



**RESOURCE
MANAGEMENT AGENCY
COUNTY OF TULARE
AGENDA ITEM**

BOARD OF SUPERVISORS

ALLEN ISHIDA
District One
PETE VANDER POEL
District Two
PHILLIP A. COX
District Three
J. STEVEN WORTHLEY
District Four
MIKE ENNIS
District Five

AGENDA DATE: September 17, 2013

Public Hearing Required	Yes	<input type="checkbox"/>	N/A	<input checked="" type="checkbox"/>
Scheduled Public Hearing w/Clerk	Yes	<input type="checkbox"/>	N/A	<input checked="" type="checkbox"/>
Published Notice Required	Yes	<input type="checkbox"/>	N/A	<input checked="" type="checkbox"/>
Advertised Published Notice	Yes	<input type="checkbox"/>	N/A	<input checked="" type="checkbox"/>
Meet & Confer Required	Yes	<input type="checkbox"/>	N/A	<input checked="" type="checkbox"/>
Electronic file(s) has been sent	Yes	<input checked="" type="checkbox"/>	N/A	<input type="checkbox"/>
Budget Transfer (Aud 308) attached	Yes	<input type="checkbox"/>	N/A	<input checked="" type="checkbox"/>
Personnel Resolution attached	Yes	<input type="checkbox"/>	N/A	<input checked="" type="checkbox"/>
Agreements are attached and signature line for Chairman is marked with tab(s)/flag(s)	Yes	<input checked="" type="checkbox"/>	N/A	<input type="checkbox"/>

CONTACT PERSON: Celeste Perez PHONE: (559) 624-7010

SUBJECT: Approval of Inter-Agency Agreement with Fresno County for Mine Inspection Services

REQUEST(S):
That the Board of Supervisors:

1. Approve the Inter-Agency Agreement with Fresno County for inspection services at two Tulare County owned open pit surface mines; and
2. Authorize the Chairman to sign the agreement.

SUMMARY:
Tulare County owns two open pit mines, referred to as the Galasso Pit (94-004) and the Chrisman Pit (94-005) which are required to be inspected annually as set forth in Public Resources Code Section 2774(b) and Section 7-25-1205 of the Tulare County Ordinance Code. These mines are used by the county to harvest sand and gravel used in road work. The Galasso Mine is located at Avenue 112 and west of Highway 65. The Chrisman Mine is located at Avenue 368 and Road 112.

Traditionally, the County self-inspected the mines, however, on June 27, 2012; Tulare County received a letter from the State Mining and Geology Board indicating a potential conflict of interest with self-inspection. Title 14, Division 2, Chapter 8, Subchapter 1, Section 3504.5 of the California Code of Regulations (CCR) specifically states: "A surface mine inspection shall be not performed by any person who holds a financial interest in or has been employed by the surface mining operation in any capacity, including as a constituent or as a contractor, during the year proceeding inspection."

SUBJECT: Approval of Inter-Agency Agreement with Fresno County for Mine Inspection Services

DATE: September 17, 2013

The State Mining and Geology Board has recently indicated that self-inspection of County owned mines by County staff is a conflict of interest and has offered to inspect the mines for a fee. Resource Management Agency staff wishes to pursue the inspection by another county agency and for this reason contacted Fresno County to provide this service. Fresno County, who also has open pit mines, is receptive to the idea and provided an agreement to provide inspection services on a time and materials basis, which has been reviewed by staff, approved as to form by County Council and is attached for your approval. Staff believes that due to the proximity of the county of Fresno this agency would have lower travel costs and could therefore perform this work at a lower fee than the State. Staff estimates the time to perform both inspections, including travel time from Fresno to be 8 hours and would estimate the cost of this work, including filing the inspection report with the State, to not exceed \$1,000.

FISCAL IMPACT/FINANCING:

There is no net cost to the County General Fund. The estimated cost for this work is \$1,000 and funding is provided through the Road Fund.

LINKAGE TO THE COUNTY OF TULARE STRATEGIC BUSINESS PLAN:

Strategic Initiative 1: Safety and Security includes the goal of improving and maintaining adequate transportation infrastructure. Maintaining adequate surface mines for harvest of road materials meet the requirements of Strategic Initiative 1 by providing the necessary materials to maintain roads that improve the safety of the motorists throughout the County.

