

**COUNTY OF ALAMEDA
PUBLIC WORKS AGENCY**

399 Elmhurst Street • Hayward, CA 94544-1307
(510) 670-5480

November 21, 2008

Honorable Board of Supervisors
Administration Building
Oakland, CA 94612

Dear Board Members:

Subject: Approve and Execute Contract No. 3637, Professional Services Agreement with HARRIS & ASSOCIATES for the Pavement Distress Survey and Report Preparation for PMP Certification for the Period of December 9, 2008 through December 31, 2009, in the amount of \$82,280

RECOMMENDATION:

Approve and authorize the President of the Board to accept the proposal, award and execute Contract No. 3637, Professional Services Agreement, with Harris & Associates (Principal: Bob Guletz; Location: Oakland) for the Pavement Distress Survey and Report Preparation for Pavement Management Program (PMP) Certification for the period of December 9, 2008 through December 31, 2009 in the amount of \$82,280.

DISCUSSION/SUMMARY:

Pursuant to Section 2108.1 of the Streets and Highways Code, the Metropolitan Transportation Commission (MTC) requires that local agencies utilize a Pavement Management Program (PMP) in order to receive funding under the state transportation improvement program for pavement maintenance and rehabilitation projects. MTC grants PMP certification to local agencies that meet this requirement.

In order to meet this requirement, local agencies must 1) Review and update their roadway inventory every two years; 2) Complete inspection of pavement sections for their roadways within every two or five years, depending on functional classification; and 3) Calculate budget needs for rehabilitating or replacing deficient pavement sections for the current year and the following three years.

The Alameda County's current PMP Certification will expire on December 31, 2009. With approximately 450 miles of Alameda County roadways to be inspected, the Public Works Agency is proposing to retain Harris & Associates to provide assistance in obtaining PMP certification prior to the expiration date of the current certification.

SELECTION CRITERIA AND PROCESS:

A qualifications-based selection method as mandated by Government Code Sections 4525-4529.5 for selecting consultants was followed. A Request for Proposals (RFP) was issued on June 9, 2008 for consultants to provide the Pavement Distress Survey and Report Preparation for PMP Certification. The RFP was placed on the Public Works' website and e-mailed to qualified firms derived from Public Works consultant database. Two firms submitted proposals, noted in Table 1. Both firms were invited to make oral presentations before a three-member selection committee. The panel rated both the proposals and interviews based on formal written criteria.

Table 1: Consulting Firms

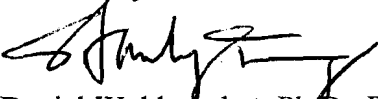
Consultant	Location	Local	SLEB
<i>Harris & Associates</i>	<i>Oakland</i>	<i>Yes</i>	<i>No</i>
<i>Nichols Consulting Engineers, chtd.</i>	<i>Point Richmond</i>	<i>No</i>	<i>No</i>

In accordance with Public Works Agency consultant selection guidelines, contract negotiations was entered with the top ranked firm. Although Harris & Associates is not SLEB certified, they are a local firm and are a certified Alameda County Transportation Improvement Authority (ACTIA) Local Business Enterprise (LBE). In addition, their team includes a SLEB firm (Applied Materials & Engineering), to whom they plan to contract with, whenever possible, to meet the 20% SLEB goals required by Alameda County.

FINANCING:

There will be no Net County Cost as a result of this action. Funding for this contract in the amount of \$82,280 is available and budgeted in Road Department, Organization 270401, Account 610261, Professional and Specialized Services, Program 50600, Engineering and Construction.

Yours truly,

for 
Daniel Woldesenbet, Ph.D., P.E.
Director, Public Works Agency

DW/JC/mm
Attachments

- c: Audrey Beaman, County Counsel
- Patrick O'Connell, Auditor-Controller
- Crystal Hishida-Graff, Clerk of the Board

Attachment 1

**Public Works Professional Services Agreement Summary for
Pavement Distress Survey and Report Preparation for PMP Certification**

December 9, 2008 through December 31, 2009

Vendor	Location	Estimated Dollar Value of Contract	Small and Local Participation
Harris & Associates	Oakland	\$82,280	\$16,456 (20%)
		Certified SLEB Partner:	
		Applied Materials & Engineering, Oakland	

Professional Services Agreement

With

HARRIS & ASSOCIATES

for the

PAVEMENT DISTRESS SURVEY and REPORT PREPARATION

For PMP CERTIFICATION

Contract No. _____

County of Alameda

HARRIS #081-0319

COUNTY OF ALAMEDA

**AGREEMENT BETWEEN THE COUNTY OF ALAMEDA AND
HARRIS & ASSOCIATES**

This Agreement is made this 9th day of December, 2008, in the City of Oakland, State of California, by and between Harris & Associates, 7700 Edgewater Dr #215, Oakland, California, 94621, hereinafter referred to as "Consultant" and the County of Alameda, a political subdivision of the State of California, hereinafter referred to as "County."

AGREEMENT

1. Definitions

Where any word or phrase defined below, or a pronoun used in place thereof, is used in any part of this Agreement, it shall have the meaning herein set forth.

- Agreement** This Agreement together with all attachments and appendices and other documents incorporated herein by reference, including, but not limited to, Appendices "A", "B", "C", "D", and "E" attached hereto.
- Consultant** Harris & Associates
- County** County of Alameda
- Project** The County's project – (Pavement Distress Survey and Report Preparation for PMP Certification) - as further described in Appendix "A", "Services to be Provided by Consultant".
- Services** All work, labor, materials and services required under the terms and conditions of this Agreement, provided pursuant to the terms and conditions of this Agreement, including without limitation architectural, engineering, coordination and administrative services.
- Subconsultants** Consultant's consultants, subconsultants, contractors and subcontractors, of any tier.

2. Term of Agreement

All work comprising the Services shall be deemed performed under this Agreement. The contract period will be from December 9, 2008 through December 31, 2009.

3. Services Consultant Agrees to Perform

- 3.1 Consultant shall perform all Services described in Appendix "A", "Services to be Provided by Consultant", attached hereto and incorporated by reference as though fully set forth herein.
- 3.2 Consultant shall complete all Services required by this Agreement within the times specified in the Milestone Schedule in Appendix "A". Consultant agrees that the Milestone Schedule includes reasonable allowances for completion of the Services, including all time required for County's review and approval of deliverables and for approval of the deliverables by all authorities having jurisdiction over the Project and the Services. Consultant shall achieve its scheduled Milestones (as shown on the Milestone Schedule) unless an excusable event causes delay (excusable delay), and unless Consultant gives written notice of the excusable event and requests a time extension within ten days of the occurrence of the excusable event. (Excusable events shall be limited to acts of neglect by County or County's agents or consultants when acting at County's direction, breaches of this Agreement by County, Acts of God such as fire, flood, earthquake, or epidemic, or delay by a construction contractor during the construction phase of the Project, or any other circumstances beyond Consultant's reasonable control). If the period of excusable delay

caused by an excusable event concurs with a Consultant caused or other nonexcusable delay, County may (but shall not be required to) grant a time extension without compensation.

- 3.3 Consultant may recover extra costs resulting from excusable delay upon showing that the costs claimed (i) resulted from time and/or expenses actually incurred in performing Services, (ii) were incurred by Consultant as a direct result of the delay and not otherwise within Consultant's scope of Services, and (iii) are documented to the County's satisfaction. (For example, and not by way of limitation, contract punchlist and final inspection Services, whenever performed, and Services related to correcting deficiencies in Consultant's work, shall be within Basic Services and not entitle Consultant to extra costs or Additional Services.)
- 3.4 Should the progress of the Services under this Agreement at any time fall behind schedule for any reason other than excusable delays, Consultant shall apply such additional manpower and resources as necessary to bring progress of the Services under this Agreement back on schedule and consistent with the standard of professional skill and care required by this Agreement. Time is of the essence in the performance of this Agreement.

