

INDEPENDENT CONTRACTOR AGREEMENT
(Design Professional - Federal)

This Contract is entered into this _____ day of _____, 20____, by and between the County of Santa Cruz, hereinafter called COUNTY, and Bowman and Williams Inc., incorporated in the State of California, hereinafter called CONTRACTOR. The parties agree as follows:

1. DUTIES. CONTRACTOR agrees to exercise special skill to accomplish the following results: Provide civil engineering services for Cox Road PM 1.93 Storm Damage Repair Project as described in Attachment A – “Scope of Services”.

2. ALLOWABLE COSTS AND PAYMENTS.

A. CONTRACTOR will be reimbursed for hours worked at the hourly rates specified in CONTRACTORs Cost Proposal. The specified hourly rates shall include direct salary costs, employee benefits, overhead, and fee. These rates are not adjustable for the performance period set forth in this Contract.

B. In addition, CONTRACTOR will be reimbursed for incurred (actual) direct costs other than salary costs that are in the cost proposal and identified in the cost proposal.

C. Reimbursement for transportation and subsistence costs shall not exceed the rates as specified in the approved Cost Proposal.

D. When milestone cost estimates are included in the approved Cost Proposal, CONTRACTOR shall obtain prior written approval for a revised milestone cost estimate from the Contract Administrator before exceeding such estimate.

E. Progress payments will be made monthly in arrears based on services provided and actual costs incurred.

F. CONTRACTOR shall not commence performance of work or services until this contract has been approved by COUNTY, and notification to proceed has been issued by COUNTY’S Contract Administrator. No payment will be made prior to approval or for any work performed prior to approval of this contract.

G. CONTRACTOR will be reimbursed, as promptly as fiscal procedures will permit upon receipt by COUNTY’S Contract Administrator of itemized invoices in triplicate. Separate invoices itemizing all costs are required for all work performed under the contract. Invoices shall be submitted no later than 45 calendar days after the performance of work for which CONTRACTOR is billing, or upon completion of the Contract. Invoices shall detail the work performed on each milestone, on each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this contract number and project title. Credits due COUNTY that include any equipment purchased under the provisions of Article XI Equipment Purchase of this contract, must be reimbursed by CONTRACTOR prior to the expiration or termination of this contract. Invoices shall be mailed to COUNTY’S Contract Administrator at the following address:

Santa Cruz County
Department of Public Works
Attn: Tim Bailey
701 Ocean Street, Room 410
Santa Cruz, CA 95060

H. The total amount payable by COUNTY for all work resulting from this contract shall not exceed \$55,000.

3. PERFORMANCE PERIOD.

A. This contract shall go into effect upon approval by COUNTY, and CONTRACTOR shall commence work after notification to proceed by COUNTY'S Contract Administrator. The contract shall end on December 31, 2019 unless extended by contract amendment.

B. CONTRACTOR is advised that any recommendation for contract award is not binding on COUNTY until the contract is fully executed and approved by COUNTY.

4. EARLY TERMINATION.

A. COUNTY reserves the right to terminate this contract upon thirty (30) calendar days written notice to CONTRACTOR with the reasons for termination stated in the notice.

B. COUNTY may terminate this contract with CONTRACTOR should CONTRACTOR fail to perform the covenants herein contained at the time and in the manner herein provided. In the event of such termination, COUNTY may proceed with the work in any manner deemed proper by COUNTY. If COUNTY terminates this contract with CONTRACTOR, COUNTY shall pay CONTRACTOR the sum due to CONTRACTOR under this contract prior to termination, unless the cost of completion to COUNTY exceeds the funds remaining in the contract. In which case the overage shall be deducted from any sum due CONTRACTOR under this contract and the balance, if any, shall be paid to CONTRACTOR upon demand.