ADMINISTRATIVE SIGN-OFF:

Britt L. Fussel Digitally signed by Britt L. Fussel
DN: cn=Britt L. Fussel, o, ou=RMA,
email=bfussel@co.tulare.ca.us, c=US
Date: 2013.08.26 07:07:04 -0700 8/26/13

Britt L. Fussel, P.E. Date
Assistant Director—Public Works
County Surveyor

BLF:mlb

Cc: Auditor-Controller
County Counsel
County Administrative Office (2)

Attachment(s) Attachment A –Vicinity Map
Attachment B – Letter from State Mining and Geology Board
Attachment C – Inter-agency Agreement for Mine Inspection Services

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

IN THE MATTER OF APPROVAL OF INTER-)
AGENCY AGREEMENT WITH FRESNO) Resolution No. _____
COUNTY FOR MINE INSPECTION) Agreement No. _____
SERVICES)

UPON MOTION OF SUPERVISOR _____, SECONDED BY
SUPERVISOR _____, THE FOLLOWING WAS ADOPTED BY THE BOARD
OF SUPERVISORS, AT AN OFFICIAL MEETING HELD SEPTEMBER 17, 2013 BY
THE FOLLOWING VOTE:

AYES:
NOES:
ABSTAIN:
ABSENT:

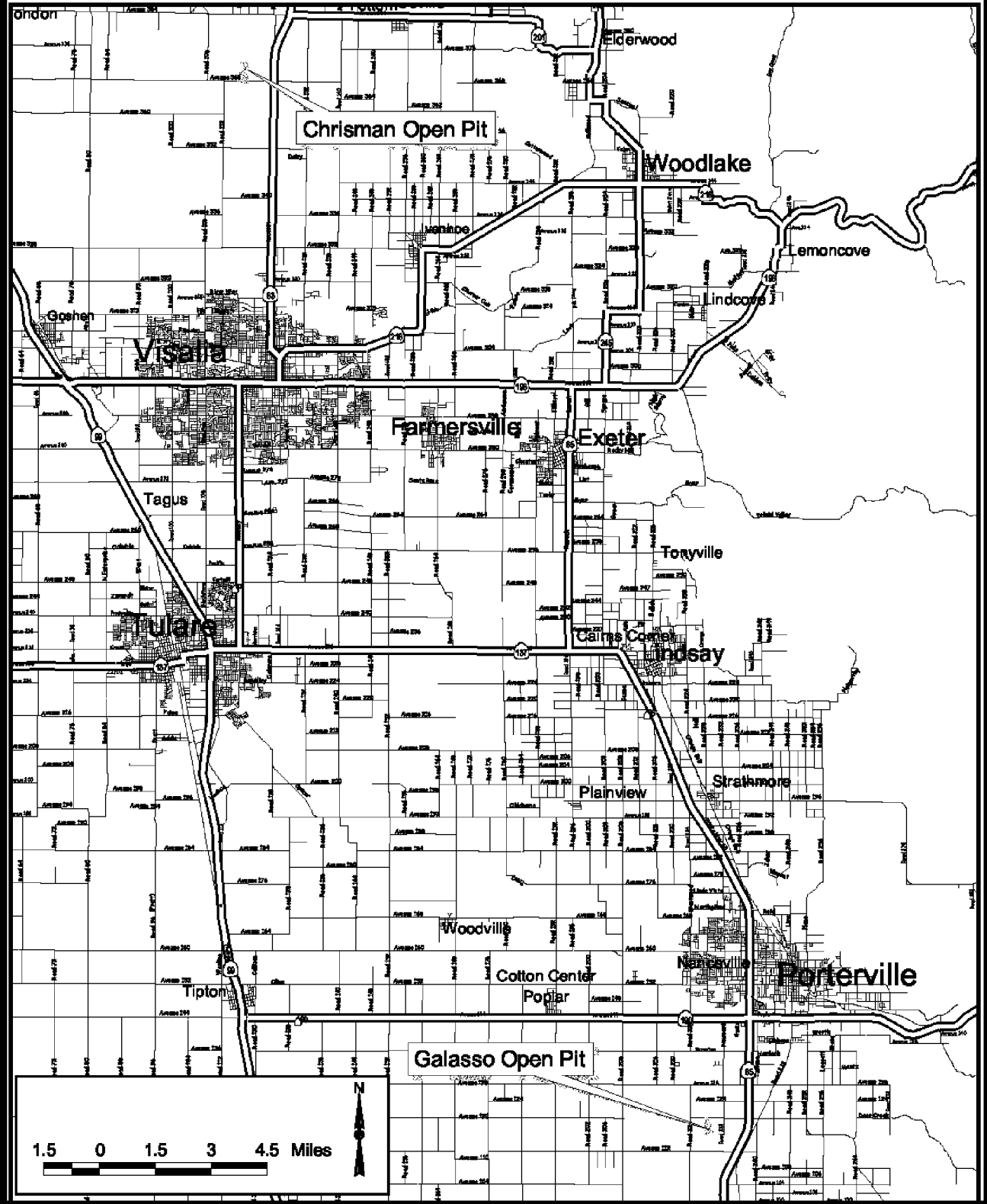
ATTEST: JEAN M. ROUSSEAU
COUNTY ADMINISTRATIVE OFFICER/
CLERK, BOARD OF SUPERVISORS

