

AMENDMENT TO CONTRACT

1

The County of San Benito ("COUNTY") and Bracewell Engineering Inc. ("CONTRACTOR") enter into this agreement on the date stated next to the signatures below. In consideration of the mutual promises set forth herein, the parties agree as follows:

1. Existing Contract.

a. Initial Contract.

COUNTY and CONTRACTOR acknowledge that the parties entered into a contract, dated July 1, 2015.

b. Prior Amendments. (Check one.)

☒ The initial contract previously has not been amended.

☐ The initial contract previously has been amended. The date(s) of prior amendments are as follows: _____

c. Incorporation of Original Contract.

The initial contract and any prior amendments to the initial contract (hereafter collectively referred to as the "original contract") are attached to this amendment as Exhibit 1 and made a part of this amended contract.

2. Purpose of this Amendment.

The purpose of this amendment is to change the agreement between the parties in the following particulars:

a. Term of the Contract. (Check one.)

☐ The term of the original contract is not modified.

☒ The term of the original contract (Exhibit 1) is extended from the current expiration date of June 30, 2016, to a new expiration date of June 30, 2018.

b. Scope of Services. (Check one.)

☒ The services specified in the original contract (Exhibit 1) are not modified.

☐ The services specified in the original contract (Exhibit 1) are modified as specified below: (Check one.)

☐ The services specified in the original contract are modified only as specified below:

Modified or New Scope of Services:

(Insert modified or new services.)

☐ The services specified in the original contract are deleted in their entirety and replaced with the following services:

New Scope of Services:

(Insert new services.)

c. Payment Terms. (Check one.)

- ☐ The payment terms in the original contract (Exhibit 1) are not modified.
☒ The payment terms in the original contract (Exhibit 1) are modified as specified below: (Check one.)
☒ The payment terms are modified only as specified below:

Modified or New Payment Terms:

Paragraph B-3 (Compensation) of Attachment B (Payment Schedule) to the original contract (Exhibit 1) is modified to add additional compensation in the amount of \$225,424.00 for the continuation of services described in Scope of Services (Attachment A) of the original contract (Exhibit 1). Accordingly, Paragraph B-3 is hereby revised to read as follows:

B-3. COMPENSATION

COUNTY shall pay to CONTRACTOR: (Check one.)

- ☐ a total lump sum payment of \$ _____, or
☒ a total sum not to exceed \$338,136.00 _____,
for services rendered pursuant to the terms and conditions of the original contract (Exhibit 1) in the amount of \$112,712.00 and this amendment #1 in the amount not to exceed \$30,000.00, for a total contract value of \$338,136.00 and pursuant to any special compensation terms specified in paragraph B-4.

All other provisions of Attachment B to the original contract shall remain the same.

- ☐ The payment terms are deleted in their entirety and replaced with the following payment terms:

New Payment Terms:

B-1. BILLING

Charges for services rendered pursuant to the terms and conditions of this contract shall be invoiced on the following basis: (Check one.)

- ☒ One month in arrears.
☐ Upon the complete performance of the services specified in the original agreement (Exhibit 1) and this amendment.
☐ The basis specified in paragraph B-4.

B-2. PAYMENT

Payment shall be made by COUNTY to CONTRACTOR at the address specified in paragraph 8 of the original contract, net thirty (30) days from the invoice date.

B-3. COMPENSATION

COUNTY shall pay to CONTRACTOR: (Check one.)

- ☐ a total lump sum payment of \$ _____, or
☐ a total sum not to exceed \$ _____,

for services rendered pursuant to the terms and conditions of the original contract (Exhibit I) and this amendment, and pursuant to any special compensation terms specified in paragraph B-4.

B-4. SPECIAL COMPENSATION TERMS: (Check one.)

- ☐ There are no additional terms of compensation.
☐ The following specific terms of compensation shall apply:
(Specify)

d. **Other Terms.** (Check one.)

- ☒ There are no other terms of the original contract that are modified.
☐ Other terms of the original contract are modified only as specified below:

Other Modified or New Terms:
(Insert other modified or new terms.)

3. Other Terms.

All other terms and conditions of the original contract (Exhibit I) which are not changed by this amendment shall remain the same.

CONTRACTOR


Name/Title: Christopher Hauge/Operations Manager

6-1-2016
Date

COUNTY

San Benito County Board of Supervisors

Robert Rivas, Chair

Date

APPROVED AS TO LEGAL FORM:

San Benito County Counsel's Office


By: Shirley L. Murphy, Deputy County Counsel

June 1, 2016
Date

EXHIBIT 1
TO AMENDMENT # 1

ORIGINAL
CONTRACT

(Please attach the initial contract and any prior amendments, from the most recent to the initial contract, in reverse chronological order.)

C O N T R A C T

The COUNTY OF SAN BENITO ("COUNTY") and Bracewell Engineering Inc. ("CONTRACTOR") enter into this contract which shall be effective on the date stated in Paragraph 1.