C. The maximum amount for which the COUNTY shall be liable if this contract is terminated is \$55,000 dollars.

5. INDEMNIFICATION. CONTRACTOR shall exonerate, indemnify, defend, and hold harmless COUNTY (which for the purpose of Section 5 and 6 of this document shall include, without limitation, its officers, agents, employees and volunteers) from and against:

A. Any and all claims, demands, losses, damages, defense costs, or liability of any kind or nature which COUNTY may sustain or incur or which may be imposed upon it which arise out of, pertain to, or relate to CONTRACTOR'S negligent acts, errors or omissions, recklessness, or willful misconduct under the terms of this Agreement. Such indemnification includes any damage to the person(s), or property(ies) of CONTRACTOR and third persons; and

B. Any and all Federal, State and Local taxes, charges, fees, or contributions required to be paid with respect to CONTRACTOR and CONTRACTOR'S officers, employees and agents engaged in the performance of this Contract (including, without limitation, unemployment insurance, social security and payroll tax withholding).

6. INSURANCE. CONTRACTOR, at its sole cost and expense, for the full term of this Contract (and any extensions thereof), shall obtain and maintain, at minimum, compliance with all of the

following insurance coverage(s) and requirements. Such insurance coverage shall be primary coverage as respects COUNTY and any insurance or self-insurance maintained by COUNTY shall be considered in excess of CONTRACTOR'S insurance coverage and shall not contribute to it. If CONTRACTOR normally carries insurance in an amount greater than the minimum amount required by the COUNTY for this Contract, that greater amount shall become the minimum required amount of insurance for purposes of this Contract. Therefore, CONTRACTOR hereby acknowledges and agrees that any and all insurances carried by it shall be deemed liability coverage for any and all actions it performs in connection with this Contract. Insurance is to be placed with insurers reasonably acceptable to the COUNTY.

If CONTRACTOR utilizes one or more subcontractors in the performance of this Contract, CONTRACTOR shall obtain and maintain Contractor's Protective Liability insurance as to each subcontractor or otherwise provide evidence of insurance coverage from each subcontractor equivalent to that required of CONTRACTOR in this contract, unless CONTRACTOR and COUNTY both initial here ____ / ____.

A. Types of Insurance and Minimum Limits

(1) Worker's Compensation in the minimum statutorily required coverage amounts. This insurance coverage shall be required unless the CONTRACTOR has no employees and certifies to this fact by initialing here _____.

(2) Automobile Liability Insurance for each of CONTRACTOR'S vehicles used in the performance of this Contract, including owned, non-owned (e.g. owned by CONTRACTOR'S employees), leased or hired vehicles, in the minimum amount of \$500,000 combined single limit per occurrence for bodily injury and property damage. This insurance coverage is required unless the CONTRACTOR does not drive a vehicle in conjunction with any part of the performance of this Contract and CONTRACTOR and COUNTY both certify to this fact by initialing here ____ / ____.

(3) Comprehensive or Commercial General Liability Insurance coverage at least as broad as ISO Form CG 00 01 with a minimum limit of \$1,000,000 per occurrence and \$2,000,000 aggregate, including coverage for: (a) products and completed operations; (b) bodily and personal injury, (c) broad form property damage, (d) contractual liability, and (e) cross-liability.

(4) Professional Liability Insurance in the minimum amount of \$1,000,000 combined single limit, if, and only if, this Subparagraph is initialed by CONTRACTOR and COUNTY ____ / ____.

B. Other Insurance Provisions

(1) If any insurance coverage required in this Contract is provided on a "Claims Made" rather than "Occurrence" form, CONTRACTOR agrees that the retroactive date thereof shall be no later than the date first written above, and that it shall maintain the required coverage for a period of three (3) years after the expiration of this Contract (hereinafter "post Contract coverage") and any extensions thereof. CONTRACTOR may maintain the required post Contract coverage by renewal or purchase of prior acts or tail coverage. This provision is contingent upon post Contract coverage being both available and reasonably affordable in relation to the coverage provided during the term of this Contract. For purposes of interpreting this requirement, a cost not exceeding 100% of the last annual policy premium during the term of this Contract in order to purchase prior acts or tail coverage for post Contract coverage shall be deemed to be reasonable.

(2) All policies of Comprehensive or Commercial General Liability Insurance shall be endorsed to cover the County of Santa Cruz, its officials, employees, agents and volunteers as additional insureds with respect to liability arising out of the work or operations and activities performed by or on behalf of CONTRACTOR, including materials, parts or equipment furnished in connection with such work or operations. Endorsements shall be at least as broad as ISO Form CG 20 10 11 85 or both 20 10 10 01 and 20 37 10 01.