BY: _____
Deputy Clerk

1. Approved the Inter-Agency Agreement with Fresno County for inspection services at two Tulare County owned open pit surface mines; and
2. Authorized the Chairman to sign the agreement.



Vicinity Map Open Pit Surface Mines County of Tulare



Attachment B

Letter from State Mining and Geology Board

**STATE MINING AND GEOLOGY BOARD**

DEPARTMENT OF CONSERVATION

801 K Street • Suite 2015 • Sacramento, California 95814

PHONE: 916 / 322-1082 • FAX: 916 / 445-0738 • TDD: 916 / 324-2555 • INTERNET: conservation.ca.gov/smgbVACANT, CHAIR
BRIAN BACA, VICE CHAIRTOM BARRY
JOHN LANE
CHARLIE WYATTJELISAVETA GAVRIC
DAN REDING

June 27, 2012

VIA CERTIFIED MAIL: 7006 2150 0000 6804 8069Jake Raper, Director
Resource Management Agency
County of Tulare
5961 South Mooney Boulevard
Visalia, CA 93277**Re: Potential Conflict of Financial Interest Pertaining to the Conduct of SMARA Mine Inspections for Two Surface Mining Operations, County of Tulare**

Dear Mr. Raper:

It has come to our attention through the Department of Conservation's Office of Mine Reclamation (OMR) that a potential conflict of interest may exist which contradicts Title 14, Division 2, Chapter 8, Subchapter 1, Section 3504.5(c) of the California Code of Regulations (CCR). Specifically, CCR Section 3504.5(c) states:

"A surface mine inspection shall not be performed by any person who holds a financial interest in or has been employed by the surface mining operation in any capacity, including as a consultant or as a contractor, during the year preceding the inspection."

Based on a review of records maintained by OMR, the County of Tulare (County) maintains a financial interest either as a land owner and/or operator for the following surface mining operations:

- Galasso Pit (CA Mine ID #91-54-0024)
- Chrisman Pit (CA Mine ID #91-54-0025)

Should this be the case, then there is an apparent conflict of interest on the part of the County.

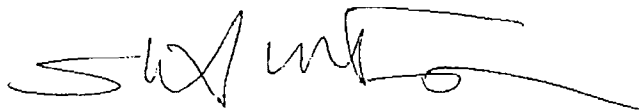
Mr. Jake Raper
Tulare County SMARA Mine Inspections
June 27, 2012
Page 2 of 2

Assuming we have the foregoing facts correct, it would be inappropriate for the County to continue to conduct annual mine inspections for the above surface mining operations. Such inspections should be performed by State Mining and Geology Board (SMGB) staff, and upon acceptance by the SMGB, such inspection reports would be forwarded to the County. The County would be invoiced and responsible for the cost of conducting such inspections.

