

**AMENDMENT NO. 3 TO AGREEMENT
BETWEEN
COUNTY OF TULARE AND
CONWAY CONSULTING GROUP**

I. INTRODCUTION

This Amendment ("Amendment") to Tulare County Agreement No. 27551 ("Agreement"), is entered into as of October 1, 2017 between the County of Tulare, referred to as "COUNTY," and CONWAY CONSULTING GROUP, referred to as "CONTRACTOR" with reference to the following:

II. RECITALS

A. **WHEREAS**, the COUNTY and CONTRACTOR entered into the Agreement, Tulare County Agreement No. 27551, effective as of March 29, 2016 pertaining to the CONTRACTOR providing consulting services in order to assist COUNTY in obtaining funding and improve relationships with intergovernmental agencies and programs; and

B. **WHERAS**, on October 18, 2016, the Board of Supervisors amended Tulare County Agreement No. 27551 to extend the Agreement through March 30, 2017; and

C. **WHEREAS**, on March 28, 2017, the Board of Supervisors amended Tulare County Agreement No. 27551 to extend the Agreement through September 30, 2017; and

D. **WHEREAS**, the parties desire to further modify the provisions of the Agreement.

ACCORDINGLY, IT IS AGREED:

III. SPECIFIC TERMS

A. Item one (1), Term of Agreement, is amended to extend the expiration date from September 30, 2017 to March 31, 2018.

B. Item three (3), Payment for Services, is amended to set the total compensation under the Agreement to \$24,000 for the period of October 1, 2017 through March 31, 2018.

C. Except as amended above, all of the terms and conditions of said Agreement shall remain in full force and effect.

///

///

THE PARTIES, having read and considered the above provisions, indicate their agreement by their authorized signatures below.

COUNTY OF TULARE

Date: _____

By: _____
Chairman, Board of Supervisors

ATTEST: MICHAEL C. SPATA
County Administrative Officer/
Clerk of the Board of Supervisors
of the County of Tulare

By: _____
Deputy Clerk

CONTRACTOR:
Conway Consulting Group

Date: _____

By: _____

Title: _____

Approved as to Form
County Counsel

By: _____

Date: _____

ATTACHMENT – 2

Agreement No. 27551 (Conway Consulting Group)

**BEFORE THE BOARD OF SUPERVISORS
COUNTY OF TULARE, STATE OF CALIFORNIA**

IN THE MATTER OF AGREEMENT)
WITH CONWAY CONSULTING GROUP) Resolution No. 2016-0220
) Agreement No. 27551

UPON MOTION OF SUPERVISOR VANDER POEL, SECONDED BY SUPERVISOR WORTHLEY, THE FOLLOWING WAS ADOPTED BY THE BOARD OF SUPERVISORS, AT AN OFFICIAL MEETING HELD MARCH 29, 2016, BY THE FOLLOWING VOTE:

AYES: SUPERVISORS ISHIDA, VANDER POEL, COX, WORTHLEY AND ENNIS
NOES: NONE
ABSTAIN: NONE
ABSENT: NONE

ATTEST: MICHAEL C. SPATA
COUNTY ADMINISTRATIVE OFFICER/
CLERK, BOARD OF SUPERVISORS



BY: *Dennis A. Ybana*
Deputy Clerk

1. Approved an agreement between the County of Tulare and Conway Consulting Group in an amount not to exceed \$24,000 for special consulting services for intergovernmental projects and programs, and
2. Authorized the Chairman to sign the agreement

CAO
Co. Counsel
Auditor

DAY
3/30/16

TULARE COUNTY AGREEMENT NO. 27551

THIS AGREEMENT is entered into on this 29th day of March, 2016, between the COUNTY OF TULARE, referred to as COUNTY, and CONWAY CONSULTING GROUP, referred to as CONTRACTOR, with reference to Intergovernmental Relations Services.

ACCORDINGLY, IT IS AGREED:

1. **TERM:** This Agreement shall become effective on the date first above written and shall expire on **September 30, 2016**, unless otherwise terminated as provided in this Agreement.
2. **SERVICES:** CONTRACTOR agrees to provide consulting services in order to assist COUNTY in obtaining funding and improve relationships with intergovernmental agencies and programs. The consultant services will include, but are not limited to, the following programs:
 - Statewide Transportation Improvement Program;
 - Temperance Flat Water Storage and Flood Control Project;
 - Air Board Policies and Regulations; and
 - Any Other Specialized Services As Requested By County.