4. Compensation

- 4.1 County shall pay Consultant compensation according to the Compensation Schedule established in Appendix "B", Payments to Consultant. County shall pay Consultant in monthly payments on or before the last day of each month for Services properly invoiced by the Consultant which have been properly performed as of the last day of the immediately preceding month and is due under Appendix "B".
- 4.2 County shall not incur any charges under this Agreement, nor shall any payments become due to Consultant for any payment period on the Project, until County receives all deliverables required under Appendix "A" for the payment period (if any) and reasonably accepts such deliverables as meeting the requirements of this Agreement. In cases where Consultant has partially completed one or more deliverables due during a payment period, and if Consultant demonstrates diligent progress thereon, then County may make a partial progress payment based upon Consultant's percentage completion of the partially completed deliverables and diligent progress but taking into account any adverse impacts upon County.
- 4.3 County will not withhold entire payment if a questioned amount is involved, but will issue payment in the amount of the total invoice less any questioned amount(s). County will make payment for questioned amounts(s) upon County's receipt of any requested documentation verifying the claimed amount(s) and County's determination that the amount is due under the terms of this Agreement. County shall advise Consultant, in writing, within 15 days of receipt of the requested documentation. Final payment will be made when all Services required under this Agreement have been completed to the reasonable satisfaction of County including, without limitation, Consultant's transmittal of all deliverables to County required by Appendix "A".
- 4.4 Invoices furnished by Consultant under this Agreement must be in a form acceptable to County. All amounts paid by County to Consultant shall be subject to audit by County. Payment shall be made by County to Consultant at the address stated hereinabove.
- 4.5 County may set off against payments due Consultant under this Agreement any sums that County determines that Consultant owes to County because of Consultant's errors, omissions, breaches of this Agreement, delays or other acts which caused County monetary damages. Prior to exercising such right, County must demand and attend mediation pursuant to Section 24.3 of this Agreement, to be attended by County, Consultant, and any applicable insurance carriers; such mediation to occur within 30 days of demand. If the parties cannot agree upon the time, place, and mediator, within one week of the County's demand, then the Alameda County Superior Court may upon application by any party make such selection for the parties. If a party other than County refuses to mediate under this Section, then County shall have satisfied its obligations under this Section.

5. Maximum Costs

- 5.1 County's obligation hereunder shall not at any time exceed the amount approved by the Board of Supervisors for payment to the Consultant pursuant to the terms of this Agreement.

- 5.2 Except as may be provided by applicable law governing emergency conditions, County has not authorized its employees, officers and agents to request Consultant to perform Services or to provide materials, equipment and supplies that would result in Consultant performing Services or providing materials, equipment and supplies that exceed the scope of the Services, materials, equipment and supplies agreed upon in the Agreement unless the County amends the Agreement in writing and approves the amendment as required by law to authorize the additional Services, materials, equipment or supplies.
- 5.3 County shall not reimburse Consultant for Services, materials, equipment or supplies provided by Consultant beyond the scope of the Services, materials, equipment and supplies agreed upon in the Agreement and unless approved by a written amendment to the Agreement having been executed and approved in the same manner as this Agreement.

6. Qualified Personnel

- 6.1 For purposes of this Agreement, except for notices specified under Section 17 below, County shall direct all communications to Consultant through Bob Guletz, PE, Harris & Associates, 7700 Edgewater Dr #215, Oakland, California, 94621; and Consultant shall direct all communications to County through County Project Engineer.
- 6.2 Services under this Agreement shall be performed only by competent personnel under the supervision of and/or in the employment of Consultant. Consultant shall conform with County's reasonable requests regarding assignment of personnel, but all personnel, including those assigned at County's request, shall be supervised by Consultant.
- 6.3 Consultant agrees that all professional personnel assigned to the Project will be listed in its proposal, Appendix "A", attached hereto and by this reference incorporated herein, and that the listed personnel will continue their assignments on the Project during the entire term of this Agreement. It is recognized that the listed personnel are not bound by personal employment contracts to Consultant. Consultant agrees that reassignment of any of the listed personnel during the Agreement period shall only be with other professional personnel who have equivalent experience and shall require the prior written approval of County. Any costs associated with reassignment of personnel shall be borne exclusively by Consultant.
- 6.4 Consultant agrees that should the above personnel not continue their assignments on the Project during the entire term of this Agreement, then Consultant shall not charge County for the cost of training or "bringing up to speed" replacement personnel. County may condition its reasonable approval of substitution personnel upon a reasonable transition period wherein new personnel will learn the Project and get up to speed at Consultant's cost.

7. Representations

- 7.1 Consultant represents that it has reviewed Appendix "A", "Services to be Provided by Consultant", and that in its professional judgment the Services to be performed under this Agreement can be performed for a fee within the maximum amount set forth in the Compensation Schedule established in Appendix "B", Payments to Consultant, and within the times specified in the Milestone Schedule.
- 7.2 Consultant represents that it is qualified to perform the Services and that it possesses the necessary licenses and/or permits required to perform the Services or will obtain such licenses and/or permits prior to time such licenses and/or permits are required. Consultant also represents that it has extensive knowledge of all applicable building codes, laws, regulations and ordinances.
- 7.3 Consultant represents that it and its subconsultants have specialized expertise in engineering services similar to those intended for the Project. Consultant agrees that the Services shall be performed in a manner that conforms to the standards of engineering practice observed by a specialist in performing services similar to the Services. Consultant agrees that for a period of one year after the completion of the Services or at the final acceptance of the construction resulting from the Services, whichever is later, it will re-perform or replace any part or all of the Services deemed by County to be defective and/or not meeting the above standard.
- 7.4 The granting of any progress payment by County, or the receipt thereof by Consultant, or any inspection, review, approval or oral statement by any representative of County or any other governmental entity, shall

in no way waive or limit the obligations in this Section 7 or lessen the liability of Consultant to re-perform or replace unsatisfactory Services to the extent required by Section 7.3 above, including but not limited to cases where the defective or below standard Services may not have been apparent or detected at the time of such payment, inspection, review or approval.

8. Indemnification and General Liability

- 8.1 (a) To the fullest extent permitted by law, CONTRACTOR shall indemnify and save harmless, the COUNTY, its officers, employees, and servants from all claims, suits, or actions of every name, kind, and description, brought for, or on account of any other loss or cost resulting from the CONTRACTOR'S negligent or reckless acts or omissions or willful misconduct in connection with the performance of any work required of CONTRACTOR or payments made pursuant to this Agreement, including but not limited to: (A) injuries to or death of any person, including CONTRACTOR, its officers, employees and servants, (B) damage to any property of any kind whatsoever and to whomsoever belonging, (C) any sanctions, penalties or claims of damages resulting from CONTRACTOR'S failure to comply with applicable laws provided that this shall not apply to injuries or damage for which the COUNTY has been found in a court of competent jurisdiction to be solely liable by reason of its own negligence or willful misconduct.
- (b) The duty of Consultant to indemnify and save harmless as set forth herein, shall include the duty to defend as set forth in Section 2778 of the California Civil Code.
- (c) The obligations set forth in this section shall continue beyond the term of this Agreement as to any act or omission which occurred during or under this Agreement to the extent permitted by law.
- 8.2 Consultant shall defend (with legal counsel reasonably acceptable to the County), indemnify and hold harmless the Indemnitees from all loss, cost, damage, expense, liability or claims, in law or in equity, including attorneys' fees, court costs, litigation expenses and fees of expert consultants or expert witnesses, that may at any time arise for any infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark or any other proprietary right of any person or persons in consequence of the use by County, or any of the other Indemnitees, of articles or Services to be supplied in the performance of this Agreement.
- 8.3 [Intentionally Omitted]
- 8.4 Consultant shall place in its subconsulting agreements and cause its Subconsultants to agree to indemnities and insurance obligations in favor of County and other Indemnitees in the exact form and substance of those contained in this Agreement.
- 8.5 County acknowledges that the discovery, presence, handling or removal of asbestos products, polychlorinated biphenyl (PCB) or other hazardous substances which may presently exist at the Project site is outside of Consultant's expertise and is not included in the scope of Services Consultant is to perform nor included in Consultant's insurance. County shall hire an expert consultant in this field if the Project involves such materials. Consultant shall not be responsible or be involved in any way with the discovery, presence, handling or removal of such materials. Consultant shall be responsible to coordinate with County's expert consultant as required by Appendix "A", Services To Be Provided By Consultant.