Please confirm that our understanding of the apparent financial interest held by the County for the above surface mining operations is correct. Should such information be correct, SMGB staff would anticipate scheduling a convenient time to conduct inspections during the summer or fall of 2012.

On behalf of the SMGB, I would appreciate a prompt response. Should you have any questions regarding this matter, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "S. M. Testa", with a long horizontal flourish extending to the right.

Stephen M. Testa
Executive Officer

cc: Rick Thalhammer, Deputy Attorney General
Jim Pompy, Assistant Director, Office of Mine Reclamation
Johnny Wong, Tulare County Resources Management Agency

Attachment C

Agreement

1 INTER-AGENCY AGREEMENT FOR MINING INSPECTION SERVICES

2
3 THIS AGREEMENT made and entered into this _____ day of
4 _____, 2013, between the COUNTY of Fresno, a political subdivision
5 of the State of California, hereinafter referred to as FRESNO, and the COUNTY of
6 TULARE, also a political subdivision, herein and hereinafter referred to as TULARE.

7 RECITALS:

8 WHEREAS, Surface Mine and Reclamation Act (SMARA) annual inspections are
9 required by the State of California, and

10 WHEREAS, TULARE has requested FRESNO to perform the necessary
11 inspections for two surface mines operated by Tulare hereafter referred to as Galasso
12 (94-004) and Chrisman (94-005) surface mines, and

13 WHEREAS, it is in the interest of the general public that said services be
14 performed by FRESNO subject to the terms and conditions provided herein;

15 NOW, THEREFORE, the parties agree as follows:

16 AGREEMENT:

17 1. OBLIGATIONS OF FRESNO: FRESNO, through its Department of Public Works
18 and Planning, Development Services Division, shall perform all inspection services
19 requested by TULARE associated with Galasso and Chrisman surface mines and
20 provide the necessary inspections reports required by SMARA.

21 2. OBLIGATIONS OF TULARE: TULARE agrees to furnish and prepare all maps,
22 conditions of approval, reclamation plans, information, and physical access to the mines
23 required by the FRESNO to carry-out its inspection duties.

24 3. COMPENSATION: It is agreed that TULARE will reimburse FRESNO for all
25 costs, including prorated amounts thereof, incurred in connection with the services
26 being provided. Costs shall include salaries and fringe benefits of employees engaged
27 therein, plus Department and Countywide overhead and travel expenses as identified
28 as follows:

1 Grading Inspector: \$70.20 per hour

2 Mileage rate: \$.58 per mile

3 Said costs shall be reviewed and adjusted annually to recover actual County costs.

4 4. BILLING OF SERVICES AND PAYMENT: Fresno shall send Tulare a billing for
5 the cost of services rendered and the Tulare shall pay Fresno within thirty (30) days
6 thereafter.

7 5. SCHEDULE OF SERVICES: Fresno will provide services within 30 days after the
8 execution of this agreement. The annual inspection report will be provided within 15
9 days after completion of the inspection.

10 6. TERM: This Agreement shall become effective upon execution and shall
11 continue in effect until services are rendered unless otherwise terminated as provided in
12 this Agreement.

13 7. INDEPENDENT CONTRACTOR:

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

19 (b) FRESNO agrees to advise everyone it assigns or hires to perform any duty under
20 this agreement that they are not employees of TULARE. Subject to any performance
21 criteria contained in this Agreement, FRESNO shall be solely responsible for
22 determining the means and methods of performing the specified services and TULARE
23 shall have no right to control or exercise any supervision over FRESNO as to how the
24 services will be performed. As FRESNO is not TULARE'S employee, FRESNO is
25 responsible for paying all required state and federal taxes. In particular, TULARE will
26 not:

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

28

1 2. Make state or federal unemployment insurance contributions on FRESNO'S
2 behalf.

3 3. Withhold state or federal income tax from payments to FRESNO.

4 4. Make disability insurance contributions on behalf of FRESNO.

5 5. Obtain unemployment compensation insurance on behalf of FRESNO.

6 (c) Notwithstanding this independent contractor relationship, TULARE shall have the
7 right to monitor and evaluate the performance of FRESNO to assure compliance with
8 this Agreement.