1. **Duration of Contract.**

This contract shall commence on July 1, 2015, and end on June 30, 2016, unless sooner terminated as specified herein.

2. **Scope of Services.**

CONTRACTOR, for COUNTY's benefit shall perform the services specified on Attachment A to this contract. Attachment A is made a part of this contract.

3. **Compensation for Services.**

In consideration for CONTRACTOR's performance, COUNTY shall pay compensation to CONTRACTOR according to the terms specified in Attachment B. Attachment B is made a part of this contract.

4. **General Terms and Conditions.**

The rights and duties of the parties to this contract are governed by the general terms and conditions mutually agreed to and listed in Attachment C. Attachment C is made a part of this contract.

5. **Insurance Limits.**

CONTRACTOR shall maintain the following insurance policy limits of coverage consistent with the further insurance requirements specified in Attachment C.

- (a) Comprehensive general liability insurance: \$1,000,000.00
- (b) Professional liability insurance: \$1,000,000.00
- (c) Comprehensive motor vehicle liability insurance: \$50,000.00

6. **Termination.**

The number of days of advance written notice required for termination of this contract is 30 days.

7. **Specific Terms and Conditions** (check one)

- ☐ There are no additional provisions to this contract.
- ☒ The rights and duties of the parties to this contract are additionally governed by the specific, additional terms mutually agreed to and listed in Attachment D. Attachment D is made a part of this contract.
- ☐ The rights and duties of the parties to this contract are additionally governed by the specific, additional terms mutually agreed to and listed in Attachment E. Attachment E is made a part of this contract.

8. **Information about Contract Administrators.**

The following names, titles, addresses, and telephone numbers are the pertinent information for the respective contract administrators for the parties.

Contract Administrator for COUNTY:

Name: Joe Horwedel

Title: Interim Public Works Director

Address: 2301 Technology Parkway

Hollister, California 95023

Telephone No.: 831-636-4170

Fax No.: 831-636-4170

Contract Administrator for CONTRACTOR:

Name: Christopher Hauge

Title: Operations Manager

Address: 16465 Hill Road

Morgan Hill, CA 95036

Telephone No.: 831-325-8296

Fax No.: 408-498-7015

SIGNATURES

APPROVED BY COUNTY:

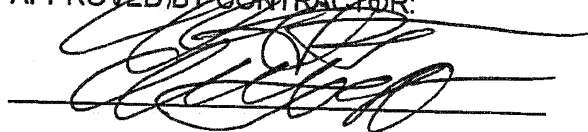


Name: Margie Barrios

Chair, San Benito County Board of Supervisors

Date: 7/24/15

APPROVED BY CONTRACTOR:



Name: Christopher Hauge

Title: Operations Manager

Date: 7-24-2015

APPROVED AS TO LEGAL FORM:

San Benito County Counsel's Office



By: Shirley L. Murphy, Deputy County Counsel

Date: July 16, 2015

ATTACHMENT A

Scope of Services

CONTRACTOR shall perform the following services regarding the operation and maintenance of a domestic water treatment plant at County Service Area (CSA) #50, Dunneville Estates, the operation and maintenance of two water treatment plants at CSA #31, Stonegate, and operation and maintenance of a wastewater treatment plant (WWTP) at CSA #22, Cielo Vista:

A. General Description

The specifications described below set forth the minimum requirements for the quantity and quality of work to be provided hereunder. The items to be purchased shall meet or exceed the specifications identified herein. As used herein, the term "work" refers to the articles, equipment, materials, supplies and labor as specified, designated or otherwise required by this contract, and as specified in the Invitation for Bids (IFB) No. PWB-1502.

Except where specified to the contrary herein, all work shall be new and shall be supplied with the equipment and accessories indicated as standard equipment in manufacturer's published descriptions, owner's manuals, and other literature for said work.

B. Specifications

CONTRACTOR shall provide operation and maintenance services for a domestic water treatment plant at County Service Area (CSA) #50, Dunneville Estates, operation and maintenance services for two water treatment plants at CSA #31, Stonegate, and operation and maintenance services for a wastewater treatment plant (WWTP) at CSA #22, Cielo Vista.

Operation and Maintenance of these facilities will include providing all necessary materials, chemicals, supplies, licensed/certified personnel, testing, and the generation and submission of all reports required for the operation and maintenance of domestic water and wastewater treatment facilities according to all applicable state, federal, and local regulations.

CONTRACTOR shall provide operational and maintenance services to County CSA Water and Wastewater treatment plants in the defined scopes for each CSA, as further described below. This contract provides operations to enhance and support those already in place by the County of San Benito at each of the four locations. Services are to be performed in accordance with State, Federal, and Local regulations governing the operation and maintenance of Domestic Water and Wastewater Treatment Plants in San Benito County.