CONTRACTOR shall provide periodic written reports no less than once per quarter regarding progress and action plans for the aforementioned projects. All other specialized services not specifically stated in this agreement but otherwise requested by the COUNTY under this agreement shall be confirmed by contractor in writing.

3. **PAYMENT FOR SERVICES:** It is mutually agreed that the COUNTY shall pay CONTRACTOR no more than a total of **Twenty Four Thousand Dollars and 00/100 (\$24,000.00)** for all services rendered under this agreement payable for services rendered in an amount not to exceed **Four Thousand Dollars per month**, exclusive of reimbursement of reasonable and necessary business expenses as allowed by law (including applicable County Administrative Regulations). CONTRACTOR shall submit for COUNTY approval a detailed invoice describing the work performed along with a Monthly Progress Report in a form to be provided by COUNTY. All payments under this Agreement shall be made in accordance with the COUNTY'S normal payment cycle. CONTRACTOR will not charge, and COUNTY will not pay, any late fee or other late payment penalty.

4. **COMPLIANCE WITH LAW:** CONTRACTOR shall provide services in accordance with applicable federal, state, and local laws, regulations and directives. With respect to CONTRACTOR'S employees, CONTRACTOR shall comply with all laws and regulations pertaining to wages and hours, state and federal income tax, unemployment insurance, Social Security, disability insurance, workers' compensation insurance, and discrimination in employment.

5. **RECORDS AND AUDIT:** CONTRACTOR shall maintain complete and accurate records with respect to the services rendered and the costs incurred under this Agreement. In addition, CONTRACTOR shall maintain complete and accurate records with respect to

any payments to employees or sub contractors. All such records shall be prepared in accordance with generally accepted accounting procedures, shall be clearly identified and shall be kept readily accessible. Upon request, CONTRACTOR shall make such records available within Tulare County to the Auditor of Tulare County and to his agents and representatives, for the purpose of auditing and/or copying such records for a period of five (5) years from the date of final payment under this Agreement.

6. INSURANCE: INSURANCE: Prior to approval of this agreement by the COUNTY, CONTRACTOR shall file with the County Administrative Office evidence of Auto Liability insurance for business use (Insurance Service Office Form Number CA 00 01) of any auto operated by CONTRACTOR for the purposes of carrying out CONTRACTOR's obligations under this Agreement, in an amount of not less than \$500,000 per occurrence. If annual aggregate applies it must be no less than \$500,000. CONTRACTOR must submit endorsements to the Auto Liability reflecting the following provisions:

a. The COUNTY, its officers, agents, officials, employees and volunteers are to be covered as additional insureds as respects: liability arising out of work or operations performed by or on behalf of the Contractor; or automobiles owned, leased, hired or borrowed by the CONTRACTOR.

b. For any claims related to this project, the CONTRACTOR's insurance coverage shall be primary insurance as respects the COUNTY, its officers, agents, officials, employees and volunteers. Any insurance or self-insurance maintained by the COUNTY, its officers, agents, officials, employees or volunteers shall be excess of the CONTRACTOR's insurance and shall not contribute with it.

c. Each insurance policy required by this agreement shall be endorsed to state that coverage shall not be canceled by either party, except after thirty (30) days prior written notice has been provided to the COUNTY.

Additional insured endorsements shall not be used to reduce limits available to COUNTY as an additional insured from CONTRACTOR's full policy limits. The insurance policy shall not be used to limit liability or to limit the indemnification provisions and requirements of this Agreement or act in any way to reduce the policy coverage and limits available from the insurer. Failure to maintain or renew coverage, or to provide evidence of renewal, may be considered a material breach of this contract.

7. INDEPENDENT CONTRACTOR STATUS:

a. This Agreement is entered into by both parties with the express understanding that CONTRACTOR will perform all services required under this Agreement as an independent contractor. Nothing in this Agreement shall be construed to constitute the CONTRACTOR or any of its agents, employees or officers as an agent, employee or officer of COUNTY.

b. CONTRACTOR agrees to advise everyone it assigns or hires to perform any duty under this Agreement that they are not employees of COUNTY. Subject to any performance criteria contained in this Agreement, CONTRACTOR shall be solely

responsible for determining the means and methods of performing the specified services and COUNTY shall have no right to control or exercise any supervision over CONTRACTOR as to how the services will be performed. As CONTRACTOR is not COUNTY'S employee, CONTRACTOR is responsible for paying all required state and federal taxes. In particular, COUNTY will not:

- i. Withhold FICA (Social Security) from CONTRACTOR'S payments.
- ii. Make state or federal unemployment insurance contributions on CONTRACTOR'S behalf.
- iii. Withhold state or federal income tax from payments to CONTRACTOR.
- iv. Make disability insurance contributions on behalf of CONTRACTOR.
- v. Obtain unemployment compensation insurance on behalf of CONTRACTOR.

c. Notwithstanding this independent CONTRACTOR relationship, COUNTY shall have the right to monitor and evaluate the performance of CONTRACTOR to assure compliance with this Agreement.