(3) All required insurance policies shall be endorsed to contain the following clause:

“This insurance shall not be canceled until after thirty (30) days’ (10 days for nonpayment of premium) prior written notice has been given to:

Santa Cruz County
Dept. of Public Works
Attn: Tim Bailey
701 Ocean Street, Room 410
Santa Cruz, CA 95060

Should CONTRACTOR fail to obtain such an endorsement to any policy required hereunder, CONTRACTOR shall be responsible to provide at least thirty (30) days’ notice (10 days for non-payment of premium) of cancellation of such policy to the COUNTY as a material term of this Contract.

(4) CONTRACTOR agrees to provide its insurance broker(s) with a full copy of these insurance provisions and provide COUNTY on or before the effective date of this Contract with Certificates of Insurance and endorsements for all required coverages. However, failure to obtain the required documents prior to the work beginning shall not waive the CONTRACTOR’s obligation to provide them. All Certificates of Insurance and endorsements shall be delivered or sent to:

Santa Cruz County
Dept. of Public Works
Attn: Tim Bailey
701 Ocean Street, Room 410
Santa Cruz, CA 95060

(5) CONTRACTOR hereby grants to COUNTY a waiver of any right to subrogation which any insurer of said CONTRACTOR may acquire against the COUNTY by virtue of the payment of any loss under such insurance. CONTRACTOR agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the COUNTY has received a waiver of subrogation endorsement from the insurer.

7. INDEPENDENT CONTRACTOR STATUS. CONTRACTOR and COUNTY have reviewed and considered the principal test and secondary factors below and agree that CONTRACTOR is an independent contractor and not an employee of COUNTY. CONTRACTOR is responsible for all insurance (workers compensation, unemployment, etc.) and all payroll related taxes. CONTRACTOR is not entitled to any employee benefits. COUNTY agrees that CONTRACTOR shall have the right to control the manner and means of accomplishing the result contracted for herein.

PRINCIPAL TEST: The CONTRACTOR rather than COUNTY has the right to control the manner and means of accomplishing the result contracted for.

SECONDARY FACTORS: (a) The extent of control which, by agreement, COUNTY may exercise over the details of the work is slight rather than substantial; (b) CONTRACTOR is engaged in a distinct occupation or business; (c) In the locality, the work to be done by CONTRACTOR is usually done by a specialist without supervision, rather than under the direction of an employer; (d) The skill required in the particular occupation is substantial rather than slight; (e) The CONTRACTOR rather than the COUNTY supplies the instrumentalities, tools and work place; (f) The length of time for which CONTRACTOR is engaged is of limited duration rather than indefinite; (g) The method of payment of CONTRACTOR is by the job rather than by the time; (h) The work is part of a special or permissive activity, program, or project, rather than part of the regular business of COUNTY; (i) CONTRACTOR and COUNTY believe they are creating an independent contractor relationship rather than an employer-employee relationship; and (j) The COUNTY conducts public business.

It is recognized that it is not necessary that all secondary factors support creation of an independent contractor relationship, but rather that overall there are significant secondary factors that indicate that CONTRACTOR is an independent contractor.

By their signatures on this Contract, each of the undersigned certifies that it is his or her considered judgment that the CONTRACTOR engaged under this Contract is in fact an independent contractor.

8. NONASSIGNMENT. Contractor shall not assign the Contract without the prior written consent of the County.

9. SUBCONTRACTING.

A. Nothing contained in this contract or otherwise, shall create any contractual relation between COUNTY and any subconsultant(s), and no subcontract shall relieve CONTRACTOR of its responsibilities and obligations hereunder. CONTRACTOR agrees to be as fully responsible to COUNTY for the acts and omissions of its subconsultant(s) and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by CONTRACTOR. CONTRACTOR's obligation to pay its subconsultant(s) is an independent obligation from COUNTY'S obligation to make payments to the CONTRACTOR.

B. CONTRACTOR shall perform the work contemplated with resources available within its own organization and no portion of the work pertinent to this contract shall be subcontracted without written authorization by COUNTY's Contract Administrator, except that, which is expressly identified in the approved Cost Proposal.

C. CONTRACTOR shall pay its subconsultants within ten (10) calendar days from receipt of each payment made to CONTRACTOR by COUNTY.