Contractors are required by law to be licensed and regulated by the Contractors' State License Board. At all times during the performance of this contract, CONTRACTOR shall possess a current and valid General Engineering Contractor (A classification) license and a grade 4 Water Systems/Wastewater Treatment Plan operator license issued by the State of California and shall comply with all terms and conditions of such licenses. CONTRACTOR shall have a minimum of five (5) years practical experience and successful history in the field of water systems and treatment plant operation and maintenance and shall guarantee and provide the required certified operator necessary in performing the regulated operations within each facility in accordance with special operations permits.

CONTRACTOR shall ensure the Water and Wastewater service fulfills the following duties in the operation of the plant(s). Water and Wastewater representatives shall interact with the County Facilities and Grounds Manager, or designee, to receive any additional guidance or coordination necessary to ensure these tasks are performed in a manner consistent with County needs.

Typical needs may consist of:

1. Perform laboratory tests, analyze results, take or recommend necessary action, maintain lab records, equipment and order supplies as required.
2. Clean and maintain aeration basins and clarifiers, determine any adjustments to aeration basin and adjust pH as needed.
3. Inspect and maintain sludge ponds including sludge transportation coordination.
4. Inspect and maintain outlying pump stations to ensure standards of operation.
5. Perform preventative maintenance on water plant and wastewater plant components, and recommend to Facilities and Grounds Manager any necessary plant operation repairs not outlined within existing contract and all facility related maintenance.
6. Determine when and how much sludge to waste or to pump and haul.
7. Perform lab-cleaning activities.
8. Prepare and file daily, weekly, monthly and annual lab result reports as required by all regulatory agencies.
9. Add necessary chemicals to maintain quality levels necessary for operation of wastewater treatment plant.
10. Perform and report weekly water level soundings for well #1 (Stonegate CSA #31)
11. Judge laboratory test results and other data to determine treatment plans and operations.

12. Perform routine maintenance, calibration and operation of equipment to include the exercising of system valves, and system flushing.
13. Interpret data under unique circumstances or reconcile conflicting data from laboratory tests and other sources of information although guidelines and procedures are available.
14. Provide direct supervision of contract employees and/or subcontractors, in coordination with County's personnel authorized to schedule work activities and other operating related items.
15. Be responsible for permit renewals, non-compliance notifications, O&M manual updates, and QA manual updates.
16. Attend all audits and inspections as requested by regulatory agencies.
17. Document each shift by completing necessary paperwork.
18. Submit within 120 days of the Notice to Proceed, a comprehensive assessment of plant equipment condition, projected life expectancy, and estimated replacement cost of key equipment and components for each treatment plant. Comprehensive assessments will be required on an annual basis.
19. Building and Facility maintenance beyond water and wastewater operations are County maintained, but CONTRACTOR shall notify the County's designated Contract Administrator of noticeable facility repairs or needs.
20. Provide the County, at a minimum, the following written report for each of the Water and Wastewater Treatment Plants, to be submitted electronically:

Dunneville Estates:

- Coliform Reporting Form - Monthly
- Summary of Distribution System Coliform monitoring - Monthly
- Water System Monitoring Report - Monthly
- Disinfectant Residuals Compliance Report for Systems using Chlorine or Chloramines - Quarterly
- Consumer Confidence Report (CCR) - Annual
- HazMat Report - Annual
- Small Water System Annual Report to the Drinking Water Program - Annual
- Water Quality Emergency Notification Plan - Annual

Stonegate: Water Treatment Plant Meadow Ct.

- Coliform Reporting Form - Monthly
- Distribution System Coliform Monitoring - Monthly Summary
- Monitoring for Surface Water Treatment Regulations - Monthly Summary
- Water System Monitoring Report - Monthly

- HAA5 Report for Disinfection Byproducts Compliance - Quarterly
- Disinfectant Residuals Compliance Report for Systems using Chlorine or Chloramines - Quarterly
- Disinfection Byproduct Precursors Compliance Report for Systems required to meet the Enhanced Coagulation or Enhanced Softening Requirements - Quarterly Report
- TTHM Report for Disinfection Byproducts Compliance - Quarterly
- Consumer Confidence Report (CCR) - Annual
- Small Water System Annual Report to the Drinking Water Program - Annual
- Water Quality Emergency Notification Plan - Annual
- HazMat Report - Annual

Stonegate: Well #1 and manganese treatment system operating as the primary potable water source for CSA #31

- Coliform Reporting Form - Monthly
- Distribution System Coliform Monitoring - Monthly Summary
- Monitoring for Surface Water Treatment Regulations - Monthly Summary
- Water System Monitoring Report - Monthly
- HAA5 Report for Disinfection Byproducts Compliance - Quarterly
- Disinfectant Residuals Compliance Report for Systems using Chlorine or Chloramines - Quarterly
- Disinfection Byproduct Precursors Compliance Report for Systems required to meet the Enhanced Coagulation or Enhanced Softening Requirements - Quarterly Report
- TTHM Report for Disinfection Byproducts Compliance - Quarterly
- Consumer Confidence Report (CCR) - Annual
- Small Water System Annual Report to the Drinking Water Program - Annual
- Water Quality Emergency Notification Plan - Annual
- HazMat Report - Annual