9. Liability of County

- 9.1 Except as provided in Appendix "A", Services to be Provided by Consultant, and Appendix "C", Insurance, County's obligations under this Agreement shall be limited to the payment of the compensation provided for in Sections 3, 4 and 5 of this Agreement.
- 9.2 Notwithstanding any other provision of this Agreement, in no event shall County be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Agreement or the Services performed in connection with this Agreement.
- 9.3 County shall not be responsible for any damage to persons or property as a result of the use, misuse, or failure of any equipment used by Consultant, or by any of its employees, even though such equipment be furnished, rented, or loaned to Consultant by County. The acceptance or use of such equipment by Consultant or any of its employees shall be construed to mean that Consultant accepts full responsibility for

and agrees to exonerate, indemnify, defend and save harmless County from and against any and all claims for any damage or injury of any type, including attorneys' fees, arising from the use, misuse or failure of such equipment, whether such damage be to the Consultant, its employees, County employees or third parties, or to property belonging to any of the above.

9.4 Nothing in this Agreement shall constitute a waiver or limitation of any right or remedy, whether in equity or at law, which County may have under this Agreement or any applicable law. All rights and remedies of County, whether under this Agreement or other applicable law, shall be cumulative.

10. Independent Contractor; Payment of Taxes and Other Expenses

10.1 Consultant shall be deemed at all times to be an independent contractor and shall be wholly responsible for the manner in which Consultant performs the Services required of Consultant by the terms of this Agreement. Consultant shall be liable for the acts and omissions of its Subconsultants, its employees and its agents.

10.2 Nothing contained herein shall be construed as creating an employment, agency or joint venture relationship between County and Consultant. Consultant acknowledges that neither it nor any of its employees or agents shall, for any purpose whatsoever, be deemed to be County employees, and shall not be entitled to receive any benefits conferred on County employees, including without limitation workers' compensation, pension, health, insurance or other benefits.

10.3 Consultant shall be solely responsible for payment of any required taxes, including California sales and use taxes, and United States income tax withholding and social security taxes, levied upon this Agreement, the transaction, or the Services delivered pursuant hereto.

10.4 Consultant shall be available as much as reasonably possible to County staff during the County's normal working hours or as otherwise requested by County. Terms in this Agreement referring to direction from County shall be construed as providing for direction as to policy and the result of Consultant's Services only and not as to the means by which such a result is obtained.

10.5 Nothing in this Agreement shall operate to confer rights or benefits on persons or entities who are not parties to this Agreement.

11. Insurance

11.1 Prior to execution of this Contract, Consultant shall furnish to County satisfactory proof that it maintains the insurance required by this Contract as set forth in Appendix C "Insurance," which is attached and made a part of this Contract. In the event Consultant fails to maintain any required insurance, County may (but is not obligated to) purchase such insurance and deduct or retain premium amounts from any sums due Consultant under this Contract (or Consultant shall promptly reimburse County for such expense).

12. Suspension of Services

12.1 County may, without cause, order Consultant to suspend, delay or interrupt ("suspend") Services pursuant to this Agreement, in whole or in part, for such periods of time as County may determine in its sole discretion. County shall deliver to Consultant written notice of the extent of the suspension at least seven (7) calendar days before the commencement thereof. Suspension shall be treated as an excusable delay and Consultant shall be compensated for such delay to the extent provided under this Agreement.

12.2 Notwithstanding anything to the contrary contained in this Section, no compensation shall be made to the extent that performance is, was or would have been so suspended, delayed or interrupted by a cause for which Consultant is responsible.

13. Termination of Agreement for Cause

13.1 If at any time County believes Consultant may not be adequately performing its obligations under this Agreement, that Consultant may fail to complete the Services as required by this Agreement, or has provided written notice of observed deficiencies in Consultant's performance, County may request from Consultant prompt written assurances of performance and a written plan to correct the observed

deficiencies in Consultant's performance. Consultant shall provide such written assurances and written plan within ten calendar days of receipt of written request. Consultant acknowledges and agrees that any failure to provide written assurances and a written plan to correct observed deficiencies, in the required time, is a material breach under this Agreement.

13.2 Consultant shall be in default of this Agreement and County may, in addition to any other legal or equitable remedies available to County, terminate Consultant's right to proceed under the Agreement, for cause:

13.2.1 Should Consultant make an assignment for the benefit of creditors, admit in writing its inability to pay its debts as they become due, file a voluntary petition in bankruptcy, be adjudged a bankrupt or insolvent, file a petition or answer seeking for itself any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any present or future statute, law, or regulation, file any answer admitting or not contesting the material allegations of a petition filed against Consultant in any such proceeding, or seek, consent to, or acquiesce in, the appointment of any trustee, receiver, custodian or liquidator of Consultant or of all or any substantial part of the properties of Consultant, or if Consultant, its directors or shareholders, take action to dissolve or liquidate Consultant; or

13.2.2 Should Consultant commit a material breach of this Agreement and not cure such breach within ten (10) calendar days of the date of written notice from County to Consultant demanding such cure; or, if such failure is curable but not curable within such ten (10) day period, within such period of time as is reasonably necessary to accomplish such cure. (In order for Consultant to avail itself of this time period in excess of 10 calendar days, Consultant must provide County within the 10 day period a written plan acceptable to County to cure said breach, and then diligently commence and continue such cure according to the written plan); or

13.2.3 Should Consultant violate or allow a violation of any valid law, statute, regulation, rule, ordinance, permit, license or order of any governmental agency in effect at the time of performance of the Services and applicable to the Project or Services and does not cure such violation within ten (10) days of the date of the notice from County to Consultant demanding such cure; or, if such failure is curable but not curable within such ten (10) day period, within such period of time as is reasonably necessary to accomplish such cure. (In order for Consultant to avail itself of this time period in excess of 10 calendar days, Consultant must provide County within the 10 day period a written plan to cure said violation acceptable to County, and then diligently commence and continue performance of such cure according to the written plan.)

13.3 In the event of termination by County as provided herein for cause:

13.3.1 County shall compensate Consultant for the value of the Services delivered to County upon termination as determined in accordance with the Agreement, subject to all rights of offset and back charges, but County shall not compensate Consultant for its costs in terminating the Services or any cancellation charges owed to third parties;

13.3.2 Consultant shall deliver to County possession of all tangible aspects of the Services in their then condition, including but not limited to, all copies (electronic and hard copy) of designs, engineering, Project records, cost data of all types, drawings and specifications and contracts with vendors and Subconsultants, and all other documentation associated with the Project, and all supplies and aids dedicated solely to performing Services which, in the normal course of the Services, would be consumed or only have salvage value at the end of the Services period.

13.3.3 Consultant shall remain fully liable for the failure of any Services completed and drawings and specifications provided through the date of such termination to comply with the provisions of the Agreement. The provisions of this Section shall not be interpreted to diminish any right which County may have to claim and recover damages for any breach of this Agreement, but rather, Consultant shall compensate County for all loss, cost, damage, expense, and/or liability suffered by County as a result of such termination and failure to comply with the Agreement.

