

**COUNTY OF TULARE
SERVICES AGREEMENT
DINUBA LIBRARY REMODEL DESIGN**

THIS AGREEMENT ("Agreement") is entered into as of _____ 2020, between the **COUNTY OF TULARE**, a political subdivision of the State of California ("COUNTY"), and **CHARLES A. RHOADS**, d/b/a Chas Rhoads Architecture, a California sole proprietorship ("ARCHITECT"). COUNTY and ARCHITECT are each a "Party" and together are the "Parties" to this Agreement, which is made with reference to providing design services for the Dinuba Library Remodel.

THE PARTIES AGREE AS FOLLOWS:

- 1. TERM:** This Agreement becomes effective as of 1/7/2020 and expires at 11:59 PM on 6/30/2021 unless earlier terminated as provided below, or unless the Parties extend the term by a written amendment to this Agreement.
- 2. SERVICES:** See attached **Exhibit A**
- 3. PAYMENT FOR SERVICES:** It is mutually agreed that the COUNTY shall pay ARCHITECT no more than TWO-HUNDRED FIVE THOUSAND AND 00/100 dollars (\$205,000.00) for all services rendered under this agreement as provided in the attached **Exhibit A**. Expenses for other services or materials not herein listed are neither authorized nor reimbursable. ARCHITECT shall submit for COUNTY approval a detailed invoice describing the work performed. All payments under this Agreement shall be made in accordance with the COUNTY'S normal payment cycle. ARCHITECT will not charge, and COUNTY will not pay, any late fee or other late payment penalty.
- 4. INSURANCE:** Before approval of this Agreement by COUNTY, ARCHITECT must file with the Clerk of the Board of Supervisors evidence of the required insurance as set forth in the attached **Exhibit B**.
- 5. GENERAL AGREEMENT TERMS AND CONDITIONS:** COUNTY'S "General Agreement Terms and Conditions" are attached as **Exhibit C** and hereby incorporated by reference and made a part of this Agreement.
- 6. NOTICES:** (a) Except as may be otherwise required by law, any notice to be given must be written and must be either personally delivered, sent by facsimile transmission or sent by first class mail, postage pre-paid and addressed as follows:

COUNTY:

Mark Van Fossen
Capital Projects Coordinator II
County of Tulare
General Services Agency
2637 W Burrel Ave, Ste 200
Visalia, CA 93291
Phone No.: 559-205-1140

With a Copy to:

COUNTY ADMINISTRATIVE OFFICER
2800 W. Burrel Ave.
Visalia, CA 93291
Phone No.: 559-636-5005
Fax No.: 559- 733-6318

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ARCHITECT:

Chas Rhoads
Rhoads Architecture
128 Katherine St
Hanford, CA 93230
Phone No.: 559-584-3371

(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 will be deemed received on the fifth calendar day after the date of mailing. Either Party may change the above address by giving written notice under this section.

7. AUTHORITY: Each Party represents and warrants to the other that the individual(s) signing this Agreement on its behalf are duly authorized and have legal capacity to sign this Agreement and bind them to its terms. Each Party acknowledges that the other Party has relied upon this representation and warranty in entering into this Agreement.

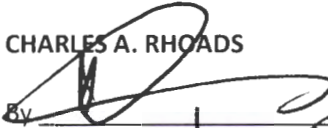
8. COUNTERPARTS: The Parties may sign this Agreement in counterparts, each of which is an original and all of which taken together form one single document.

[THIS SPACE LEFT BLANK INTENTIONALLY; SIGNATURES FOLLOW ON NEXT PAGE]

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

Date: 12/17/19

CHARLES A. RHOADS
By: 
Print Name Charles Rhoads
Title Owner

[Pursuant to Corporations Code section 313, County policy requires that contracts with a **Corporation** be signed by both (1) the chairman of the Board of Directors, the president or any vice-president (or another officer having general, operational responsibilities), and (2) the secretary, any assistant secretary, the chief financial officer, or any assistant treasurer (or another officer having recordkeeping or financial responsibilities), unless the contract is accompanied by a certified copy of a resolution of the corporation's Board of Directors authorizing the execution of the contract. Similarly, pursuant to California Corporations Code section 17703.01, County policy requires that contracts with a **Limited Liability Company** be signed by at least two managers, unless the contract is accompanied by a certified copy of the articles of organization stating that the LLC is managed by only one manager.]