D. All subcontracts entered into as a result of this contract shall contain all the provisions stipulated in this contract to be applicable to subconsultants.

E. Any substitution of subconsultant(s) must be approved in writing by COUNTY's Contract Administrator prior to the start of work by the subconsultant(s).

10. ACKNOWLEDGMENT. CONTRACTOR shall acknowledge in all reports and literature that the Santa Cruz County Board of Supervisors has provided funding to the CONTRACTOR.

11. PRESENTATION OF CLAIMS. Presentation and processing of any or all claims arising out of or related to this Contract shall be made in accordance with the provisions contained in Chapter 1.05 of the Santa Cruz County Code, which by this reference is incorporated herein.

12. ATTACHMENTS. This Contract includes the following attachments:

Attachment A Scope of Services

Attachment B Rate Sheet

13. LIVING WAGE. This Contract is covered under Living Wage provisions if this section is initialed by COUNTY_____.

If Item #13 above is initialed by the COUNTY, then this Contract is subject to the provisions of Santa Cruz County Code Chapter 2.122, which requires payment of a living wage to covered employees. Non-compliance during the term of the Contract with these Living Wage Provisions will be considered a material breach, and may result in termination of the Contract and/or pursuit of other legal or administrative remedies.

CONTRACTOR agrees to comply with Santa Cruz County Code section 2.122.140, if applicable.

14. STATE PREVAILING WAGE RATES.

A. CONTRACTOR shall comply with the State of California's General Prevailing Wage Rate requirements in accordance with California Labor Code, Section 1770, and all Federal, State, and local laws and ordinances applicable to the work.

B. Any subcontract entered into as a result of this contract if for more than \$25,000 for public works construction or more than \$15,000 for the alteration, demolition, repair, or maintenance of public works, shall contain all of the provisions of this Article, unless the awarding agency has an approved labor compliance program by the Director of Industrial Relations.

C. When prevailing wages apply to the services described in the scope of work, transportation and subsistence costs shall be reimbursed at the minimum rates set by the Department of Industrial Relations (DIR) as outlined in the applicable Prevailing Wage Determination. See <http://www.dir.ca.gov>.

Note: The Federal "Payment of Predetermined Minimum Wage" applies only to federal-aid construction contracts.

15. COST PRINCIPLES AND ADMINISTRATIVE REQUIREMENTS

A. The CONTRACTOR agrees that the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., shall be used to determine the allowability of cost individual items.

B. The CONTRACTOR also agrees to comply with federal procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

C. Any costs for which payment has been made to CONTRACTOR that are determined by subsequent audit to be unallowable under 49 CFR, Part 18 and 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., are subject to repayment by CONTRACTOR to the COUNTY.

16. CONTINGENT FEE. The CONTRACTOR warrants, by execution of this contract that no person or selling agency has been employed, or retained, to solicit or secure this contract upon an agreement or understanding, for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees, or bona fide established commercial or selling agencies maintained by the CONTRACTOR for the purpose of securing business. For breach or violation of this warranty, the COUNTY has the right to annul this contract without liability; pay only for the value of the work actually performed, or in its discretion to deduct from the contract price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

17. RETENTION OF RECORDS/AUDIT. For the purpose of determining compliance with Public Contract Code 10115, et seq. and Title 21, California Code of Regulations, Chapter 21, Section 2500 et seq., when applicable and other matters connected with the performance of the contract pursuant to Government Code 8546.7; CONTRACTOR, subconsultants, and COUNTY shall maintain and make available for inspection all books, documents, papers, accounting records, and other evidence pertaining to the performance of the contract, including but not limited to, the costs of administering the contract. All parties shall make such materials available at their respective offices at all reasonable times during the contract period and for three years from the date of final payment under the contract. The state, State Auditor, COUNTY, FHWA, or any duly authorized representative of the Federal Government shall have access to any books, records, and documents of CONTRACTOR and its certified public accountants (CPA) work papers that are pertinent to the contract and indirect cost rates (ICR) for audit, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested.

18. AUDIT REVIEW PROCEDURES

A. Any dispute concerning a question of fact arising under an interim or post audit of this contract that is not disposed of by agreement, shall be reviewed by COUNTY Chief Financial Officer.