13.4 In the event a termination for cause is determined to have been made wrongfully or without cause, then the termination shall be treated as a termination for convenience, and Consultant shall have no greater

rights than it would have had if a termination for convenience had been effected in the first instance. No other loss, cost, damage, expense, or liability may be claimed, requested, or recovered by Consultant.

14. Termination of Agreement for Convenience

- 14.1 County may terminate performance of the Services under the Agreement in accordance with this Section in whole, or from time to time in part, whenever County shall determine that termination is in the County's best interests. Termination shall be effected by County delivering to Consultant, at least seven (7) calendar days prior to the effective date of the termination, a Notice of Termination specifying the extent to which performance of the Services under the Agreement is terminated.
- 14.2 After receipt of a Notice of Termination, and except as otherwise directed by County, Consultant shall:
- 14.2.1 Stop Services under the Agreement on the date and to the extent specified in the Notice of Termination;
 - 14.2.2 Place no further orders or subcontracts (including agreements with Subconsultants) for materials, Services, or facilities except as necessary to complete the portion of the Services under the Agreement which is not terminated;
 - 14.2.3 Terminate all orders and subcontracts to the extent that they relate to performance of Services terminated by the Notice of Termination;
 - 14.2.4 Assign to County in the manner, at times, and to the extent directed by County, all right, title, and interest of Consultant under orders and subcontracts so terminated. County shall have the right, in its discretion, to settle or pay any or all claims arising out of termination of orders and subcontracts;
 - 14.2.5 Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with approval or ratification of County to the extent County may require. County's approval or ratification shall be final for purposes of this clause;
 - 14.2.6 Transfer title and possession to County, and execute all required documents and take all required actions to deliver in the manner, at times, and to the extent, if any, directed by County, completed and uncompleted designs and specifications, Services in process, completed Services, supplies, and other material produced or fabricated as part of, or acquired in connection with performance of, Services terminated by the Notice of Termination (including mockups and model(s)), completed or partially completed plans, drawings, information, in whatever form (i.e., hard-copy and electronic), all intellectual property rights (including without limitation, to the extent applicable, all licenses and copyright, trademark and patent rights) and all other property and property rights which, if the Agreement had been completed, would have been required to be furnished to County.
 - 14.2.7 Use its best efforts to assist County in selling, in the manner, at times, to the extent, and at a price or prices that County directs or authorizes, any property of the types referred to in Section 14.2.6, but Consultant shall not be required to extend credit to any purchaser, and may acquire any such property under conditions prescribed and at a price or prices approved by County. All proceeds from the foregoing shall be applied to reduce payments to be made by County to Consultant under this Agreement, shall otherwise be credited to the price or cost of Services covered by this Agreement or be paid in such other manner as County may direct;
 - 14.2.8 Complete performance of any part of the Services which were not terminated by the Notice of Termination; and
 - 14.2.9 Take such action as may be necessary, or as County may direct, for the protection and preservation of property related to this Agreement which is in Consultant's possession and in which County has or may acquire an interest.
- 14.3 After receiving a Notice of Termination, Consultant shall submit to County a termination claim, in the form and with the certification County prescribes. The claim shall be submitted promptly but in no event later than 3 months from the effective date of the termination, unless one or more extensions in writing are granted by County upon Consultant's written request made within such 3-month period or authorized

extension. However, if County determines that facts justify such action, it may receive and act upon any such termination claim at any time after such 3-month period or extension. If Consultant fails to submit the termination claim within the time allowed, County may determine, on basis of information available to it, the amount, if any, due to Consultant because of the termination. County shall then pay to Consultant the amount so determined.

- 14.4 Subject to provisions of Section 14.3, Consultant and County may agree upon the whole or part of the amount or amounts to be paid to Consultant because of any termination of Services under this Section. The amount or amounts may include a reasonable allowance for profit on Services done. However, such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total Agreement price as reduced by the amount of payments otherwise made and as further reduced by the Agreement price of Services terminated. The Agreement may be amended accordingly, and Consultant shall be paid the agreed amount.
- 14.5 If Consultant and County fail, under Section 14.4, to agree on the whole amount to be paid to Consultant because of termination of Services under this Section, then Consultant's entitlement to compensation for Services specified in the Agreement which are performed before the effective date of Notice of Termination, shall be the total (without duplication of any items) of –
- 14.5.1 Reasonable value of Consultant's Services performed prior to Notice of Termination, based on Consultant's entitlement to compensation under Appendix "B", "Payments to Consultant". Such amount or amounts shall not exceed the total Agreement price as reduced by the amount of payments otherwise made and as further reduced by the Agreement value of Services terminated. Deductions against such amount or amounts shall be made for deficiently performed Services, rework caused by deficiently performed Services, cost of materials to be retained by Consultant, amounts realized by sale of materials, and for other appropriate credits against cost of Services. Such amount or amounts may include profit, but not in excess of 10 percent of Consultant's total costs of performing the Services.
- 14.5.2 When, in opinion of County, the cost of any item of Services is excessively high due to costs incurred to remedy or replace defective or rejected Services (including having to re-perform Services), reasonable cost to be allowed will be the estimated reasonable cost of performing Services in compliance with the requirements of Agreement and excessive actual cost shall be disallowed.
- 14.5.3 Reasonable cost to Consultant of handling material returned to vendors, delivered to County or otherwise disposed of as directed by County.
- 14.6 Except as provided in this Agreement, in no event shall County be liable for costs incurred by Consultant (or Subconsultants) after receipt of a Notice of Termination. Such non-recoverable costs include, but are not limited to, anticipated profits on the Agreement or subcontracts, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, costs of preparing and submitting claims or proposals, attorney's fees or other costs relating to prosecution of the claim or a lawsuit, pre-judgment interest, or any other expense which is not reasonable or authorized under Section 14.5.
- 14.7 This section shall not prohibit Consultant from recovering costs necessary to discontinue further Services under the Agreement as provided for in Section 14.2 or costs authorized by County to settle claims from Subconsultants.
- 14.8 In arriving at amount due Consultant under this Section there shall be deducted:
- 14.8.1 All unliquidated advance or other payments on account theretofore made to Consultant, applicable to the terminated portion of Agreement,
- 14.8.2 Any substantiated claim which County may have against Consultant in connection with this Agreement, and
- 14.8.3 The agreed price for, or proceeds of sale of, any materials, supplies, or other things kept by Consultant or sold under the provisions of this Section, and not otherwise recovered by or credited to County.

14.9 If the termination for convenience hereunder is partial, before settlement of the terminated portion of this Agreement, Consultant may file with County a request in writing for equitable adjustment of price or prices specified in the Agreement relating to the portion of this Agreement which is not terminated. County may, but shall not be required to, agree on any such equitable adjustment. Nothing contained herein shall limit the right of County and Consultant to agree upon amount or amounts to be paid to Consultant for completing the continued portion of the Agreement when the Agreement does not contain an established price for the continued portion. Nothing contained herein shall limit County's rights and remedies at law.

15. Conflicts of Interest/Other Agreements

15.1 Consultant represents that it is familiar with Section 1090 and Section 87100 et seq. of the Government Code of the State of California, and that it does not know of any facts that constitute a violation of said sections.

15.2 Consultant represents that it has completely disclosed to County all facts bearing upon any possible interests, direct or indirect, which Consultant believes any member of County, or other officer, agent or employee of County or any department presently has, or will have, in this Agreement, or in the performance thereof, or in any portion of the profits thereunder. Willful failure to make such disclosure, if any, shall constitute ground for termination of this Agreement by County for cause. Consultant agrees to comply with all conflict of interest codes adopted by the County of Alameda and their reporting requirements.