Cielo Vista Estates:

- Self-Monitoring Report (SMR) - Quarterly
- HazMat Report - Annual
- Inventory Report - Annual

All services shall be performed in accordance with State, Federal, and Local regulations and in accordance with site permits

Treatment Plant Locations / Service Address

Department	Days Serviced
WATER TREATMENT	
1 Dunneville Estates Water Treatment Plant Dunneville Way Hollister CA: APN: 016-160-031	As required for compliance
2 Stonegate Water Treatment Plant Meadow Court Hollister CA: APN: 022-310-015	As required for compliance
3 Stonegate Water Treatment Plant Well #1 Bolado Road Tres Pinos CA: APN: 022-250-0004	As required for Compliance
WASTE WATER TREATMENT	
4 Cielo Vista Estates Wastewater Treatment Plant TIERRA DEL SOL - PCL 2 Hollister CA: APN: 20-770-027	As required for compliance

Labor, Materials and Supplies

CONTRACTOR shall provide all labor, materials, and supplies necessary to provide the services under this contract, including but not limited to the following:

1. Water Treatment Chemicals
2. Water Testing Equipment and Chemicals
3. NSF Filter Bags
4. Sludge Bags
5. Transportation of sludge material by a licensed hazardous waste transporter to an approved facility
6. All chemicals, testing equipment, and chemicals for testing necessary to operate and maintain water treatment and wastewater treatment plants

CONTRACTOR shall make efforts to purchase parts and materials within the County of San Benito when possible or feasible. Materials and supplies provided shall conform to San Benito County's Recycled Content Purchasing Policy, if feasible.

Any equipment provided under this contract is to be the newest and latest model in current production. Used, re-manufactured, shopworn,

demonstrator, prototype or discontinued models are not acceptable unless otherwise stipulated in this contract. Manufacturers' brand names and model numbers, when used, are for reference to indicate the character or quality desired. Requests to provide approved equals must clearly describe the item, state the manufacturer's brand and model number, or level of quality, and shall be supported by complete technical documentation which shall include descriptive literature, pictures of the proposed equal, instructions for operations, and manufacturer's statement of certification that materials meet or exceed specifications. The determination of the County as to what items are equal is final and conclusive.

Delivery and Storage

CONTRACTOR shall be responsible for delivery and storage of all equipment, materials, and supplies. F.O.B. destination to include inside delivery to 2301 Technology Parkway, Hollister, California. Deliveries will be accepted from 9:00 a.m. to 3:00 p.m., Monday through Thursday. CONTRACTOR shall, at all times, keep the premises clean from accumulation of waste materials or rubbish and shall remove all resulting work debris from the job site.

END OF ATTACHMENT A.

ATTACHMENT B
Payment Schedule

B-1. BILLING

Charges for services rendered pursuant to the terms and conditions of this contract shall be invoiced on the following basis: (check one)

- ☒ One month in arrears.
- ☐ Upon the complete performance of the services specified in Attachment A.
- ☐ The basis specified in paragraph B-4.

B-2. PAYMENT

Payment shall be made by COUNTY to CONTRACTOR at the address specified in paragraph 8 of this contract, net thirty (30) days from the invoice date.

B-3. COMPENSATION

COUNTY shall pay to CONTRACTOR: (check one)

- ☐ a total lump sum payment of \$ _____, or
- ☐ a total sum not to exceed \$ 112,712.00 _____

for services rendered pursuant to the terms and conditions of this contract and pursuant to any special compensation terms specified in this attachment, Attachment B.

B-4. SPECIAL COMPENSATION TERMS: (check one)

- ☐ There are no additional terms of compensation.
- ☒ The following specific terms of compensation shall apply: (Specify)

1. Costs relative to operations and maintenance will not be subject to overtime or travel costs.
2. Twenty-four (24) Call-Outs (work at a time outside normal working hours, usually an emergency) per CSA will be required and identified within each CSA annual cost. Responses in addition to identified contract Call Outs are not subject to overtime/travel costs as they are considered part of maintenance and operations.

END OF ATTACHMENT B.

ATTACHMENT C

General Terms and Conditions

C-1. INDEMNIFICATION.

CONTRACTOR and COUNTY each agree to indemnify, defend and save harmless the other party and the other party's officers and employees, from and against any and all claims and losses whatsoever arising out of, or in any way related to, the indemnifying party's performance under this contract, including, but not limited to, claims for property damage, personal injury, death, and any legal expenses (such as attorneys' fees, court costs, investigation costs, and experts' fees) incurred by the indemnitee in connection with such claims or losses. A party's "performance" includes the party's action or inaction and the action or inaction of that party's officers and employees.