COUNTY OF TULARE

Date: _____

By _____
Chairman, Board of Supervisors

ATTEST: JASON T. BRITT
County Administrative Officer/Clerk of the Board
of Supervisors of the County of Tulare

By _____
Deputy Clerk

Approved as to Form
County Counsel
By 
Deputy
Matter # 20192005

Attached Exhibits:
Exhibit A = Scope of Services
Exhibit B = Required Insurance;
Exhibit C = County's General Agreement Terms and Conditions.

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EXHIBIT A
SCOPE OF SERVICES

Chas. Rhoads Architecture

128 Katherine Street - Hanford - California - 93230

November 29, 2019

Fee Proposal Dinuba Library Remodel

Our office is very pleased to have been selected to provide the professional design for the remodel of the Dinuba Branch Library. In keeping with the approach to services described in our Statement of Qualifications, we offer the following outline of our full range of proposed work products, and the associated fee.

Scope of Work

- **Assessment / Preliminary Design**

Meetings as Required

Topographic Survey (By County Vendor)

Boundary Survey (By County Vendor)

Site Plan

Floor Plan

Interior Elevations

Exterior Elevations

- **Design Development**

Meetings as Required

Architectural

Site Improvements

Floor Plans

Elevations

Sections

Interior Elevations

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Exterior Elevations
Ceiling Plans
Roof Plans
Furnishings Plan

Landscape
Planting Plan

Estimating
Preliminary Cost Estimate

• **Construction Documents**

Meetings as Required

Civil Engineering

Grading & Drainage Plan
Site Improvements

Architectural

Site Improvements
Floor Plans
Elevations
Sections
Schedules
Details
Interior Elevations
Reflected Ceiling Plans
Roof Plans
Signage & Graphics Plans
Fixtures/Furnishings/Equipment Plans
Colors/Finishes Plans
Structural Plans & Details
Plumbing Plans & Details
Mechanical Plans & Details
Mechanical Title 24 Documentation
Electrical Plans & Details
Communication/Data/Alarm Plans & Details
Electrical Title 24 Documentation

Specifications

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Landscape
Irrigation Plan & Details
Planting Plan & Details

Estimating
Final Cost Estimate

- **Bid Phase Assistance**

Pre-Bid Meeting
Addenda
Bid Result Consultation

- **Construction Management**

Pre-Construction Meeting
Respond to RFI's
Process Submittals
Weekly Progress Meetings
Punch List Reviews

- **Post Occupancy**

Call-back Coordination

Project Budget

Based on discussions with County staff, it is the understanding of this office that the proposed project budget is as follows:

| | |
|--|----------------------|
| Construction Budget | \$2,200,000 |
| To include professional fees and contingency. | |
| FF&E | \$ 300,000 |
| To include fixed shelving and loose furniture. | |
| Project Budget | ----- \$2,500,000 |

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Proposed Fee

For Outlined Services: A fee for the full range of offered services on a renovation project of this type and scale would typically fall between 11.0% and 12.5% of the project cost. However, it is the proposal of this office to provide the outlined work for a fixed amount of two hundred and five thousand dollars (\$205,000). This fee will be allocated over the project phases as follows-

| | | |
|----------------------|-------|------------|
| Preliminary Design | 20% | \$ 41,000 |
| Design Development | 30% | \$ 61,500 |
| Contract Documents | 45% | \$ 92,250 |
| Bidding/Construction | 5% | \$ 10,250 |
| | ----- | ----- |
| | 100% | \$ 205,000 |

Not Included: The County will be responsible for the following:

Surveys as required;

Reproduction of documents as required for agency review, bidding and construction;

Hazardous materials tests and remediation;

Coordination services by designated County furnishings vendors;

Materials testing as required;

Inspections as required;

In addition, should other improvements be needed to address any unknown building deficiencies not outlined above, or to comply with agency requirements, the design of such improvements shall be considered an additional expense and is not included in this proposal.