B. Not later than 30 days after issuance of the final audit report, CONTRACTOR may request a review by COUNTY'S Chief Financial Officer of unresolved audit issues. The request for review will be submitted in writing.

C. Neither the pendency of a dispute nor its consideration by COUNTY will excuse CONTRACTOR from full and timely performance, in accordance with the terms of this contract.

D. CONTRACTOR and subcontractors' contracts, including cost proposals and indirect cost rates (ICR), are subject to audits or reviews such as, but not limited to, a Contract Audit, an Incurred Cost Audit, an ICR Audit, or a certified public accountant (CPA) ICR Audit Workpaper Review. If selected for audit or review, the contract, cost proposal and ICR and related workpapers, if applicable, will be reviewed to verify compliance with 48 CFR, Part 31 and other related laws and regulations. In the instances of a CPA ICR Audit Workpaper Review it is CONTRACTOR'S responsibility to ensure federal, state, or local government officials are allowed full access to the CPA'S workpapers. The contract, cost proposal, and ICR shall be adjusted by CONTRACTOR and approved by COUNTY contract manager to conform to the audit or review recommendations. CONTRACTOR agrees that individual terms of costs identified in the audit report shall be incorporated into the contract by this reference if directed by COUNTY at its sole discretion. Refusal by CONTRACTOR to incorporate audit or review recommendations, or to ensure that the Federal, State, or local governments have access to CPA workpapers, will be considered a breach of contract terms and cause for termination of the contract and disallowance of prior reimbursed costs.

19. NATIONAL LABOR RELATIONS BOARD CERTIFICATION. In accordance with Public Contract Code Section 10296, the CONTRACTOR hereby states under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against the CONTRACTOR within the immediately preceding two-year period, because of the CONTRACTOR's failure to comply with an order of a federal court that orders the CONTRACTOR to comply with an order of the National Labor Relations Board.

20. STATEMENT OF COMPLIANCE. The CONTRACTOR's signature affixed herein, and dated, shall constitute a certification under penalty of perjury under the laws of the State of California that the CONTRACTOR has, unless exempt, complied with, the nondiscrimination program requirements of Government Code Section 12990 and Title 2, California Administrative Code, Section 8103.

A. During the performance of this Contract, Consultant and its subconsultants shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave. Consultant and subconsultants shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Consultant and subconsultants shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated there under (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Contract by reference and made a part hereof as if set forth in full. Consultant and its subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement. The CONTRACTOR shall cause the foregoing provisions to be inserted in all subcontracts for any work covered under this Contract by a subcontractor compensated more than \$50,000 and employing more than fifteen (15) employees, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

B. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

C. The Consultant shall comply with regulations relative to Title VI (nondiscrimination in federally-assisted programs of the Department of Transportation – Title 49 Code of Federal Regulations, Part 21 - Effectuation of Title VI of the 1964 Civil Rights Act). Title VI provides that the recipients of federal assistance will implement and maintain a policy of nondiscrimination in which no person in the state of California shall, on the basis of race, color, national origin, religion, sex, age, disability, be excluded from participation in, denied the benefits of or subject to discrimination under any program or activity by the recipients of federal assistance or their assignees and successors in interest.

D. The Consultant, with regard to the work performed by it during the Agreement shall act in accordance with Title VI. Specifically, the Consultant shall not discriminate on the basis of race,

color, national origin, religion, sex, age, or disability in the selection and retention of Subconsultants, including procurement of materials and leases of equipment. The Consultant shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the U.S. DOT's Regulations, including employment practices when the Agreement covers a program whose goal is employment.

E. In the event of the CONTRACTOR'S non-compliance with the non-discrimination clauses of this Contract or with any of the said rules, regulations, or orders said CONTRACTOR may be declared ineligible for further contracts with the COUNTY.

21. INSPECTION OF WORK. CONTRACTOR and any subconsultant shall permit COUNTY, the State, and the FHWA if federal participating funds are used in this contract; to review and inspect the project activities and files at all reasonable times during the performance period of this contract including review and inspection on a daily basis.