C-2. GENERAL INSURANCE REQUIREMENTS.

Without limiting CONTRACTOR's duty to indemnify COUNTY, CONTRACTOR shall comply with the insurance coverage requirements set forth in the contract and in this attachment. Those insurance policies mandated by Paragraph C-3 shall satisfy the following requirements:

- (a) Each policy shall be issued by a company authorized by law to transact business in the State of California.
- (b) Each policy shall provide that COUNTY shall be given notice in writing at least thirty (30) days in advance of any change, cancellation, or nonrenewal thereof.
- (c) The comprehensive motor vehicle and comprehensive general liability policies shall each provide an endorsement naming the County of San Benito and its officers, agents and employees as additional insureds.
- (d) The required coverage shall be maintained in effect throughout the term of this contract.

CONTRACTOR shall require all subcontractors performing work under this contract to obtain substantially the identical insurance coverage required of CONTRACTOR pursuant to this agreement.

C-3. INSURANCE COVERAGE REQUIREMENTS.

If required by paragraph 5 of the contract, CONTRACTOR shall maintain the following insurance policies in full force and effect during the term of this contract:

- (a) Comprehensive general liability insurance. CONTRACTOR shall maintain comprehensive general liability insurance, covering all of CONTRACTOR's operations with a combined single limit of not less than the amount set out in paragraph 5 of this contract.
- (b) Professional liability insurance. CONTRACTOR shall maintain professional liability insurance with liability limits of not less than the amount set out in paragraph 5 of this contract.

- (c) Comprehensive motor vehicle liability insurance. CONTRACTOR shall maintain comprehensive motor vehicle insurance covering all motor vehicles (including owned, non-owned and hired) used in providing services under this contract, with a combined single limit of not less than the amount set out in Paragraph 5 of this contract.
- (d) Workers' compensation insurance. CONTRACTOR shall maintain a workers' compensation plan covering all of its employees as required by California Labor Code Section 3700, either through workers' compensation insurance issued by an insurance company or through a plan of self-insurance certified by the State Director of Industrial Relations. If CONTRACTOR elects to be self-insured, the certificate of insurance otherwise required by this contract shall be replaced with a consent to self-insure issued by the State Director of Industrial Relations.

C-4. CERTIFICATE OF INSURANCE.

Prior to the commencement of performance of services by CONTRACTOR and prior to any obligations of COUNTY, CONTRACTOR shall file certificates of insurance with COUNTY, showing that CONTRACTOR has in effect the insurance required by this contract. CONTRACTOR shall file a new or amended certificate promptly after any change is made in any insurance policy which would alter the information on the certificate then on file. In lieu of providing proof of insurance, CONTRACTOR may provide proof of self-insurance meeting requirements equivalent to those imposed herein. CONTRACTOR warrants that CONTRACTOR's self-insurance provides substantially the same protection to COUNTY as the insurance required herein. CONTRACTOR further agrees to notify COUNTY in the event any change in self-insurance occurs that would alter the obligations undertaken in this contract within thirty (30) days of such change.

C-5. RECORDS TO BE MAINTAINED.

CONTRACTOR shall keep and maintain accurate records of all costs incurred and all time expended for work under this contract. CONTRACTOR shall contractually require that all of CONTRACTOR's subcontractors performing work called for under this contract also keep and maintain such records. All such records, whether kept by CONTRACTOR or any subcontractor, shall be made available to COUNTY or its authorized representative, or officials of the State of California for review or audit during normal business hours, upon reasonable advance notice given by COUNTY, its authorized representative, or officials of the State of California.

C-6. RETENTION OF RECORDS.

CONTRACTOR shall maintain and preserve all records related to this contract for a period of three years from the close of the fiscal year in which final payment under this contract is made. CONTRACTOR shall also contractually require the maintenance of such records in the possession of any third party performing work related to this contract for the same period of time. Such records shall be retained beyond the three-year period, if any audit involving such records is then pending, until the audit findings are resolved. The obligation to insure the maintenance of the records beyond the initial three year period shall arise only if the COUNTY notifies CONTRACTOR of the commencement of an audit prior to the expiration of the three year period.

C-7. TITLE TO DOCUMENTS; COPYRIGHT.

All reports and other materials collected or produced by the CONTRACTOR or any subcontractor of CONTRACTOR shall, after completion and acceptance of the contract, become the property of COUNTY, and shall not be subject to any copyright claimed by the CONTRACTOR, subcontractor, or their agents or employees. CONTRACTOR may retain copies of all such materials exclusively for administrative purposes. Any use of completed or uncompleted documents for other projects by CONTRACTOR, any subcontractor, or any of their agents or employees, without the prior written consent of COUNTY is prohibited.

C-8. INDEPENDENT CONTRACTOR.