For Additional Work: A fee to be negotiated based on the current hourly rates for the types of services required.

Invoices to be submitted monthly based on percentage of completion for each phase of the work.

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I hope this proposal offers evidence of our desire to again work with the County and library staff to improve and modernize a facility that is vital to the culture and lives of residents of the Dinuba area.

Yours truly,

Chas Rhoads
Principal Architect

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**EXHIBIT B
INSURANCE REQUIREMENTS**

PROFESSIONAL SERVICES CONTRACTS

ARCHITECT shall provide and maintain insurance for the duration of this Agreement against claims for injuries to persons and damage to property that may arise from, or in connection with, performance under the Agreement by the ARCHITECT, his agents, representatives, employees, and subcontractors, if applicable.

A. Minimum Scope & Limits of Insurance

1. Coverage at least as broad as Commercial General Liability, insurance Services Office Commercial General Liability coverage occurrence form GC 00 01, with limits no less than \$1,000,000 per occurrence including products and completed operations, property damage, bodily injury and personal & advertising injury. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
2. Insurance Services Office Form Number CA 00 01 covering Automobile Liability of \$1,000,000 per occurrence including any auto or, if the ARCHITECT has no owned autos, hired and non-owned auto coverage. If an annual aggregate applies, it must be no less than \$2,000,000.
3. Workers' Compensation insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.
4. Professional Liability (Errors and Omissions) insurance appropriate to the ARCHITECT's profession, with limit no less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate.

B. Specific Provisions of the Certificate

1. If the required insurance is written on a claims-made form, the retroactive date must be before the date of the contract or the beginning of the contract work and must be maintained and evidence of insurance must be provided for at least three (3) years after completion of the contract work.
2. ARCHITECT must submit endorsements to the General 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 ARCHITECT including material, parts, or equipment furnished in connection with such work or operations.

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- b. For any claims related to this project, the ARCHITECT'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 ARCHITECT's insurance and shall not contribute with it.
 - c. ARCHITECT hereby grants to COUNTY a waiver of any right to subrogation that any insurer of CONTRACTPR may acquire against the county by virtue of the payment of any loss under such insurance. ARCHITECT agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this less of whether or not the COUNTY has received a waiver of subrogation endorsement from the insurer.
 - d. *Each insurance policy required by this agreement shall be endorsed to state that coverage shall not be canceled by either party, except after written notice has been provided to the County.*
3. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the COUNTY for all work performed by the ARCHITECT, its employees, agents and subcontractors. ARCHITECT waives all rights against the COUNTY and its officers, agents, officials, employees and volunteers for recovery of damages to the extent these damages are covered by the workers compensation and employers liability.

C. Deductibles and Self-Insured Retentions

Self-insured retentions must be declared and the COUNTY Risk Manager must approve any deductible or self-insured retention that exceeds \$100,000.

D. Acceptability of Insurance

Insurance must be placed with insurers with a current rating given by A.M. Best and Company of no less than A-: VII and a Standard & Poor's Rating (if rated) of at least BBB and from a company approved by the Department of Insurance to conduct business in California. Any waiver of these standards is subject to approval by the County Risk Manager.

E. Verification of Coverage

Prior to approval of this Agreement by the COUNTY, the ARCHITECT shall file with the submitting department, certificates of insurance with original endorsements effecting coverage in a form acceptable to the COUNTY. Endorsements must be signed by persons authorized to bind coverage on behalf of the insurer. The COUNTY reserves the right to require certified copies of all required insurance policies at any time.

Rev. 3/3/17

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**EXHIBIT C
COUNTY'S GENERAL AGREEMENT TERMS AND CONDITIONS**

1. PAYMENT DOES NOT IMPLY ACCEPTANCE OF WORK: ARCHITECT is not entitled to any payments from COUNTY until the County Department for which services are provided under the Agreement approves services, including any furnished deliverables, as satisfying all of the requirements of this Agreement. Payments to ARCHITECT by COUNTY shall not excuse ARCHITECT from its obligation to replace unsatisfactory deliverables, including equipment, components, materials, or services even if the unsatisfactory character of such deliverables, equipment, components, materials, or services may not have been apparent or detected at the time such payment was made. Deliverables, equipment, components, materials and services that do not conform to the requirements of this Agreement may be rejected by COUNTY and in such case must be replaced by ARCHITECT without delay and at no cost to the COUNTY.