15.3 Consultant covenants that it presently has no interest, and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of Services required under this Agreement. Without limitation, Consultant represents to and agrees with the County that Consultant has no present, and will have no future, conflict of interest between providing the County the Services hereunder and any interest Consultant may presently have, or will have in the future, with respect to any other person or entity (including but not limited to any federal or state wildlife, environmental or regulatory agency) which has any interest adverse or potentially adverse to the County, as determined in the reasonable judgment of the County. The provisions of this Section 15 shall remain fully effective indefinitely after termination of Services to the County hereunder.

16. Proprietary or Confidential Information of County; Publicity

16.1 Consultant acknowledges and agrees that, in the performance of the Services under this Agreement or in the contemplation thereof, Consultant may have access to private or confidential information which may be owned or controlled by County and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to County. Consultant agrees that all information disclosed by County to or discovered by Consultant shall be held in strict confidence and used only in performance of the Agreement. Consultant shall exercise the same standard of care to protect such information as a reasonably prudent Consultant would use to protect its own proprietary data, and shall not accept employment adverse to the County's interests where such confidential information could be used adversely to the County's interests. Consultant agrees to notify the County immediately in writing if it is requested to disclose any information made known to or discovered by Consultant during the performance of or in connection with this Agreement. This provision shall not apply to information in whatever form that is in the public domain, nor shall it restrict the Consultant from giving notices required by law or complying with an order to provide information or data when such order is issued by a court, administrative agency or other legitimate authority, or if disclosure is reasonable necessary for the Consultant to defend itself from any legal action or claim.

16.2 Any publicity or press releases with respect to the Project or Services shall be under the County's sole discretion and control. Consultant shall not discuss the Services or Project, or matters pertaining thereto, with the public press, representatives of the public media, public bodies, or representatives of public bodies, without County's prior written consent. Consultant shall have the right, however, without County's further consent, to include representations of Services among Consultant's promotional and professional material, and to communicate with persons or public bodies where necessary to perform under this Agreement.

16.3 The provisions of this Section 16 shall remain fully effective indefinitely after termination of Services to the County hereunder.

17. Notice to the Parties

17.1 Notices. All notices (including requests, demands, approvals, or other communications) under this Agreement shall be in writing.

17.1.1 Method of Delivery. Notice shall be sufficiently given for all purposes as follows:

- (a) When personally delivered to the recipient, notice is effective on delivery.
- (b) When mailed first class to the last address of the recipient known to the party giving notice, notice is effective on delivery.
- (c) When mailed by certified mail with return receipt requested, notice is effective on receipt if delivery is confirmed by a return receipt.
- (d) When delivered by overnight delivery service, including Federal Express, Airborne, and United Parcel Service, with charges prepaid or charged to the sender's account, notice is effective on delivery if delivery is confirmed by the delivery service.
- (e) When sent by fax to the last fax number of the recipient known to the party giving notice, notice is effective on receipt as long as (1) a duplicate copy of the notice is promptly given by first-class or certified mail or by overnight delivery or (2) the receiving party delivers a written confirmation of receipt. Any notice given by fax shall be considered to have been received on the next business day if it is received after 5 p.m. (recipient's time) or on a nonbusiness day.

17.1.2 Refused, Unclaimed or Undeliverable Notices. Any correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified shall be considered to be effective as of the first date that the notice was refused, unclaimed, or considered undeliverable by the postal authorities, messenger, or overnight delivery service.

17.1.3 Addresses. Addresses for the purpose of giving notice are set forth below. Either party may change its address or fax number by giving the other party notice of the change in any manner permitted by this paragraph 17.

To County:

County of Alameda
Supervising Civil Engineer, Road Design
399 Elmhurst Street, Room 201
Hayward, CA 94544

To Consultant:

HARRIS & ASSOCIATES
Vice President
7700 Edgewater Dr #215
Oakland, California, 94620

17.1.4 Change of Recipient or Address. Either party may, by written notice given at any time or from time to time, require subsequent notices to be given to another individual person, whether a party or an officer or a representative, or to a different address, or both. Notices given before actual receipt of notice of change shall not be invalidated by the change.

18. Ownership of Results/Work for Hire

- 18.1 Any interest (including, but not limited to, property interests and copyright interests) of Consultant or its Subconsultants, in drawings, plans, specifications, studies, reports, memoranda, computational sheets or other documents (including but not limited to, electronic media) prepared by Consultant or its Subconsultants in connection with Services to be performed under this Agreement shall become the property of and will be transmitted to County at the conclusion of this Agreement. Consultant may, however, retain one copy for its files. Notwithstanding the foregoing, in the normal course of the Consultant's activities, Consultant shall have an unrestricted right to reuse its standard construction drawings, details, specifications and other related documents, including the right to retain electronic data or other reproducible copies thereof, and the right to reuse portions or the information contained in them which is incidental to the overall design of the Project.
- 18.2 Any and all artworks, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, source codes or any original works of authorship created by Consultant or its Subconsultants in connection with Services performed under this Agreement shall be Works for Hire as defined under Title 17 of the United States Code, and all copyrights in such works are the property of County. In the event that it is ever determined that any works created by Consultant or its Subconsultants under this Agreement are not Works for Hire under U.S. law, Consultant hereby assigns all copyrights to such works to County. With the prior written approval of the County, Consultant may retain and use copies of such works for reference and as documentation of its experience and capabilities.

19. Audit and Inspection Records

- 19.1 Consultant shall maintain all drawings, specifications, calculations, cost estimates, quantity takeoffs, statements of construction costs and completion dates, schedules and all correspondence, internal memoranda, papers, writings, electronic media and documents of any sort prepared by or furnished to Consultant during the course of performing the Services and providing services with respect to the Project, for a period of at least five years following final completion and acceptance of the Project. All such records (except for materials subject to the attorney client privilege, if any) shall be available to County, and County's authorized agents, officers, and employees, upon request at reasonable times and places. Monthly records of Consultant's personnel costs, Consultant costs, and reimbursable expenses pertaining to both Basic Services, or Additional Services shall be kept on a generally recognized accounting basis, and shall be available to County, and County's authorized agents, officers, and employees, upon request at reasonable times and places. Consultant shall not destroy any Project records until after advising County and allowing County to accept and store the records.
- 19.2 Consultant agrees to maintain full and adequate records in accordance with County requirements to show actual costs incurred by Consultant in its performance of this Agreement, and to make available to County during business hours accurate ledgers, books of accounts, invoices, vouchers, cancelled checks, and accounting and other books, records and documents evidencing or relating to all expenditures and disbursements charged to County or relative to Consultant's activities under this Agreement. Consultant will furnish to County, its authorized agents, officers and employees such other evidence or information as County may request with regard to any such expenditure or disbursement charged by Consultant. Consultant will permit County, and County's authorized agents, officers, and employees, to audit, examine and make copies, excerpts and transcripts from such items, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement.
- 19.3 Consultant shall maintain all items described in Sections 19.1 and 19.2 above in an accessible location and condition for a period of not less than five years after final completion and acceptance of the Project or until after final audit has been resolved, whichever is later. If such items are not kept and maintained by Consultant within a radius of fifty (50) miles from County's offices at 399 Elmhurst Street, Hayward, California, Consultant shall, upon County's request and at Consultant's sole cost and expense, make such items available to County, and County's authorized agents, officers, and employees, for inspection at a location within said fifty (50) mile radius, or Consultant shall pay County its reasonable and necessary costs incurred in inspecting Consultant's books and records, including, but not limited to, travel, lodging

and subsistence costs. The State of California or any federal agency having an interest in the subject of this Agreement shall have the same rights conferred upon County by this Section.

19.4 The rights and obligations established pursuant to this Section shall be specifically enforceable and survive termination of this Agreement.