CONTRACTOR and its officers and employees, in the performance of this contract, are independent contractors in relation to COUNTY and not officers or employees of COUNTY. Nothing in this contract shall create any of the rights, powers, privileges or immunities of any officer or employee of COUNTY. CONTRACTOR shall be solely liable for all applicable taxes or benefits, including, but not limited to, federal and state income taxes, Social Security taxes, or ERISA retirement benefits, which taxes or benefits arise out of the performance of this contract. CONTRACTOR further represents to COUNTY that CONTRACTOR has no expectation of receiving any benefits incidental to employment.

C-9. CONFLICT OF INTEREST.

CONTRACTOR covenants that it presently has no interest and shall not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of the services hereunder. CONTRACTOR further covenants that, in the performance of this contract, no subcontractor or person having such an interest shall be used or employed.

C-10. COMPLIANCE WITH APPLICABLE LAWS.

CONTRACTOR shall comply with all applicable federal, state and local laws now, or hereafter, in force, and with any applicable regulations, in performing the work and providing the services specified in this contract. This obligation includes, without limitation, the acquisition, and maintenance of any permits, licenses, or other entitlements necessary to perform the duties imposed expressly or impliedly under this contract.

C-11. NONDISCRIMINATION.

CONTRACTOR shall not discriminate in the employment of persons necessary to perform this contract on any legally impermissible basis, including on the basis of the race, color, national origin, ancestry, religion, age, sex, or disability of such person.

C-12. BANKRUPTCY.

CONTRACTOR shall immediately notify COUNTY in the event that CONTRACTOR ceases conducting business in the normal manner, becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets, or avails itself of, or becomes subject to, any proceeding under the Federal Bankruptcy Act or any other statute of any state relating to insolvency or protection of the rights of creditors.

C-13. PROHIBITION AGAINST ASSIGNMENT AND DELEGATION OF DUTIES.

Except as specifically authorized herein, no rights under this contract may be assigned and no duties under this contract may be delegated by CONTRACTOR without the prior written consent of COUNTY, and any attempted assignment or delegation without such consent shall be void.

C-14. NEGOTIATED CONTRACT.

This contract has been arrived at through negotiation between the parties. Neither party is to be deemed the party which prepared this contract within the meaning of California Civil Code Section 1654.

C-15. SEVERABILITY.

Should any provision herein be found or deemed to be invalid, this contract shall be construed as not containing such provision, and all other provisions which are otherwise lawful shall remain in full force and effect. To this end, the provisions of this contract are declared to be severable.

C-16. ENTIRE CONTRACT.

This contract is the entire agreement of the parties. There are no understandings or agreements pertaining to this contract except as are expressly stated in writing in this contract or in any document attached hereto or incorporated herein by reference.

C-17. TIME IS OF THE ESSENCE.

Time is of the essence in the performance of this contract.

C-18. TERMINATION.

Either party may terminate this contract, with or without cause, at any time. In order to terminate this contract, the terminating party shall give advance written notice to the other party. The termination shall be effective no earlier than the expiration of the number of days specified in paragraph 6 of this contract. The termination notice shall be made as specified in paragraph C-19, below. In the event of termination, COUNTY shall pay CONTRACTOR for all work satisfactorily performed prior to the effective date of the termination.

C-19. NOTICES.

Notices to the parties in connection with the administration of this contract shall be given to the parties' contract administrator personally, by regular mail, or by facsimile transmission as more particularly specified in this paragraph. Notices will be deemed given on:

- (a) The day the notice is personally delivered to the contract administrator or the office of the party's contract administrator; or
- (b) Five days after the date the notice is deposited in the United States mail, addressed to a party's contract administrator as indicated in this contract, with first-class postage fully prepaid; or

- (c) On the day that the notice is transmitted by facsimile to a party's facsimile number specified in paragraph 8 of this contract, provided that an original of such notice is deposited in the United States mail, addressed to a party's contract administrator as indicated in this contract, on the same day as the facsimile transmission is made.

C-20. RESPONSIBILITY OF CONTRACT ADMINISTRATORS.

All matters concerning this contract which are within the responsibility of the parties shall be under the direction of, or shall be submitted to, the respective contract administrators or to the party's employee specified, in writing, by the contract administrator. A party may, in its sole discretion, change its designation of its contract administrator and shall promptly give written notice to the other party of any such change.

C-21. MATERIALITY.

The parties consider each and every term, covenant, and provision of this contract to be material and reasonable.

C-22. WAIVER.

Waiver by either party of a breach of any covenant of this contract will not be construed to be a continuing waiver of any subsequent breach. COUNTY's receipt of consideration with knowledge of CONTRACTOR's violation of a covenant does not waive its right to enforce any covenant of this contract. The parties shall not waive any provisions of this contract unless the waiver is in writing and signed by all parties.

C-23. AUTHORITY AND CAPACITY.

CONTRACTOR and CONTRACTOR's signatory each warrant and represent that each has full authority and capacity to enter into this contract.