22. DEBARMENT AND SUSPENSION CERTIFICATION.

A. The CONTRACTOR's signature affixed herein, shall constitute a certification under penalty of perjury under the laws of the State of California, that the CONTRACTOR has complied with Title 49, Code of Federal Regulations, Part 29, Debarment and Suspension Certificate, which certifies that he/she or any person associated therewith in the capacity of owner, partner, director, officer, or manager, is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency; has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years; does not have a proposed debarment pending; and has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years. Any exceptions to this certification must be disclosed to the COUNTY.

B. Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining CONTRACTOR responsibility. Disclosures must indicate to whom exceptions apply, initiating agency, and dates of action.

C. Exceptions to the Federal Government Excluded Parties List System maintained by the General Services Administration are to be determined by the Federal highway Administration.

23. CONFLICT OF INTEREST.

A. The CONTRACTOR shall disclose any financial, business, or other relationship with the COUNTY that may have an impact upon the outcome of this contract, or any ensuing COUNTY construction project. The CONTRACTOR shall also list current clients who may have a financial interest in the outcome of this contract, or any ensuing COUNTY construction project, which will follow.

B. The CONTRACTOR hereby certifies that it does not now have, nor shall it acquire any financial or business interest that would conflict with the performance of services under this agreement.

C. The CONTRACTOR hereby certifies that neither CONTRACTOR, nor any firm affiliated with the CONTRACTOR will bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract. An affiliated firm is one, which is subject to the control of the same persons through joint-ownership, or otherwise.

D. Except for subcontractors whose services are limited to providing surveying or materials testing information, no subcontractor who has provided design services in connection with this contract

shall be eligible to bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract.

E. Except for subconsultants whose services are limited to materials testing, no subconsultant who is providing service on this contract shall have provided services on the design of any project included within this contract.

24. MISCELLANEOUS. This written Contract, along with any attachments, is the full and complete integration of the parties' agreement forming the basis for this Contract. The parties agree that this written Contract supersedes any previous written or oral agreements between the parties, and any modifications to this Contract must be made in a written document signed by all parties. Any arbitration, mediation, or litigation arising out of this Contract shall occur only in the County of Santa Cruz, notwithstanding the fact that one of the contracting parties may reside outside of the County of Santa Cruz.

25. CHANGE IN TERMS.

A. This contract may be amended or modified only by mutual written agreement of the parties.

B. The CONTRACTOR shall only commence work covered by an amendment after the amendment is executed and notification to proceed has been provided by the COUNTY's Contract Manager.

C. There shall be no change in the CONTRACTOR's Project Manager or members of the project team, as listed in the approved Cost Proposal, which is a part of this contract without prior written approval by the COUNTY's Contract Manager.

26. DISPUTES.

A. Any dispute, other than audit, concerning a question of fact arising under this contract that is not disposed of by agreement shall be decided by a committee consisting of the COUNTY's Contract Manager and Director of Public Works, who may consider written or verbal information submitted by the CONTRACTOR.

B. Not later than 30 days after completion of all work under the contract, the CONTRACTOR may request review by the COUNTY GOVERNING BOARD of unresolved claims or disputes, other than audit. The request for review will be submitted in writing.

C. Neither the pendency of a dispute, nor its consideration by the committee will excuse the CONTRACTOR from full and timely performance in accordance with the terms of this contract.

27. EQUIPMENT PURCHASE.

A. Prior authorization in writing, by the COUNTY's Contract Manager shall be required before the CONTRACTOR enters into any unbudgeted purchase order, or subcontract exceeding \$5,000 for supplies, equipment, or CONTRACTOR services. The CONTRACTOR shall provide an evaluation of the necessity or desirability of incurring such costs.

B. For purchase of any item, service or consulting work not covered in the CONTRACTOR's Cost Proposal and exceeding \$5,000 prior authorization by the COUNTY's Contract

Manager; three competitive quotations must be submitted with the request, or the absence of bidding must be adequately justified.