2. DISALLOWANCE: If ARCHITECT requests or receives payment from COUNTY for services hereunder, reimbursement for which is later disallowed by the State of California or United States Government, ARCHITECT shall promptly refund the disallowed amount to COUNTY upon COUNTY'S request. At its option, COUNTY may offset the amount disallowed from any payment due or to become due to ARCHITECT under this Agreement or any other Agreement between ARCHITECT and COUNTY. ARCHITECT'S obligations under this section 2 will survive the expiration or termination of this Agreement.

3. LIABILITY OF COUNTY: COUNTY'S payment obligations under this Agreement shall be limited to the payment of the compensation provided for in section 3, "PAYMENT FOR SERVICES," of this Agreement. Notwithstanding any other provision of this Agreement, in no event shall COUNTY be

liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits, arising out of or in connection with this Agreement or the services performed in connection with this Agreement.

4. QUALIFIED PERSONNEL: ARCHITECT shall utilize only competent personnel under the supervision of, and in the employment of, ARCHITECT (or ARCHITECT'S authorized subcontractors) to perform the services. ARCHITECT will comply with COUNTY'S reasonable requests regarding assignment and/or removal of personnel, but all personnel, including those assigned at COUNTY'S request, must be supervised by ARCHITECT. ARCHITECT shall commit adequate resources to allow timely completion within the project schedule specified in this Agreement.

5. INDEPENDENT ARCHITECT STATUS: The Parties enter into this Agreement with the express understanding that ARCHITECT will perform all services required under this Agreement as an independent contractor. The Parties agree that the ARCHITECT and any of its agents, employees, or officers cannot be considered agents, employees, or officers of COUNTY. ARCHITECT 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, ARCHITECT will be solely responsible for determining the means and methods of performing the specified services and COUNTY will have no right to control or exercise any supervision over ARCHITECT as to how the ARCHITECT will perform the services. As ARCHITECT is not COUNTY'S employee, ARCHITECT is responsible for paying all required state and federal taxes. In particular, COUNTY will not:

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(1) Withhold FICA (Social Security) from ARCHITECT'S payments.

(2) Make state or federal unemployment insurance contributions on ARCHITECT'S behalf.

(3) Withhold state or federal income tax from payments to ARCHITECT.

(4) Make disability insurance contributions on behalf of ARCHITECT.

(5) Obtain unemployment compensation insurance on behalf of ARCHITECT.

Notwithstanding this independent contractor relationship, COUNTY will have the right to monitor and evaluate the performance of ARCHITECT to assure compliance with this Agreement.

6. COMPLIANCE WITH LAW: ARCHITECT must provide services in accordance with applicable Federal, State, and local laws, regulations and directives. With respect to ARCHITECT'S employees, ARCHITECT must 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.

7. LICENSES AND PERMITS: ARCHITECT represents and warrants that it possesses and will maintain during the term of this Agreement all licenses and permits required for its performance of the services required under this Agreement.

8. GOVERNING LAW: The laws of the State of California, without reference to California conflict of laws principles, govern this Agreement and its interpretation. The Parties agree that this Agreement is made in and will be performed in Tulare County, California.

9. RECORDS AND AUDIT: ARCHITECT must maintain complete and accurate records with respect to the services rendered and the costs incurred under this Agreement. In addition, ARCHITECT must maintain complete and accurate records with respect to any payments to employees or subcontractors. All of the records must be prepared in accordance with generally accepted accounting procedures, must be clearly identified, and must be kept readily accessible. Upon request, ARCHITECT must make the records available within Tulare County to the Auditor of Tulare County and to his or her agents and representatives, for the purpose of auditing and/or copying the records for a period of five (5) years from the date of final payment under this Agreement.