C-24. BINDING ON SUCCESSORS.

All of the conditions, covenants and terms herein contained shall apply to, and bind, the heirs, successors, executors, administrators and assigns of CONTRACTOR. CONTRACTOR and all of CONTRACTOR's heirs, successors, executors, administrators, and assigns shall be jointly and severally liable under this contract.

C-25. CUMULATION OF REMEDIES.

All of the various rights, options, elections, powers and remedies of the parties shall be construed as cumulative, and no one of them exclusive of any other or of any other legal or equitable remedy which a party might otherwise have in the event of a breach or default of any condition, covenant or term by the other party. The exercise of any single right, option, election, power or remedy shall not, in any way, impair any other right, option, election, power or remedy until all duties and obligations imposed shall have been fully performed.

C-26. INDEPENDENT ADVICE.

Each party hereby represents and warrants that in executing this contract it does so with full knowledge of the rights and duties it may have with respect to the other. Each party also

represents and warrants that it has received independent legal advice from its attorney with respect to the matters set forth in this contract and the rights and duties arising out of this contract, or that such party willingly foregoes any such consultation.

C-27. NO RELIANCE ON REPRESENTATIONS.

Each party hereby represents and warrants that it is not relying, and has not relied, upon any representation or statement made by the other party with respect to the facts involved or its rights or duties. Each party understands and agrees that the facts relevant, or believed to be relevant to this contract may hereunder turn out to be other than, or different from the facts now known to such party as true, or believed by such party to be true. The parties expressly assume the risk of the facts turning out to be different and agree that this contract shall be effective in all respects and shall not be subject to rescission by reason of any such difference in facts.

C-28. REDUCTION OF CONSIDERATION.

CONTRACTOR agrees that COUNTY shall have the right to deduct from any payments specified in Attachment B any amount owed to COUNTY by CONTRACTOR as a result of any obligation arising prior to, or after, the execution of this contract. For purposes of this paragraph, obligations arising prior to, or after, the execution of this contract may include, without limitation, any property tax, secured or unsecured, which tax is in arrears. If COUNTY exercises the right to reduce the consideration specified in Attachment B, COUNTY, at the time of making a reduced payment, shall give CONTRACTOR notice of the amount of any off-set and the reason for the reduction.

C-29. COUNTERPARTS.

This contract may be executed in any number of counterparts, each of which so executed shall be deemed to be an original. The counterparts shall together constitute one contract.

END OF ATTACHMENT C.

ATTACHMENT D
Specific Terms and Conditions

The rights and duties of the parties to this contract are additionally governed by the following specific, additional terms and conditions:

D-1 DELIVERY AND STORAGE; RISK OF LOSS

- D-1.1 Delivery and storage of all equipment, materials, and supplies shall be the responsibility of the contractor. F.O.B. destination to include inside delivery to 2301 Technology Parkway, Hollister, California. CONTRACTOR shall bear risk of loss until materials and supplies have reached the final F.O.B. destination point. Thereafter, the COUNTY shall bear risk of loss. CONTRACTOR shall replace all items that are damaged at the time the COUNTY receives them. While CONTRACTOR bears the risk of loss, CONTRACTOR, at its own expense, shall procure and carry suitable fire, and extended coverage insurance on material, work-in-process and any furnished items which comprise or will eventually comprise the Piece of Equipment. The amount to be insured shall be the actual replacement value of said material, work-in-process and furnished items. Such insurance shall provide a loss payable clause in favor of the successful bidder as its interest may appear.
- D-1.2 Material and equipment shall be stored so as to insure the preservation of its quality and fitness for the work. Stored materials and equipment to be incorporated in the work shall be located so as to facilitate prompt inspection.
- D-1.3 Damage to existing facilities, equipment, planting, etc., caused by CONTRACTOR in the performance of services under this contract, shall be replaced or repaired and restored to original condition by CONTRACTOR.

D-2 PROTECTION OF WORK, PROPERTY AND PERSONS; SAFEGUARDS

- D-2.1 CONTRACTOR will be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the work. The Contractor will take all necessary precautions for the safety of, and will provide the necessary protection to prevent damage, injury or loss to all employees on the worksite and other persons who may be affected thereby, all the work and all materials or equipment to be incorporated therein, whether in storage on or off the site, and other property at the site or adjacent thereto.
- D-2.2 CONTRACTOR will comply with all applicable laws, ordinances, rules, regulations and orders of any public body having jurisdiction. CONTRACTOR will remedy all damage, injury or loss

to any property caused, directly or indirectly, in whole or part, by CONTRACTOR, any subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them will be liable, except damage or loss attributable to the fault of the contract documents or to the acts or omissions of the County and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of CONTRACTOR.