C. Any equipment purchased as a result of this contract is subject to the following: “The CONTRACTOR shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least two years and an acquisition cost of \$5,000 or more. If the purchased equipment needs replacement and is sold or traded in, the COUNTY shall receive a proper refund or credit at the conclusion of the contract, or if the contract is terminated, the CONTRACTOR may either keep the equipment and credit the COUNTY in an amount equal to its fair market value, or sell such equipment at the best price obtainable at a public or private sale, in accordance with established COUNTY procedures; and credit the COUNTY in an amount equal to the sales price. If the CONTRACTOR elects to keep the equipment, fair market value shall be determined at the CONTRACTOR’s expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to by the COUNTY and the CONTRACTOR, if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by the COUNTY.” 49 CFR, Part 18 requires a credit to Federal funds when participating equipment with a fair market value greater than \$5,000 is credited to the project.

28. SAFETY.

A. The CONTRACTOR shall comply with OSHA regulations applicable to CONTRACTOR regarding necessary safety equipment or procedures. The CONTRACTOR shall comply with safety instructions issued by the COUNTY Safety Officer and other COUNTY representatives. CONTRACTOR personnel shall wear hard hats and safety vests at all times while working on the construction project site.

B. Pursuant to the authority contained in Section 591 of the Vehicle Code, the COUNTY has determined that such areas are within the limits of the project and are open to public traffic. The CONTRACTOR shall comply with all of the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code. The CONTRACTOR shall take all reasonably necessary precautions for safe operation of its vehicles and the protection of the traveling public from injury and damage from such vehicles.

C. Any subcontract entered into as a result of this contract, shall contain all of the provisions of this Article.

29. OWNERSHIP OF DATA.

A. Upon completion of all work under this contract, ownership and title to all reports, documents, plans, specifications, and estimates produce as part of this contract will automatically be vested in the COUNTY; and no further agreement will be necessary to transfer ownership to the COUNTY. The CONTRACTOR shall furnish the COUNTY all necessary copies of data needed to complete the review and approval process.

B. It is understood and agreed that all calculations, drawings and specifications, whether in hard copy or machine-readable form, are intended for one-time use in the construction of the project for which this contract has been entered into.

C. The CONTRACTOR is not liable for claims, liabilities, or losses arising out of, or connected with the modification, or misuse by the COUNTY of the machine-readable information and data provided by the CONTRACTOR under this agreement; further, the CONTRACTOR is not liable

for claims, liabilities, or losses arising out of, or connected with any use by the COUNTY of the project documentation on other projects for additions to this project, or for the completion of this project by others, except only such use as may be authorized in writing by the CONTRACTOR.

D. Applicable patent rights provisions described in 41 CFR 1-91, regarding rights to inventions shall be included in the Agreements as appropriate.

E. The CONTRACTOR is not liable for claims, liabilities or losses arising out of, or connected with, the modification or misuse by the COUNTY of the machine readable information and data provided by the CONTRACTOR under this agreement; further, the CONTRACTOR is not liable for claims, liabilities or losses arising out of, or connected with, any use by the COUNTY of the project documentation on other projects; for additions to this project, or for the completion of this project by others, except only such use as may be authorized, in writing, by the CONTRACTOR.

F. The COUNTY may permit copyrighting reports or other agreement products. If copyrights are permitted; the agreement shall provide that the FHWA shall have the royalty-free nonexclusive and irrevocable right to reproduce, publish, or otherwise use; and to authorize others to use, the work for government purposes.

G. Any subcontract in excess of \$25,000 entered into as a result of this contract, shall contain all of the provisions of this Article.

30. CLAIMS FILED BY COUNTY'S CONSTRUCTION CONTRACTOR.

A. If claims are filed by the COUNTY's construction contractor relating to work performed by CONTRACTOR's personnel, and additional information or assistance from the CONTRACTOR's personnel is required in order to evaluate or defend against such claims; CONTRACTOR agrees to make its personnel available for consultation with the COUNTY'S construction contract administration and legal staff and for testimony, if necessary, at depositions and at trial or arbitration proceedings.

B. CONTRACTOR's personnel that the COUNTY considers essential to assist in defending against construction contractor claims will be made available on reasonable notice from the COUNTY. Consultation or testimony will be reimbursed at the same rates, including travel costs that are being paid for the CONTRACTOR's personnel services under this agreement.

C. Services of the CONTRACTOR's personnel in connection with the COUNTY's construction contractor claims will be performed pursuant to a written contract amendment, if necessary, extending the termination date of this agreement in order to finally resolve the claims.