10. CONFLICT OF INTEREST:

(a) At all times during the performance of this Agreement, ARCHITECT must comply with the law of the State of California regarding conflicts of interests and 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 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 ARCHITECT for this purpose, from making any decision on behalf of COUNTY in which the officer, employee, or consultant/contractor has a direct or indirect financial interest. A violation can occur if the public officer, employee, or consultant/contractor participates in or influences any COUNTY decision that has the potential to confer any pecuniary benefit on ARCHITECT or any business firm in which ARCHITECT has an interest, with certain narrow exceptions.

(b) ARCHITECT agrees that if any facts come to its attention that raise any questions as to the applicability of conflicts of interests laws, then it

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will immediately inform COUNTY and provide all information needed for resolution of this question.

11. INSURANCE: The attached **Exhibit B** outlines the minimum scope, specifications, and limits of insurance required under this Agreement. Additional insured endorsements required as outlined in **Exhibit B** cannot be used to reduce limits available to COUNTY as an additional insured from ARCHITECT'S full policy limits. Insurance policies cannot 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(s). If ARCHITECT fails to maintain or renew coverage, or to provide evidence of renewal, then COUNTY may consider that failure a material breach of this Agreement. COUNTY may also withhold any payment otherwise due to ARCHITECT for failure to provide evidence of renewal until ARCHITECT provides such evidence.

12. INDEMNIFICATION:

(a) To the fullest extent permitted by law, ARCHITECT must indemnify, and hold harmless, but not defend, COUNTY, all subsidiaries, divisions and affiliated agencies of COUNTY, and all of their representatives, partners, officers, directors, employees, successors and assigns, (each, an "Indemnified Party" and collectively, the "Indemnified Parties"), from and against all claims by third parties (including, without limitation, claims for bodily injury, death or damage to property), losses, judgments, fines, penalties, liabilities, costs and expenses (individually, a "Claim"; collectively, "Claims") but only to the extent actually caused by the negligence, recklessness, or misconduct of ARCHITECT with respect to any work performed or services provided under this Agreement (including, without limitation, the negligent acts, errors and/or omissions of ARCHITECT, its principals, officers, agents, employees,

sub-consultants, contractors, or anyone employed directly or indirectly by any of them or for whose negligent acts they may be liable or any or all of them). ARCHITECT'S obligation to indemnify applies unless it is finally adjudicated that the liability was caused by the negligence or willful misconduct of an Indemnified Party or any third party. If it is finally adjudicated that liability is caused by the comparative active negligence or willful misconduct of an Indemnified Party or any third party, then ARCHITECT'S indemnification obligation shall be reduced in proportion to the established comparative liability.

(b) ARCHITECT has no obligation to pay for any of the indemnitees' defense related costs prior to a final determination of liability or to pay any amount of such costs that exceeds ARCHITECT'S finally determined percentage of liability based upon the comparative fault of the ARCHITECT, an Indemnified Party, and any third parties. Such defense related costs may include, without limitation, attorneys' fees, disbursements and court costs, all other professional expert or consultants' fees and costs, and COUNTY general and administrative expenses incurred in defense of the matter.

(c) CONTRACTOR must indemnify and hold COUNTY harmless from all loss and liability for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons in consequence of the use by COUNTY, or any of its officers or agents, of articles or services to be supplied in the performance of this Agreement, but only to the extent actually caused by the negligence, recklessness, or misconduct of CONTRACTOR (including, without limitation, the negligent acts, errors and/or omissions of CONTRACTOR, its principals, officers, agents, employees, sub-consultants, contractors, or anyone employed directly or indirectly by any of them or for whose

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negligent acts they may be liable or any or all of them). CONTRACTOR'S obligation to indemnify applies unless it is finally adjudicated that the liability was caused by the negligence or willful misconduct of an Indemnified Party or any third party. If it is finally adjudicated that liability is caused by the comparative active negligence or willful misconduct of an Indemnified Party, then CONTRACTOR'S indemnification obligation shall be reduced in proportion to the established comparative liability. CONTRACTOR has no obligation to pay for any of the indemnitees' defense related costs prior to a final determination of liability or to pay any amount of such costs that exceeds CONTRACTOR'S finally determined percentage of liability based upon the comparative fault of the CONTRACTOR, an Indemnified Party, and any third parties. Such defense related costs may include, without limitation, attorneys' fees, disbursements and court costs, all other professional expert or consultants' fees and costs, and COUNTY general and administrative expenses incurred in defense of the matter.