20. Subcontracting/Assignment/ County Employees

20.1 Consultant and County agree that Consultant's unique talents, knowledge and experience form a basis for this Agreement and that the services to be performed by Consultant under this Agreement are personal in character. Therefore, Consultant shall not subcontract, assign or delegate any portion of this Agreement or any duties or obligations hereunder unless approved by County in a written instrument executed and approved by the County in writing. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. Any agreement that violates this Section shall confer no rights on any party and shall be null and void.

20.2 Consultant shall use the subconsultants for the scopes of work listed in its Statement of Qualifications and Proposal (exhibits to Appendix "A"), below and shall not substitute Subconsultants unless approved by written instrument executed and approved by the County in writing.

20.3 To the extent Consultant is permitted by County in writing to subcontract, assign or delegate any portion of this Agreement or any duties or obligations hereunder, Consultant shall comply with all applicable prompt payment laws and regulations (including, without limitation, California Civil Code Section §3321.) Consultant shall remain fully liable and responsible for all acts and omissions of its Subconsultants in connection with the Services or the Project, as if it engaged in the acts and omissions directly.

20.4 Consultant shall not employ or engage, or attempt to employ or engage, any person who is or was employed by County or any department thereof at any time that this Agreement is in effect, during the term of this Agreement and for a period of two years after the termination of this Agreement or the completion of the Services, without the written consent of County.

21. Non-Discrimination, Equal Employment Opportunity, and Business Practices

21.1 Consultant shall not discriminate against any employee or applicant for employment, nor against any Subconsultant or applicant for a subcontract, because of race, color, religious creed, age, sex, actual or perceived sexual orientation, national origin, disability as defined by the ADA (as defined below), political affiliation, veteran's status, or any other non-merit factor. To the extent applicable, Consultant shall comply with all federal, state, and local laws (including, without limitation, County ordinances, rules, and regulations) regarding non-discrimination, equal employment opportunity, affirmative action, and occupational-safety-health concerns, shall comply with all applicable rules and regulations thereunder, and shall comply with same as each may be amended from time to time.

21.2 Consultant shall, in all solicitations or advertisements for applicants for employment placed as a result of this Agreement, state that it is an "Equal Opportunity Employer" or that all qualified applicants will receive consideration for employment without regard to their race, color, religious creed, age, sex, actual or perceived sexual orientation, national origin, disability as defined by the ADA (as defined below), political affiliation, veteran's status, or any other non-merit factor.

21.3 Consultant shall, if requested to do so by the County, certify that it has not, in the performance of this Agreement, discriminated against applicants or employees because of their race, color, religious creed, age, sex, actual or perceived sexual orientation, national origin, disability as defined by the ADA (as defined below), political affiliation, veteran's status, or any other non-merit factor.

21.4 If requested to do so by the County, Consultant shall provide the County with access to copies of all of its records pertaining or relating to its employment practices, except to the extent such records or portions of such records are confidential or privileged under state or federal law.

21.5 Consultant shall recruit vigorously and encourage minority – and women-owned businesses to bid its subcontracts.

- 21.6 Nothing contained in this Agreement shall be construed in any manner so as to require or permit any act, which is prohibited by law.
- 21.7 The Consultant shall include the provisions set forth in 21.2 through 21.6 (above) in each of its subcontracts.

22. Drug-Free Workplace Policy

- 22.1 Consultant acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on a County facility or work site. Consultant agrees that any violation of this prohibition by Consultant, its employees, agents, or assigns shall be deemed a material breach of this Agreement.
- 22.2 If Consultant or any employee of Consultant is convicted of a criminal drug statute violation occurring at a County facility or work site, the Consultant within five days thereafter shall notify the head of the County department/agency for which the contract services are performed.

23. Compliance with Americans with Disabilities Act

- 23.1 Consultant acknowledges that, pursuant to the Americans with Disabilities Act ("ADA"), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Consultant shall provide the Services specified in this Agreement in a manner that complies with the standard of care established under this Agreement regarding the ADA and any and all other applicable federal, state, and local disability rights legislation. Consultant agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of Consultant, its employees, agents or assigns shall constitute a material breach of this Agreement.

24. Disputes

- 24.1 Should any question arise as to the meaning and intent of this Agreement, the question shall, prior to any other action or resort to any other legal remedy, be referred to the County Engineer or his designee, and a principal of the Consultant who shall attempt, in good faith, to resolve the dispute. Such referral may be initiated by written request from either party and a meeting between the County representative and principal of the Consultant shall then take place within five days of the request.
- 24.2 Provided that County continues to compensate Consultant in accordance with this Agreement, Consultant shall continue its Services throughout the course of any and all disputes. Nothing in this Agreement shall allow Consultant to discontinue Services during the course of any dispute and Consultant's failure to continue Services during any and all disputes shall be considered a material breach of this Agreement. Consultant agrees that the existence or continued existence of a dispute does not excuse performance under any provision of this Agreement, including but not limited to, the time to complete the Services. Consultant also agrees that should Consultant discontinue Services due to a dispute or disputes, County may terminate this Agreement for cause as provided herein.
- 24.3 In the event of claims exceeding \$50,000, as a precondition to litigation, the parties shall first participate in non-binding mediation pursuant to the construction mediation procedures of the American Arbitration Association ("AAA"), in Oakland, before a mediator mutually agreeable to the parties, and in the event the parties are unable to agree, selected by a judge of the Alameda County Superior Court from an approved list of AAA qualified construction mediators. The parties may agree to engage in discovery prior to mediation, but if they do, they shall follow the procedures prescribed in the California Code of Civil Procedure, Section 2019, et. seq. and discovery so conducted shall apply in any subsequent litigation as if conducted in that litigation.

25. Agreement Made in California; Venue

- 25.1 This Agreement shall be deemed to have been executed in the City of Oakland, County of Alameda. The formation, interpretation, and performance of this Agreement shall be governed by the laws of the State of California, excluding its conflict of laws rules. Venue for all litigation relative to the formation,

interpretation and performance of this Agreement shall be in the County of Alameda. Consultant waives CCP §394.

25.2 The parties shall execute one original and six copies of this Agreement.

26. Compliance with Laws

26.1 Consultant represents that it will comply with all applicable laws in the performance of the Services, regardless of whether such laws are specifically stated in this Agreement and regardless of whether such laws are in effect on the date hereof. Consultant shall comply with all security requirements imposed by authorities with jurisdiction over the Project, and will provide all information, work histories, and/or verifications as requested by such authorities for security clearances or compliance.

26.2 Consultant further represents that all plans, drawings, specifications, designs and any other product of the Services will comply with all applicable laws, codes and regulations, consistent with the standard of care in this Agreement.

27. Construction

27.1 All section and paragraph captions are for reference only and shall not be considered in construing this Agreement. Each signatory to this Agreement for Consultant shall have joint and several responsibility and liability to perform the terms of this Agreement.

28. Miscellaneous

28.1 As between the parties to this Agreement: as to all acts or failures to act by either party to this Agreement, any applicable statute of limitations shall commence to run on the date of issuance by County of the final Certificate for Payment, or termination of this Agreement, whichever is earlier. This section shall not apply to latent defects as defined by California law or negligence claims, as to which the statute of limitations shall be as defined by law. However, the applicable statutes of repose, California Code of Civil Procedure Sections §§ 337.1 and 337.15, shall continue to apply.

28.2 Any provisions or portion thereof of this Agreement, which is prohibited by, unlawful or unenforceable under any applicable law of any jurisdiction, shall as to such jurisdiction be ineffective without affecting other provisions of this Agreement. If the provisions of such applicable law may be waived, they are hereby waived to the end that this Agreement may be deemed to be a valid and binding agreement enforceable in accordance with its terms. If any provisions or portion thereof of this Agreement are prohibited by, unlawful, or unenforceable under any applicable law and are therefore stricken or deemed waived, the remainder of such provisions and this Agreement shall be interpreted to achieve the goals or intent of the stricken or waived provisions or portions thereof to the extent such interpretation is consistent with applicable law.