8. INDEMNIFICATION: CONTRACTOR shall hold harmless, defend and indemnify COUNTY, its agents, officers and employees from and against any liability, claims, actions, costs, damages or losses of any kind, including death or injury to any person and/or damage to property, including COUNTY property, arising from, or in connection with, the performance by CONTRACTOR or its agents, officers and employees under this Agreement. This indemnification specifically includes any claims that may be made against COUNTY by any taxing authority asserting that an employer-employee relationship exists by reason of this Agreement, and any claims made against COUNTY alleging civil rights violations by CONTRACTOR under Government Code Sections 12920 et seq. (California Fair Employment and Housing Act), and any fines or penalties imposed on COUNTY for CONTRACTOR'S failure to provide form DE-542, when applicable. This indemnification obligation shall continue beyond the term of this Agreement as to any acts or omissions occurring under this Agreement or any extension of this Agreement.

9. CONFLICT OF INTEREST:

a. CONTRACTOR agrees to comply at all times in performance of this Agreement with the law of the State of California regarding conflicts of interests or appearance of conflicts of interests, including, but not limited to Government Code Section 1090 et seq., and the Political Reform Act, Government Code Section 81000 et seq. and regulations promulgated pursuant thereto by the California Fair Political Practices Commission. The statutes, regulations and laws previously referenced include, but are not limited to, prohibitions against any public officer or employee, including CONTRACTOR for this purpose, from the making of any decision on behalf of COUNTY in which such officer, employee or contractor has a direct or indirect financial interest. A violation can occur if

the public officer, employee or contractor participates in or influences any COUNTY decision which has the potential to confer any pecuniary benefit on CONTRACTOR or any business firm in which CONTRACTOR has an interest, with certain narrow exceptions.

b. CONTRACTOR agrees that if any facts come to CONTRACTOR's attention which raises any questions as to the applicability of conflicts of interest laws, it will immediately inform the COUNTY's designated representative and provide all information needed for resolution of this question.

10. TERMINATION:

a. The right to terminate this Agreement under this section may be exercised without prejudice to any other right or remedy to which the terminating party may be entitled at law or under this Agreement.

i. Without Cause: COUNTY will have the right to terminate this Agreement without cause by giving thirty (30) days prior written notice of intention to terminate pursuant to this provision, specifying the date of termination. COUNTY will pay to the CONTRACTOR the compensation earned for work performed and not previously paid for to the date of termination. COUNTY will not pay lost anticipated profits or other economic loss. The payment of such compensation is subject to the restrictions on payment of compensation otherwise provided in this Agreement, and is conditioned upon receipt from CONTRACTOR of any and all plans, specifications and estimates, and other documents prepared by CONTRACTOR in accordance with this Agreement. No sanctions will be imposed.

- ii. With Cause: This Agreement may be terminated by either party should the other party:
- (a) be adjudged a bankrupt, or
 - (b) become insolvent or have a receiver appointed, or
 - (c) make a general assignment for the benefit of creditors, or
 - (d) suffer any judgment which remains unsatisfied for 30 days, and which would substantively impair the ability of the judgment debtor to perform under this Agreement, or
 - (e) materially breach this Agreement.

For any of these occurrences except item (e), termination may be effected upon written notice by the terminating party specifying the date of the termination. Upon a material breach, the Agreement may be terminated following the failure of the defaulting party to remedy the breach to the satisfaction of the non-defaulting party within FIVE (5) days of receiving written notice specifying the breach. If the breach is not remedied within that FIVE (5) day period, the non-defaulting party may terminate the agreement on further written notice specifying the date of termination. If the nature of the breach is such that it cannot be cured within a 5 day period, the defaulting party may, submit a written proposal within that period which sets forth a specific means to resolve the default. If the non-defaulting party consents to that proposal in writing, which consent shall not be unreasonably withheld, the defaulting party shall immediately embark on its plan to cure. If the default is not cured within the time agreed, the non-defaulting party may terminate

upon written notice specifying the date of termination. COUNTY will pay to the CONTRACTOR the compensation earned for work performed and not previously paid for to the date of termination. COUNTY will not pay lost anticipated profits or other economic loss, nor will the COUNTY pay compensation or make reimbursement to cure a breach arising out of or resulting from such termination. If the expense of finishing the CONTRACTOR's scope of work exceeds the unpaid balance of the agreement, the CONTRACTOR must pay the difference to the COUNTY. The payment of such compensation is subject to the restrictions on payment of compensation otherwise provided in this Agreement, and is conditioned upon receipt from CONTRACTOR of any and all plans, specifications and estimates, and other documents prepared by CONTRACTOR by the date of termination in accordance with this Agreement. Sanctions taken will be possible rejection of future proposals based on specific causes of non-performance.