13. TERMINATION:

(a) **Without Cause:** COUNTY may terminate this Agreement without cause by giving thirty (30) days' prior written notice to ARCHITECT of its intention to terminate under this provision, specifying the date of termination. COUNTY will pay to ARCHITECT the compensation earned for work satisfactorily 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 any compensation is subject to the restrictions on payment of compensation otherwise provided in this Agreement, and is conditioned upon receipt from ARCHITECT of all plans, specifications and estimates, and other documents prepared by ARCHITECT in accordance with this Agreement. COUNTY will not impose sanctions on ARCHITECT under these circumstances.

(b) **With Cause:** Either Party may terminate this Agreement immediately, by written notice to the other Party, should the other Party:

- (1) Be adjudged a bankrupt, or
- (2) Become insolvent or have a receiver appointed, or
- (3) Make a general assignment for the benefit of creditors, or
- (4) Suffer any judgment that remains unsatisfied for 30 days, and that would substantially impair the ability of the judgment debtor to perform under this Agreement, or
- (5) Materially breach this Agreement.

In addition, COUNTY may terminate this Agreement based on:

- (6) Material misrepresentation, either by ARCHITECT or anyone acting on ARCHITECT'S behalf, as to any matter related in any way to COUNTY'S retention of ARCHITECT, or
- (7) Other misconduct or circumstances that, in the sole discretion of COUNTY, either impairs the ability of ARCHITECT to competently provide the services under this Agreement, or exposes COUNTY to an unreasonable risk of liability.

For any of the occurrences except item (5) above, termination may be effected upon written notice by the terminating Party specifying the date of the termination. If ARCHITECT fails to perform according to the terms and conditions of this Agreement, then COUNTY may, in addition to any other remedy it may have, issue a declaration of default after 10 days written notice to ARCHITECT. Upon a material breach, the Agreement may be terminated after the failure of the defaulting Party to remedy the breach to the satisfaction of the non-defaulting Party within 5 days of written notice specifying the breach. If the breach is not remedied within that 5-day period, then the non-defaulting Party may terminate this Agreement on further written notice specifying the date of termination. If the nature of the

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breach is such that it cannot be cured within a 5-day period, then the defaulting Party may submit a written proposal within that period which sets forth a specific means to resolve the default. If the nondefaulting Party consents to that proposal in writing, which consent may not be unreasonably withheld, then the defaulting Party must immediately embark on its plan to cure the default or breach. If the default or breach is not cured within the time agreed, then the non-defaulting Party may terminate this Agreement upon written notice specifying the date of termination. COUNTY will pay to ARCHITECT the compensation earned for work satisfactorily performed and not previously paid for to the date of termination. 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 ARCHITECT of all plans, specifications and estimates, and other documents prepared by ARCHITECT by the date of termination in accordance with this Agreement. COUNTY will not pay lost anticipated profits or other economic loss, nor will COUNTY pay compensation or make reimbursement to cure a breach arising out of or resulting from such termination. If COUNTY terminates this Agreement for cause and the expense of finishing ARCHITECT'S scope of work exceeds the unpaid balance of the Agreement, then ARCHITECT must pay the difference to COUNTY. COUNTY may impose sanctions under these circumstances, which may include possible rejection of future proposals based on specific causes of ARCHITECT'S non-performance.

(c) **Effects of Termination:** Expiration or termination of this Agreement will 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 COUNTY terminates ARCHITECT'S services, that termination

will not affect any rights of COUNTY to recover damages against ARCHITECT.