9 It is acknowledged that during the term of this Agreement, FRESNO may be providing
10 services to others unrelated to TULARE or to this Agreement. The parties to this
11 Agreement are independent public entities that propose pursuant to this Agreement to
12 make efficient use of public resources by permitting cooperative and conjunctive use of
13 their respective resources. This Agreement shall not be construed as making either
14 party an agent for the other, or creating a joint venture.

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

28

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

14
15 In responding to any claim arising in connection with the Agreement or the
16 services, TULARE and FRESNO agree that each will assert any applicable immunities,
17 including, but not limited to, the immunity provided by Government Code Section 818.6.

18 9. NOTICES: The persons and their addresses having authority to give and receive
19 notices under this Agreement include the following:

20 COUNTY OF FRESNO

21 COUNTY OF FRESNO
22 DEVELOPMENT SERVICES MANAGER
23 2220 TULARE STREET, 6th FLOOR
24 FRESNO, CA 93721
25 FAX (559) 262-4893

26 COUNTY OF TULARE

27 COUNTY OF TULARE
28 ASSISTANT DIRECTOR – PUBLIC WORKS
5961 S. MOONEY BLVD.
VISALIA, CA 93277
FAX (559) 730-2653

1 Any and all notices between FRESNO and Tulare provided for or permitted under
2 this Agreement or by law shall be in writing and shall be deemed duly served when
3 personally delivered to one of the parties, or in lieu of such personal services, when
4 deposited in the United States Mail, postage prepaid, addressed to such party.

5 10. ENTIRE AGREEMENT: This Agreement constitutes the entire Agreement
6 between TULARE and FRESNO with respect to the subject matter hereof and
7 supersedes all previous Agreement negotiations, proposals, commitments, writings,
8 advertisements, publications, and understanding of any nature whatsoever unless
9 expressly included in this Agreement.

10 11 COMPLIANCE WITH LAW: FRESNO shall provide services in accordance with
11 applicable Federal, State, and local laws, regulations and directives. With respect to
12 FRESNO's employees, FRESNO shall comply with all laws and regulations pertaining to
13 wages and hours, state and federal income tax, unemployment insurance, Social
14 Security, disability insurance, workers' compensation insurance, and discrimination in
15 employment.

16 12 GOVERNING LAW: This Agreement shall be interpreted and governed under
17 the laws of the State of California without reference to California conflicts of law
18 principles. The parties agree that this contract is made in and shall be performed in
19 Tulare County, California.

20 13 RECORDS AND AUDIT: FRESNO shall maintain complete and accurate
21 records with respect to the services rendered and the costs incurred under this
22 Agreement. In addition, FRESNO shall maintain complete and accurate records with
23 respect to any payments to employees or subcontractors. All such records shall be
24 prepared in accordance with generally accepted accounting procedures, shall be clearly
25 identified, and shall be kept readily accessible. Upon request, FRESNO shall make
26 such records available within Tulare County to the Auditor of Tulare County and to his
27 agents and representatives, for the purpose of auditing and/or copying such records for
28 a period of five (5) years from the date of final payment under this Agreement.

1 14 CONFLICT OF INTEREST:

2 (a) FRESNO agrees to, at all times during the performance of this Agreement,
3 comply with the law of the State of California regarding conflicts of interests and
4 appearance of conflicts of interests, including, but not limited to Government Code
5 Section 1090 et seq., and the Political Reform Act, Government Code Section 81000 et
6 seq. and regulations promulgated pursuant thereto by the California Fair Political
7 Practices Commission. The statutes, regulations and laws previously referenced
8 include, but are not limited to, prohibitions against any public officer or employee,
9 including FRESNO for this purpose, from making any decision on behalf of TULARE in
10 which such officer, employee or consultant/contractor has a direct or indirect financial
11 interest. A violation can occur if the public officer, employee or consultant/contractor
12 participates in or influences any TULARE COUNTY decision which has the potential to
13 confer any pecuniary benefit on FRESNO or any business firm in which FRESNO has
14 an interest, with certain narrow exceptions.

15 (b) FRESNO agrees that if any facts come to its attention which raise any questions
16 as to the applicability of conflicts of interests laws, it will immediately inform the
17 TULARE designated representative and provide all information needed for resolution of
18 this question.

