed at actual time. In the determination of hourly fees, time allotments shall be calculated to one-half of an hour.
- B. In the event of the need to modify the amount of total compensation under this agreement, the Public Works Director may approve an increase up to \$5,000.
- C. The Contractor shall not be entitled to reimbursement for any expenses other than those described in Article I above and as identified in Attachment A.

## **III. METHOD OF PAYMENT**

- A. Not more frequently than monthly, the contractor shall submit an invoice detailing the services provided during the preceding month, including but not limited to the Task (as identified in Article I) 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 Contractor shall provide any further documentation to verify the compensation and reimbursement sought by the Contractor.
- B. Within fifteen (15) calendar days of the receipt of the contractor's detailed invoice, the County Contract Manager or his/her designee shall either authorize payment or advise Contractor in writing of any concerns that the County Contract Manager or his/her designee 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 Contractor in writing of any concerns that the County Auditor-Controller has with the request or any need for further documentation.

#### **IV. REPORTS**

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

#### **V. RECORDS RETENTION**

All records, documents, and general correspondence relating to the project in possession of the Contractor 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's advice after delivery of such documents to Owner, nor shall Consultant be liable for their use by Owner without Consultant's consent in projects other than the Project.

#### **VI. DISPUTES**

Before any dispute or controversy arising out of 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. If the parties mutually agree in writing to submit a dispute to binding arbitration, the arbitration is subject to the condition the arbitrator's award shall be supported by substantial law and evidence, and a court may vacate any arbitration award not supported by substantial evidence or that is based on an error of law, in accordance with California Code of Civil Procedure Section 1296. 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.

#### **VII. TERM AND TERMINATION**

- A. The term of this Agreement shall run from January 29, 2005, to June 30, 2005, and may be renewed annually upon mutual consent of both parties at the discretion of the Public Works Director.
- B. 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 than 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.
- C. 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.

- D. Upon termination of this Agreement or suspension of work by either County or Contractor, Contractor 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 Contractor shall become the sole and exclusive property of Calaveras County subject to the terms and conditions of section V. Records Retention and Contractor shall be entitled to receive compensation for any work completed on such documents and other materials determined by the County Contract Manager or his/her designee to be of satisfactory quality and within the terms and conditions of this Agreement. All creative work undertaken by Contractor such as sketches, copy, mock-ups and all preparatory work for which Contractor is not compensated by the County shall remain the sole and exclusive property of the Contractor.

### **VIII. APPLICABLE LAWS**

In the performance of the services required by this Agreement, Contractor 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.

### **IX. NON-DISCRIMINATION IN SERVICES AND BENEFITS**

Contractor 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.

### **X. INDEMNIFICATION**

- A. The Contractor shall indemnify, defend 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 or, as a result of litigation or administrative proceeding(s), arising out of:
1. Any negligent act, error or omission by Contractor, 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, defend and hold harmless, Contractor, 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 or, as a result of litigation or administrative proceeding(s), 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 Contractor, its officers, agents or employees.

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

## **XI. OWNER'S RESPONSIBILITY**

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

## **XII. PUBLIC LIABILITY AND PROPERTY DAMAGE INSURANCE**

- A. During the term of this Agreement, Contractor shall at all times maintain, at its expense, comprehensive 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 comprehensive 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 general liability insurance

policies. (We are not able to add to Professional Liability and Worker's Compensation)

4. Any deductibles or self-insured 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 by certified mail, 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 Contractor's liability insurance policy.
- B. Prior to commencing services pursuant to this Agreement, Contractor shall furnish the County Contract Manager with original endorsements reflecting coverage required by this Agreement. The endorsements are to be signed by a person authorized by that insurer to bond coverage on its behalf. All endorsements are to be received by, and are subject to the approval of, the county Risk Manager before work commences. Contractor 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.
- C. During the term of this Agreement, Contractor 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. Contractor 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 affecting the coverage required by these specifications.

### **XIII. WORKERS' COMPENSATION**

Contractor 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 Contractor affirmatively represents that she has the requisite legal authority to do so on behalf of Contractor, both the person executing this

Agreement on behalf of Contractor and Contractor understand that the County is relying on this representation in entering into this Agreement.

Initials: \_\_\_\_\_

**XIV: 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: Robert K. Houghton, P.E.  
Director of Public Works

CONTRACTOR: Ronald T. Milam, AICP

- 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 Contractor at their respective address as follows:

CONTRACTOR:

COUNTY: Calaveras County  
Public Works Department  
891 Mountain Ranch Road  
San Andreas, CA 95249  
Attn: Rob Houghton, P.E.

- 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 CONTRACTOR:

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 (5<sup>th</sup>) day following deposit in the mail if sent by first class mail.

## **XV. CONFLICT OF INTEREST**

- A. Contractor 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. Contractor covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of Contractor's obligations and responsibilities hereunder. Contractor further covenants that in the performance of this Agreement, contractor will take reasonable care to ensure that no person having any such interest shall be employed. This covenant shall remain in force until Contractor completes performance of the services required of it under this Agreement.
- C. Contractor 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, Contractor will immediately inform the County and provide all information needed for resolution of the question.

## **XVI. COVENANT AGAINST CONTINGENT FEES**

Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working for Contractor, 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.

## **XVII. ASSIGNMENT AND SUBCONTRACTS**

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

## **XVIII. STATUS OF CONTRACTOR**

- A. It is understood and agreed by all the parties hereto that Contractor is an independent Contractor and that no relationship of employer-employee exists between the County and Contractor. Neither Contractor nor Contractor's assigned personnel shall be entitled to any benefits payable to employees of the County. Contractor 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 Contractor nor Contractor's assigned personnel shall have any right to act on behalf of the County in any capacity whatsoever as an agent; and (2) neither Contractor nor Contractor'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 Contractor 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 Contractor'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.

## **XIX. AMENDMENT**

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

## **XX. 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.

## **XXI. AUTHORIZED REPRESENTATIVE**

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

## **XXII. PUBLIC RECORDS ACT**

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

**XXIII. 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 Contractor 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 Contractor 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.

**XXIV. ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement between the County and Contractor 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.

**CONTRACTOR**

**COUNTY OF CALAVERAS**

By \_\_\_\_\_  
\_\_\_\_\_  
Principal

By \_\_\_\_\_  
Robert K. Houghton, P.E.  
Director of Public Works

Approved As To Form:  
County Counsel

By \_\_\_\_\_