b. Effects of Termination: Expiration or termination of this Agreement shall not terminate any obligations to indemnify, to maintain, and make available any records pertaining to the Agreement, to cooperate with any audit, to be subject to offset, or to make any reports of pre-termination contract activities. Where CONTRACTOR'S services have been terminated by the COUNTY, said termination will not affect any rights of the COUNTY to recover damages against the CONTRACTOR.

c. Suspension of Performance: Independent of any right to terminate this Agreement, the authorized representative of COUNTY for which CONTRACTOR'S services are to be performed, may immediately suspend performance by CONTRACTOR, in whole or in part, in response to any health, safety or financial emergency, or a failure or refusal by CONTRACTOR to comply with the provisions of this Agreement, until such time as the cause for suspension is resolved, or a notice of termination becomes effective.

11. LOSS OF FUNDING: It is understood and agreed that if the funding is either discontinued or reduced for this project for the COUNTY, that the COUNTY shall have the right to terminate this Agreement. In such event, the COUNTY shall provide CONTRACTOR with at least thirty (30) days prior written notice of such termination.

12. ENTIRE AGREEMENT REPRESENTED: This Agreement represents the entire agreement between CONTRACTOR and COUNTY as to its subject matter and no prior oral or written understanding shall be of any force or effect. No part of this Agreement may be modified without the written consent of both parties.

13. HEADINGS: Section headings are provided for organizational purposes only and do not in any manner affect the scope, meaning, or intent of the provisions under the headings.

14. NOTICES:

a. Except as may be otherwise required by law, any notice to be given shall be written and shall be either personally delivered, sent by facsimile transmission or sent by first class mail, postage prepaid and addressed as follows:

COUNTY:
County of Tulare
County Administrative Office
2800 W. Burrel Avenue
Visalia, CA 93291
Phone No.: (559) 636-5005
Fax No.: (559) 733-6318

BILLING/INVOICE INQUIRIES:
County Administrative Office
Attn: Accounts Payable
2800 W. Burrel Avenue
Visalia, CA 93291
Phone No.: (559) 636-5005
Fax No.: (559) 733-6318

CONTRACTOR:

Conway Consulting Group
Att: Connie Conway
1926 Cabernet Drive
Tulare, CA 93274

Phone No.: (559) 308-0845
Email: cconway157@spcglobal.net

b. Notice personally delivered is effective when delivered. Notice sent by facsimile transmission is deemed to be received upon successful transmission. Notice sent by first class mail shall be deemed received on the fifth day after the date of mailing. Either party may change the above address by giving written notice pursuant to this paragraph.

15. CONSTRUCTION: This Agreement reflects the contributions of both parties and accordingly the provisions of Civil Code Section 1654 shall not apply to address and interpret any uncertainty or ambiguity.

16. NO THIRD PARTY BENEFICIARIES INTENDED: Unless specifically set forth, the parties to this Agreement do not intend to provide any other party with any benefit or enforceable legal or equitable right or remedy.

17. GOVERNING LAW: This Agreement shall be interpreted and governed under the laws of the State of California without reference to California conflicts of law principles. The parties agree that this contract is made in and shall be performed in Tulare County California.

18. WAIVERS: The failure of either party to insist on strict compliance with any provision of this Agreement shall not be considered a waiver of any right to do so, whether for that breach or any subsequent breach. The acceptance by either party of either performance or payment shall not be considered to be a waiver of any preceding breach of the Agreement by the other party.

19. EXHIBITS AND RECITALS: The Recitals and the Exhibits to this Agreement are fully incorporated into and are integral parts of this Agreement. However, it is hereby mutually agreed and understood that, should any of the provisions of the Exhibits and Recitals attached to this Agreement be contrary to any of the paragraph provisions of this

Agreement, the paragraph provisions of this Agreement shall control and supersede the provisions of the Exhibits and Recitals.