(d) **Suspension of Performance:** Independent of any right to terminate this Agreement, the authorized representative of the COUNTY department or agency for which ARCHITECT'S services are to be performed, may immediately suspend performance by ARCHITECT, in whole or in part, in response to health, safety or financial emergency, or a failure or refusal by ARCHITECT 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.

14. LOSS OF FUNDING: It is understood and agreed that if COUNTY'S funding is either discontinued or reduced for the services to be provided hereunder, then COUNTY will have the right to terminate this Agreement under section 13 (a) ("Termination Without Cause") as of the end of the term for which funds are appropriated. Such termination shall be without penalty, liability, or expense to COUNTY of any kind, provided that COUNTY shall pay ARCHITECT in accordance with section 13 (a) for services satisfactorily performed prior to the date of such termination and to the extent funds have been appropriated for such payment.

15. SUBMITTING FALSE CLAIMS; MONETARY PENALTIES:

Under applicable federal and state law, if ARCHITECT submits a false claim to COUNTY under this Agreement, then ARCHITECT will be liable to COUNTY for the statutory penalties set forth in those statutes, including but not limited to statutory fines, treble damages, costs, and attorneys' fees. ARCHITECT will be deemed to have submitted a false claim to COUNTY if ARCHITECT:

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(a) Knowingly presents or causes to be presented to COUNTY a false claim or request for payment or approval;

(b) Knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by COUNTY;

(c) Conspires to defraud COUNTY by getting a false claim allowed or paid by COUNTY;

(d) Knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to COUNTY; or

(e) Is a beneficiary of an inadvertent submission of a false claim to COUNTY, later discovers the falsity of the claim, and fails to disclose the false claim to COUNTY within a reasonable time after discovery of the false claim.

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

17. WORKS FOR HIRE: ARCHITECT acknowledges that all work(s) under this Agreement are "work(s) for hire" within the meaning of the United States Copyright Act (Title 17 United States Code) and hereby assigns to COUNTY all

rights and interests ARCHITECT may have in the work(s) it prepares under this Agreement, including any right to derivative use of the work(s). All software and related materials developed by ARCHITECT in performance of this Agreement for COUNTY will be the sole property of COUNTY, and ARCHITECT hereby assigns and transfers all its right, title, and interest therein to COUNTY. ARCHITECT will execute all necessary documents to enable COUNTY to protect COUNTY'S intellectual property rights under this section.

18. WORK PRODUCT: All work product, equipment, or materials created for COUNTY or purchased by COUNTY under this Agreement belong to COUNTY and ARCHITECT must immediately deliver them to COUNTY at COUNTY'S request upon termination or completion of this Agreement.

19. TIME OF ESSENCE: The Parties agree that time is of the essence under this Agreement, unless they agree otherwise in writing.

20. CONFIDENTIALITY: ARCHITECT may not use or disclose any information it receives from COUNTY under this Agreement that COUNTY has previously identified as confidential or exempt from mandatory public disclosure except as necessary to carry out the purposes of this Agreement or as authorized in advance by COUNTY. Unless required to do so by law, including, but not limited to, the Ralph M. Brown Act or the California Public Records Act, COUNTY may not disclose to third parties any information it receives from ARCHITECT that ARCHITECT has previously identified as confidential. If COUNTY determines that it must disclose any information that ARCHITECT previously identified as confidential, then it shall promptly give ARCHITECT written notice of its intention to disclose such information and the authority for such disclosure. ARCHITECT shall have period of five (5) calendar days thereafter within which to seek a protective court order to

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prevent such disclosure or to notify COUNTY that it will not seek such an order. COUNTY shall cooperate with ARCHITECT in any efforts to seek such a court order. COUNTY shall not disclose the information until the five (5) day period has expired without a response from ARCHITECT, or ARCHITECT has notified COUNTY that it will not seek such an order, or ARCHITECT has sought and a court has declined to issue a protective order for such information. If ARCHITECT seeks a protective order for such information, ARCHITECT shall defend and indemnify COUNTY from any and all loss, injury, or claim arising from COUNTY'S withholding of the information from the requestor. This includes any attorney's fees awarded to the requestor. The duty of COUNTY and ARCHITECT to maintain confidentiality of information under this section continues beyond the term of this Agreement.