D-2.3. In emergencies affecting the safety of persons or the work or property at the site or adjacent thereto, CONTRACTOR, without special instructions or authorization from the County, shall act to prevent threatened damage, injury or loss. CONTRACTOR will give the County prompt written notice of any significant changes in the work or deviations from the contract documents caused thereby, and a change order shall thereupon be issued covering the changes and deviations involved.

D-3 WARRANTY; GUARANTEE

D-3.1 CONTRACTOR shall warrant all work and materials for a period of one (1) year unless otherwise specified. The CONTRACTOR shall fully warrant all materials and equipment furnished and work performed under the terms of this contract against poor and inferior quality or workmanship, for a period of not less than *one (1) year* from date of the final acceptance by the County. While under warranty, CONTRACTOR shall promptly repair or replace inoperable materials or equipment and shall promptly correct inferior or defective work as may be deemed necessary by the Engineer, in a timely manner to minimize the disruption of County operations. The County shall give notice of observed defects with reasonable promptness. In the event that the CONTRACTOR should fail to make such repairs, adjustments or other work that may be necessary to correct defective or inoperable materials, equipment or work, the County may do so and charge the CONTRACTOR the cost thereby incurred.

D-3.2 The Contractor shall issue his written guarantee to maintain such work for a period of one (1) year from date of acceptance and shall be responsible for the correction of any failure that is the result of defect in materials or workmanship.

D-4 ASSIGNMENT OF ANTI-TRUST CLAIMS REGARDING PURCHASE OF GOODS, SERVICES OR MATERIALS

CONTRACTOR offers and agrees to assign to the County all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Section 15) or under the Cartwright Act

(Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to this contract. This assignment shall be made and become effective at the time the County tenders final payment to CONTRACTOR, without further acknowledgment by the parties.

D-5 PATENTS, COPYRIGHTS AND OTHER WORK PRODUCT

CONTRACTOR shall indemnify, defend and hold the County, its officers, agents, servants, and employees, harmless from liability of any nature or kind because of use of any copyrighted, or un-copyrighted composition, secret process, patented or unpatented invention, articles or appliances furnished or used in the performance of services under this contract, and agrees to defend, at its own expense, any and all actions brought against the County or CONTRACTOR because of the unauthorized use of such items. CONTRACTOR shall indemnify, defend and hold the County, its officers, agents, servants, and employees, harmless from liability of any nature or kind because of use of any copyrighted, or un-copyrighted composition, secret process, patented or unpatented invention, articles or appliances furnished or used in providing materials or equipment, or in performing the work, and agrees to defend, at its own expense, any and all actions brought against the County or CONTRACTOR because of the unauthorized use of such items. The County shall be responsible for any such loss when a particular process, design, or product of a particular manufacturer or manufacturers is specified. However, if CONTRACTOR has reason to believe that the design, process or product specified involves the use of any copyrighted, or un-copyrighted composition, secret process, patented or unpatented invention, articles or appliances, CONTRACTOR shall be responsible for such loss unless CONTRACTOR promptly gives such information to the County.

D-6 SUPERVISION

- D-6.1. CONTRACTOR shall supervise and direct the work, using the skill, diligence and standard of care typical for the industry or, if a higher level of expertise is represented, then the higher standard of skill, diligence and standard of care shall apply. CONTRACTOR shall carefully inspect the site and study and compare all drawings, specifications, and other instructions. Ignorance of any of the features or conditions affecting the contract will not excuse CONTRACTOR from carrying out this provision to its full intent.
- D-6.2. CONTRACTOR will be solely responsible for the means, methods, techniques, sequences and procedures of providing services under this contract.

D-7 TAXES, PERMITS AND FEES

CONTRACTOR shall pay for and include all Federal, State, and local taxes, direct or indirect, upon all materials, and shall pay all applicable royalties and license fees, and all charges for permits and licenses unless otherwise specified.

D-8 TERMINATION

The County may terminate this contract as follows:

D-8.1. WITHOUT CAUSE at any time by giving thirty (30) calendar days written notice to the successful bidder.

D-8.2. WITH CAUSE (Default) at any time by giving ten (10) calendar days written notice to CONTRACTOR. Termination for cause shall be at the discretion of the County and shall be, but is not limited to, failure to supply the items, materials, equipment or services specified within the time allowed or within the terms, conditions or provisions of this contract. CONTRACTOR may not terminate this contract, without prior written consent of the County.

D-8.3. The County, at its sole discretion, may terminate this contract upon thirty (30) calendar days written notice to the CONTRACTOR, in the event that funds have not been appropriated.

Such terminations shall be without penalty to the County.

D-9. HARMONIZATION OF CONTRACT TERMS. Where the specific terms and conditions set forth in this Attachment D specifically conflict with the general terms and conditions set forth in Attachment C to this contract, the more specific terms and conditions shall be deemed to control. However, the general terms and conditions in Attachment C shall remain in full force and effect, to the extent they do not specifically conflict with the specific terms and conditions set forth in this Attachment D.

END OF ATTACHMENT D.