19 15 Without limiting the indemnification of each party as stated in Section 8 above, it
20 is understood and agreed that FRESNO and TULARE shall each maintain, at their sole
21 expense, insurance policies or self-insurance programs including, but not limited to, an
22 insurance pooling arrangement and/or Joint Powers Agreement to fund their respective
23 liabilities throughout the term of this agreement. Coverage shall be provided for
24 comprehensive general liability, automobile liability, professional liability, and workers'
25 compensation exposure. Evidence of Insurance, Certificates of Insurance or other
26 similar documentation shall not be required of either party under this Agreement.

27 16 TERMINATION:
28

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

11 (b) With Cause: This Agreement may be terminated by either party should the other
12 party:

13 (1) be adjudged a bankrupt, or

14 (2) become insolvent or have a receiver appointed, or

15 (3) make a general assignment for the benefit of creditors, or

16 (4) suffer any judgment which remains unsatisfied for 30 days, and which would
17 substantively impair the ability of the judgment debtor to perform under this Agreement,

18 or

19 (5) materially breach this Agreement.

20 In addition, TULARE may terminate this Agreement based on:

21 (6) material misrepresentation, either by FRESNO or anyone acting on FRESNO's
22 behalf, as to any matter related in any way to TULARE's retention of FRESNO, or

23 (7) other misconduct or circumstances which, in the sole discretion of the TULARE,
24 either impair the ability of FRESNO to competently provide the services under this
25 Agreement, or expose TULARE to an unreasonable risk of liability.

26 TULARE will pay to the FRESNO the compensation earned for work performed
27 and not previously paid for to the date of termination. The payment of such
28 compensation is subject to the restrictions on payment of compensation otherwise

1 provided in this Agreement, and is conditioned upon receipt from FRESNO of any and
2 all plans, specifications and estimates, and other documents prepared by FRESNO by
3 the date of termination in accordance with this Agreement. TULARE will not pay lost
4 anticipated profits or other economic loss, nor will TULARE pay compensation or make
5 reimbursement to cure a breach arising out of or resulting from such termination. If this
6 Agreement is terminated and the expense of finishing FRESNO's scope of work
7 exceeds the unpaid balance of the agreement, FRESNO must pay the difference to
8 TULARE. Sanctions taken will be possible rejection of future proposals based on
9 specific causes of non performance.

10 (c) Effects of Termination: Expiration or termination of this Agreement shall not
11 terminate any obligations to indemnify, to maintain and make available any records
12 pertaining to the Agreement, to cooperate with any audit, to be subject to offset, or to
13 make any reports of pre-termination contract activities. Where FRESNO's services have
14 been terminated by the TULARE, said termination will not affect any rights of TULARE
15 to recover damages against FRESNO.

16 (d) Suspension of Performance: Independent of any right to terminate this
17 Agreement, the authorized representative of TULARE for which FRESNO's services are
18 to be performed, may immediately suspend performance by FRESNO, in whole or in
19 part, in response to health, safety or financial emergency, or a failure or refusal by
20 FRESNO to comply with the provisions of this Agreement, until such time as the cause
21 for suspension is resolved, or a notice of termination becomes effective.

22 IN WITNESS WHEREOF the parties hereto have caused this Agreement to be
23 executed as of the day and year first above written in accordance with resolutions by
24 their respective governing bodies authorizing the same.

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COUNTY OF FRESNO, a Political
Subdivision of that State of California
("Fresno")

COUNTY OF TULARE, a Political
Subdivision of the State of California
("Tulare")

Henry Perea, Chairman
Board of Supervisors

Pete Vander Poel, Chairman
Board of Supervisors

ATTEST:
Bernice E. Seidel
Clerk to the Board of Supervisors

ATTEST:
Jean M. Rousseau
Clerk to the Board of Supervisors

By: _____

By: _____
Deputy

APPROVED AS TO LEGAL FORM:
Kevin Briggs, County Counsel

APPROVED AS TO LEGAL FORM
Kathleen Bales-Lange, County Counsel

By: _____

By: _____
Deputy
Matter ID 2013571

APPROVED AS TO ACCOUNTING FORM:
Auditor-Controller/Treasure-Tax Collector

By: _____