D. Any subcontract in excess of \$25,000 entered into as a result of this contract, shall contain all of the provisions of this Article.

31. CONFIDENTIALITY OF DATA.

A. All financial, statistical, personal, technical, or other data and information relative to the COUNTY's operations, which are designated confidential by the COUNTY and made available to the CONTRACTOR in order to carry out this contract, shall be protected by the CONTRACTOR from unauthorized use and disclosure.

B. Permission to disclose information on one occasion, or public hearing held by the COUNTY relating to the contract, shall not authorize the CONTRACTOR to further disclose such information, or disseminate the same on any other occasion.

C. The CONTRACTOR shall not comment publicly to the press or any other media regarding the contract or the COUNTY's actions on the same, except to the COUNTY's staff, CONTRACTOR's own personnel involved in the performance of this contract, at public hearings or in response to questions from a Legislative committee.

D. The CONTRACTOR shall not issue any news release or public relations item of any nature, whatsoever, regarding work performed or to be performed under this contract without prior review of the contents thereof by the COUNTY, and receipt of the COUNTY'S written permission.

E. Any subcontract entered into as a result of this contract shall contain all of the provisions of this Article.

F. All information related to the construction estimate is confidential, and shall not be disclosed by the CONTRACTOR to any entity other than the COUNTY.

32. EVALUATION OF CONSULTANT.

The CONTRACTOR's performance will be evaluated by the COUNTY. A copy of the evaluation will be sent to the CONTRACTOR for comments. The evaluation together with the comments shall be retained as part of the contract record.

33. REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION.

The CONTRACTOR warrants that this contract was not obtained or secured through rebates, kickbacks, or other unlawful consideration, either promised or paid to any COUNTY employee. For breach or violation of this warranty, the COUNTY shall have the right in its discretion; to terminate the contract without liability; to pay only for the value of the work actually performed; or to deduct from the contract price; or otherwise recover the full amount of such rebate, kickback, or other unlawful consideration.

34. PROHIBITION OF EXPENDING COUNTY STATE OR FEDERAL FUNDS FOR LOBBYING.

A. The CONTRACTOR certifies to the best of his or her knowledge and belief that:

1. No state, federal or local agency appropriated funds have been paid, or will be paid by-or-on behalf of the CONTRACTOR to any person for influencing or attempting to influence an officer or employee of any state or federal agency; a Member of the State Legislature or United States Congress; an officer or employee of the Legislature or Congress; or any employee of a Member of the Legislature or Congress, in connection with the awarding of any state or federal contract; the making of any state or federal grant; the making of any state or federal loan; the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any state or federal contract, grant, loan, or cooperative agreement.

2. If any funds other than federal appropriated funds have been paid, or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency; a Member of Congress; an officer or employee of Congress, or an employee of a Member of Congress; in

connection with this federal contract, grant, loan, or cooperative agreement; the CONTRACTOR shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

B. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, US. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

C. The CONTRACTOR also agrees by signing this document that he or she shall require that the language of this certification be included in all lower-tier subcontracts, which exceed \$100,000, and that all such sub recipients shall certify and disclose accordingly.

35. ADDITIONAL REQUIREMENTS FOR FEMA FUNDED PROJECTS.

- a. The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre- approval.
- b. This is an acknowledgement that FEMA financial assistance will be used to fund the contract only. The contractor will comply will all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives
- c. The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.
- d. The contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the contractor's actions pertaining to this contract.

IN WITNESS WHEREOF, the parties hereto have set their hands the day and year first above written.

1. BOWMAN & WILLIAMS, INC.

By: _____
SIGNED

Jeffrey R. Naess, Principal
PRINTED

Address: 3949 Research Park Court, Suite 100
Soquel, CA 95703

Telephone: (831) 426-3560

Fax: (831) 426-9182

Email: jeff@bowmanandwilliams.com

3. COUNTY OF SANTA CRUZ

By: _____
SIGNED

JOHN J. PRESLEIGH
PRINTED

2. APPROVED AS TO INSURANCE:

Risk Management

4. APPROVED AS TO FORM:

Office of County Counsel

DISTRIBUTION:

- Public Works
- Auditor-Controller
- Risk Management
- Contractor