20. CONFLICT WITH LAWS OR REGULATIONS/SEVERABILITY: This Agreement is subject to all applicable laws and regulations. If any provision of this Agreement is found by any court or other legal authority, or is agreed by the parties, to be in conflict with any code or regulation governing its subject, the conflicting provision shall be considered null and void. If the effect of nullifying any conflicting provision is such that a material benefit of the Agreement to either party is lost, the Agreement may be terminated at the option of the affected party. In all other cases the remainder of the Agreement shall continue in full force and effect.

21. FURTHER ASSURANCES: Each party will execute any additional documents and perform any further acts which may be reasonably required to affect the purposes of this Agreement.

22. ASSURANCES OF NON-DISCRIMINATION: CONTRACTOR shall not discriminate in employment or in the provision of services on the basis of any characteristic or condition upon which discrimination is prohibited by state or federal law or regulation.

(a) It is recognized that both the CONTRACTOR and the COUNTY have the responsibility to protect County employees and clients from unlawful activities, including discrimination and sexual harassment in the workplace. Accordingly, CONTRACTOR agrees to provide appropriate training to its employees regarding discrimination and sexual harassment issues, and to promptly and appropriately investigate any allegations that any of its employees may have engaged in improper discrimination or harassment activities. The COUNTY, in its sole discretion, has the right to require CONTRACTOR to replace any CONTRACTOR employee who provides services of any kind to COUNTY pursuant to this Agreement with other employees where COUNTY is concerned that COUNTY employees or clients may have been or may be the subjects of discrimination or harassment by said CONTRACTOR employees. The right to require replacement of CONTRACTOR employees as aforesaid shall not preclude COUNTY from terminating this Agreement with or without cause as provided for herein.

23. ASSIGNMENT/SUBCONTRACTING: Unless otherwise provided in this Agreement, COUNTY is relying on the unique skill, expertise, training and experience of CONTRACTOR and CONTRACTOR'S employees and no part of this Agreement may be assigned or subcontracted by CONTRACTOR without the prior written consent of COUNTY.

24. DISPUTE RESOLUTION: If a dispute arises out of or relating to this Agreement, or the breach thereof, and if said dispute cannot be settled through negotiation, the parties agree first to try in good faith to settle the dispute by non-binding mediation before resorting to litigation or some other dispute resolution procedure, unless the parties mutually agree otherwise. The mediator shall be mutually selected by the parties, but in case of disagreement, the mediator shall be selected by lot from among two nominations provided by each party. All costs and fees required by the mediator shall be split equally

by the parties. If mediation fails to resolve the dispute within 30 days, either party may pursue litigation to resolve the dispute.

25. UNEMPLOYMENT INSURANCE COMPLIANCE: CONTRACTOR acknowledges that this Agreement is subject to filing obligations pursuant to Unemployment Insurance Code Section 1088.8. Accordingly, COUNTY has an obligation to file a report with the Employment Development Department, which report will include the CONTRACTOR'S full name, social security number, address, the date this contract was executed, the total amount of the contract, the contract's expiration date, or whether it is ongoing. CONTRACTOR agrees to cooperate with COUNTY to make such information available and to complete DE Form 542. Failure to provide the required information may, at COUNTY'S option, prevent approval of this Agreement, or be grounds for termination by COUNTY.

THE PARTIES, having read and considered the above provisions, indicate their agreement by their authorized signatures below.

"COUNTY"

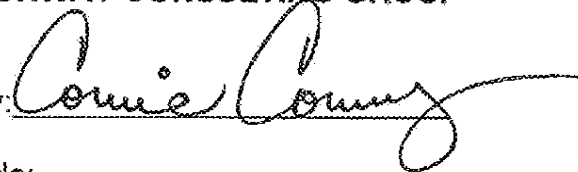
Date: 3-29-16


By: Mike Ennis
Title: Chairman, Tulare County Board of Supervisors

"CONTRACTOR"

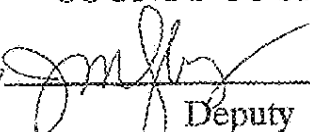
CONWAY CONSULTING GROUP

Date: 3-28-16

By: 
Title: _____

Corporations Code section 313 requires that contracts with a corporation be signed by both (1) the chairman of the Board of Directors, the president or any vice-president, and (2) the secretary, any assistant secretary, the chief financial officer, or any assistant treasurer, unless the contract is accompanied by a certified copy of the corporation's Board of Directors' resolution authorizing the execution of the contract.

APPROVED AS TO FORM:
COUNTY COUNSEL

By: 
Deputy