21. ASSIGNMENT/SUBCONTRACTING: Unless otherwise provided in this Agreement, COUNTY is relying on the personal skill, expertise, training and experience of ARCHITECT and ARCHITECT'S employees and no part of this Agreement may be assigned or subcontracted by ARCHITECT without the prior written consent of COUNTY, which consent COUNTY may grant, delay, deny, or condition in its absolute discretion.

22. DISPUTES AND DISPUTE RESOLUTION: ARCHITECT shall continue with its responsibilities under this Agreement during any dispute. If a dispute arises out of or relating to this Agreement, or the breach of the Agreement, and if the dispute cannot be settled through negotiation, then the Parties agree first to try in good faith to settle the dispute by non-binding mediation, to be held in Tulare County, California, before resorting to litigation or some other dispute resolution procedure, unless the Parties mutually agree otherwise. The Parties must mutually select the mediator, but in case of disagreement, then the Parties will select the mediator by lot from among

two nominations provided by each Party. The Parties will split equally all costs and fees required by the mediator; otherwise each Party will bear its own costs of mediation. If mediation fails to resolve the dispute within 30 days, then either Party may pursue litigation to resolve the dispute.

23. PROPERTY TAXES: Under the terms of California Revenue and Taxation Code section 107.6 (possessory interest tax), ARCHITECT'S possession or use of any COUNTY-owned real property under this Agreement may create a "possessory interest" in the real property. If a possessory interest is created, then it may be subject to property taxation and ARCHITECT may be subject to the payment of property taxes on that possessory interest.

24. FURTHER ASSURANCES: Each Party will execute any additional documents and perform any further acts that may be reasonably required to effect the purposes of this Agreement.

25. CONSTRUCTION: This Agreement reflects the contributions of all Parties and so the provisions of Civil Code section 1654 will not apply to address and interpret any alleged uncertainty or ambiguity.

26. 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.

27. 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.

28. WAIVERS: The failure of either Party to insist on strict compliance with any provision of this Agreement will not be considered a waiver of any

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right to do so, whether for that breach or any later breach. The acceptance by either Party of either performance or payment will not be considered a waiver of any preceding breach of the Agreement by the other Party.

29. ORDER OF PRECEDENCE: In the event of any conflict or inconsistency between or among the body of the Agreement (which includes these "General Agreement Terms and Conditions") and any Exhibit, Schedule, or Attachment, then the terms and conditions of the body of the Agreement shall prevail.

30. 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 matter, only the conflicting provision will 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, then the Agreement may be terminated at the option of the affected Party. In all other cases, the remainder of the Agreement will continue in full force and effect.

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

32. ASSURANCES OF NON-DISCRIMINATION: ARCHITECT must not discriminate in employment or in the provision of services based any characteristic or condition upon which discrimination is prohibited by state or federal law or reg-

ulation. The Parties recognize that both ARCHITECT and COUNTY have the responsibility to protect COUNTY employees and clients from unlawful activities, including discrimination and sexual harassment in the workplace. Accordingly, ARCHITECT 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. COUNTY, in its sole discretion, has the right to require ARCHITECT to replace any employee who provides services of any kind to COUNTY under this Agreement with other employees where COUNTY is concerned that its employees or clients may have been or may be the subjects of discrimination or harassment by such employees. COUNTY'S right to require replacement of employees under this section does not preclude COUNTY from terminating this Agreement with or without cause as provided for under this Agreement.

33. DRUG-FREE WORKPLACE POLICY: ARCHITECT acknowledges that under the Federal Drug-Free Workplace Act of 1989 and the California Drug-Free Workplace Act of 1990, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on COUNTY premises. ARCHITECT agrees that any violation of this prohibition by ARCHITECT, its employees, agents, or assigns will be deemed a material breach of this Agreement.

34. RECYCLED PAPER CONTENT: To the extent ARCHITECT'S services under this Agreement include printing services, pursuant to Public Contract Code section 22153 ARCHITECT shall use paper that meets the recycled content requirements of Public Contract Code section 12209.