28.3 Either party's waiver of any breach, or the omission or failure of either party, at any time, to enforce any right reserved to it, or to require performance of any of the terms, covenants, conditions or other provisions of this Agreement, including the timing of any such performance, shall not be a waiver of any other right to which any party is entitled, and shall not in any way affect, limit, modify or waive that party's right thereafter to enforce or compel strict compliance with every term, covenant, condition or other provision hereof, any course of dealing or custom of the trade or oral representations notwithstanding.

28.4 If a death, serious personal injury or substantial property damage occurs in connection with Consultant's performance of this Agreement, Consultant shall immediately notify the Alameda County Risk Manager's Office by telephone. Consultant shall promptly submit to County a written report, in such form as may be required by County of all accidents which occur in connection with this Agreement. This report must include the following information: (1) name and address of the injured or deceased person(s); (2) name and address of Consultant's sub-Consultant; if any; (3) name and address of Consultant's liability insurance carrier; and (4) a detailed description of the accident and whether any of County's equipment, tools, material, or staff were involved.

28.5 Consultant further agrees to take all reasonable steps to preserve all physical evidence and information which may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and to grant to the County the opportunity to review and inspect such evidence, including the scene of the accident.

29. Entire Agreement; Modifications of Agreement

29.1 The Agreement, and any written modification to the Agreement, shall represent the entire and integrated Agreement between the parties hereto regarding the subject matter of this Agreement and shall constitute the exclusive statement of the terms of the parties' Agreement. The Agreement, and any written modification to the Agreement, shall supersede any and all prior negotiations, representations or agreements, either written or oral, express or implied, that relate in any way to the subject matter of this Agreement or written modification, and the parties represent and agree that they are entering into this Agreement and any subsequent written modification in sole reliance upon the information set forth in the Agreement or written modification and the parties are not and will not rely on any other information. All prior negotiations, representations, or agreements, either written or oral, express or implied, that relate in any way to the subject matter of this Agreement, shall not be admissible or referred to hereafter in the interpretation or enforcement of this Agreement.

29.2 Consultant, in any price proposals for changes in the Services that increase the Agreement amount, or for any additional Services, shall break out and list its costs and use percentage markups. Consultant shall require its Subconsultants (if any) to do the same, and the Subconsultants' price proposals shall accompany Consultant's price proposals.

29.3 Consultant and its Subconsultants shall, upon request by County, permit inspection of all original unaltered Agreement bid estimates, subcontract Agreements, purchase orders relating to any change, and documents substantiating all costs associated with all cost proposals.

29.4 Changes in the Services made pursuant to this Section and extensions of the Agreement time necessary by reason thereof shall not in any way release Consultant's representations and agreements pursuant to this Agreement.

29.5 This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved by a fully authorized representative of both County and Consultant expressing such an intention in the case of a modification or by the party waiving in the case of a waiver.

29.6 Whenever the words "as directed", "as required", "as permitted", or words of like effect are used, it shall be understood as the direction, requirement, or permission of County. The words "approval", "acceptable", "satisfactory", or words of like import, shall mean approved by, or acceptable to, or satisfactory to County, unless otherwise indicated by the context.

30. Labor Code Requirements

30.1 The Consultant shall adhere to all appropriate provisions of the California Labor Code in particular with Division 2, Part 7, Chapter 1, Articles 1-3. Any approvals, by the County, will not relieve the Consultant from the observation and/or adherence to the provisions of the California Labor Code.

30.2 The Consultant and any subcontractor shall pay not less than the specified general prevailing rates of wages to all workers employed in the execution of the contract. General Prevailing rates of per diem wages shall be those general wage determinations made by the Director of the Department of Industrial Relations, State of California, for each craft, classification or type of worker required in the execution of the contract.

30.3 Copies of the prevailing rate of per diem wages are on file with the Contract Compliance Officer at the office of the Director of Public Works, County of Alameda, 951 Turner Court, Room 100, Hayward, CA 94545.

30.4 The Consultant shall post, on the job site, a copy of the prevailing rates of per diem wages as determined by the Director of the Department of Industrial Relations, State of California, for each craft, classification or type of worker needed to execute the contract.

- 30.5 Premium pay for Saturdays, Sundays, holidays and overtime shall be as determined by the Director of the Department of Industrial Relations, State of California for each craft, classification or type of worker required in the execution of the contract. Holidays for which the general prevailing hourly wage rate for holiday work shall be paid, shall be all holidays recognized in the collective bargaining agreement on file with the Director of the Department of Industrial Relations, State of California, applicable to the particular craft, classification, or type of worker employed on the project.
- 30.6 Health and welfare, pension, vacation/holiday, apprenticeship or other training programs and any other employer payments required in the execution of the contract shall be as determined by the Director of the Department of Industrial Relations, State of California, for each craft, classification or type of worker required in the execution of the contract.
- 30.7 Hours of work per day or week shall be as determined by the director of the Department of Industrial Relations, State of California, for each craft, classification or type of worker required in the execution of the contract. Eight hours labor constitutes a legal day's work.
- 30.8 Pursuant to Section 1773.8 of the Labor Code, travel and subsistence payments shall be made to each worker needed to execute the work, as such travel and subsistence payments are defined in the applicable collective bargaining agreements filed with the Director of the Department of Industrial Relations, State of California.
- 30.9 The Consultant, or any subcontractor, shall comply with all provisions of Section 1777.5 of the Labor Code pertaining to the employment of apprentices on public works projects. The responsibility for compliance with all the provisions of said Section 1777.5 for apprenticeable occupations is vested with the Consultant. In the event the Consultant willfully fails to comply with Section 1777.5, said Consultant shall be denied the right to bid on any public works contract for a period of up to one year for the first violation and up to three years for the second or subsequent violation with the period running from the date the determination of non-compliance is made. The interpretation and enforcement of Section 1777.5 shall be in accordance with rules and procedures prescribed by the California Apprenticeship Council.
- 30.10 The Consultant shall comply with the Labor Code Sections 1774 and 1775. In accordance with said Section 1775, the Consultant shall forfeit, as a penalty, not more than Fifty Dollars (\$50.00) for each calendar day or portion thereof, for each worker paid less than the prevailing wage rates as determined by the Director of Industrial Relations, State of California, for such work or craft in which such worker is employed for any work done under the contract by the Consultant, or by any subcontractor, in violation of the provisions of the Labor Code, and, in particular, Labor Code Sections 1770 to 1780 inclusive. In addition to said penalty, and pursuant to said Section 1775, the difference between such stipulated prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof, for which each worker was paid less than the stipulated prevailing wage rate, shall be paid to each worker by the Consultant.
- 30.11 Eight hours labor constitutes a legal day's work. The Consultant shall forfeit, as a penalty, Twenty-Five Dollars (\$25.00) for each worker employed in the execution of the contract by the Consultant or by any subcontractor for each calendar day during which such worker is required or permitted to work more than 8 hours in any one calendar day and 40 hours in any one calendar week in violation of the provisions of the Labor Code and, in particular, Sections 1810 to 1814 thereof, inclusive, except that work performed by employees of the Consultant in excess of 8 hours per day, and 40 hours during any one week, shall be permitted upon compensation for all hours worked in excess of 8 hours per day at not less than one-and-one-half (1-1/2) times the basic rate of pay, as provided in Section 1815 of the Labor Code.
- 30.12 In accordance with Section 1776 of the Labor Code:
- 30.12.1 The Consultant and each subcontractor shall keep an accurate payroll record, showing the name, address, social security number, work classification, ethnic code, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by said Consultant or subcontractor in connection with the work.
- 30.12.2 The payroll records enumerated in Section 30.12.1 shall be certified, and shall be available for inspection at all reasonable hours at the principal office of the Consultant on the following basis:

- 30.12.2.1 A certified copy of an employee's payroll record shall be made available for inspection or furnished to such employee or his or her authorized representative on request.
- 30.12.2.2 A certified copy of all payroll records enumerated in Section 30.12.1 shall be forwarded weekly to the Contract Compliance Officer via the Inspector at 951 Turner Court, Hayward, CA 94545, and shall be made available for inspection or furnished upon request to a representative of the County, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards of the Department of Industrial Relations, State of California.
- 30.12.2.3 A certified copy of all payroll records enumerated in Section 30.12.1 shall be made available upon request to the public for inspection or copies thereof made; provided, however, that a request by the public shall be made through either the County, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. The public shall not be given access to such records at the principal office of the Consultant.
- 30.12.3 The Consultant shall file a certified copy of the records enumerated in Section 30.12.1 with the entity that requested such records within ten (10) days after receipt of a written request.
- 30.12.4 Any copy of records made available for inspection as copies and furnished upon request to the public or to any public agency by the County, the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, shall be marked or obliterated in such a manner so as to prevent disclosure of an individual's name, address and social security number. The name and address of the Consultant awarded the contract or performing the contract shall not be marked or obliterated.
- 30.12.5 The Consultant shall inform the County of the location of the records enumerated under Section 30.12.1 including the street address, city and county, and shall, within five (5) working days, provide a notice of any change of location and/or address.
- 30.12.6 In the event of noncompliance with the requirements of said Section 1776 of the Labor Code, the Consultant shall have ten (10) calendar days in which to comply subsequent to receipt of written notice specifying in what respects such Consultant must comply with said Section. Should noncompliance still be evident after such ten-day period, the Consultant shall, as a penalty, forfeit Twenty-Five Dollars (\$25.00) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, such penalties shall be withheld from progress payments then due.
- 30.12.7 The responsibility for compliance with Section 1776 of the Labor Code shall be a responsibility of the Consultant.
- 30.13 A certified copy of all payroll records enumerated in the above Section 30.12 shall be sent weekly to the Contract Compliance Officer via the Inspector at 951 Turner Court, Hayward, CA 94545.
 - 30.13.1 Certified weekly payrolls shall show the wages and benefits paid to each employee, the employee's job classification, sex and ethnic code. Payrolls will be submitted by the Consultant and each subcontractor via the Consultant.
 - 30.13.2 This provision applies to all classifications, including truckers.
- 30.14 Requests for information relating to labor compliance records, including certified payroll records enumerated in Section 30.12, shall be made through the Contract Compliance Officer at 951 Turner Court, Room 100, Hayward, CA 94545.
- 30.15 Failure to file certified copies of the records enumerated in Section 30.12.1 with County representatives may result in conditioning amounts of any progress payment due.
- 30.16 The Consultant assures that he/she/it will comply with the Americans with Disabilities Act and Title VII of the Civil Rights Act of 1964 and that no person shall, on the grounds of race, creed, color, disability,

- sex, sexual orientation, national origin, age, religion, Vietnam era Veteran's status, political affiliation, or any other non-merit factor, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this contract.
- 30.16.1 The Consultant shall, in all solicitations or advertisements for applicants for employment placed as a result of this contract, state that it is an "Equal Opportunity Employer" or that all qualified applicants will receive consideration for employment without regard to their race, creed, color, disability, sex, sexual orientation, national origin, age, religion, Vietnam era Veteran's status, political affiliation, or any other non-merit factor.
- 30.16.2 Consultant shall, if requested to so do by the County, certify that it has not, in the performance of this contract, discriminated against applicants or employees because of their race, creed, color, disability, sex, sexual orientation, national origin, age, religion, Vietnam era Veteran's status, political affiliation, or any other non-merit factor.
- 30.16.3 If requested to do so by the County, Consultant shall provide the County with access to copies of all of its records pertaining or relating to its employment practices, except to the extent such records or portions of such records are confidential or privileged under state or federal law.
- 30.16.4 Consultant shall recruit vigorously and encourage minority- and women-owned businesses to bid its subcontracts.
- 30.16.5 Nothing contained in this contract shall be construed in any manner so as to require or permit any act which is prohibited by law.
- 30.16.6 The Consultant shall include the provisions set forth in Sections 30.16.1 through 30.16.5 in each of its subcontracts.
- 30.16.7 **EQUAL EMPLOYMENT OPPORTUNITY PRACTICES PROVISIONS POLICY FORM:** The Consultant must post the Equal Employment Opportunity Practices Provisions Policy in a conspicuous place at each construction site. A sample form shall be provided.
- 30.17 Non-compliance with the provisions of the Equal Employment Opportunity Practices policy is subject to the provisions outlined below.
- 30.17.1 If the Public Works Agency finds that the Consultant has violated the Equal Employment Opportunity Practices Provisions policy, the Director of Public Works (or designee) shall hold a meeting with the Consultant for the purpose of determining whether the Consultant is out of compliance. If after the meeting the Consultant is found to be still out of compliance, the Consultant will be notified of a public hearing. The public hearing will be held before the Board of Supervisors with a minimum five calendar-day notice to the Consultant. If the Board of Supervisors finds that there has been a violation, the County will notify the Consultant in writing of the sanctions to be imposed.
- 30.17.2 In addition, the County shall deem a finding by the Fair Employment Practice Commission that there was willful violation of the California Fair Employment Act also to be a violation by the Consultant of the Equal Employment Opportunity Practices Provisions requirements of the contract, and such violation shall be subject to the sanctions provided herein.
- 30.18 A finding at the public hearing that there has been violation of the Equal Employment Opportunity Practices Provisions requirements of the contract shall be cause for the Board of Supervisors to impose any or all of the following sanctions:
- 30.18.1 Withhold an additional ten percent (10%) of all further contract progress payments until the Consultant provides evidence satisfactory to the Board of Supervisors that the condition of non-compliance has been corrected.
- 30.18.2 Suspend the contract until such time as the Consultant provides evidence satisfactory to the Board of Supervisors that the condition of non-compliance has been corrected.
- 30.18.3 Terminate the contract and collect appropriate damages from the Consultant.

30.18.4 Declare that the Consultant is a non-responsible bidder, and is ineligible to make bids on future County contracts for a stated period of time or until the Consultant can demonstrate to the satisfaction of the Board of Supervisors that the violation has been corrected.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates shown below their respective authorized signatures.

“County”

County of Alameda, a political subdivision of the State of California

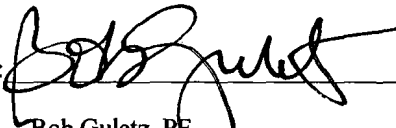
By: _____
PRESIDENT
BOARD OF SUPERVISORS

Date: _____

“Consultant”


HARRIS & ASSOCIATES

TAX ID 94-2385238

By: 
Bob Guletz, PE
VICE PRESIDENT

Date: November 17, 2008

Approved as to form:


County Counsel

By signing above, signatory warrants and represents that he/she executed this Agreement in his/her authorized capacity and that by his/her signature on this Agreement, he/she or the entity upon behalf of which he/she acted, executed this Agreement.

END OF DOCUMENT

APPENDIX A

SERVICES TO BE PROVIDED BY CONSULTANT

The work under this AGREEMENT shall consist of providing the Pavement Distress Survey and Report Preparation services necessary to assist the COUNTY in obtaining Pavement Management Program (PMP) certification from the Metropolitan Transportation Commission (MTC).

The work under this AGREEMENT will be conducted in conjunction with work that will be provided under the MTC Pavement Management Technical Assistance Program (P-TAP) for arterial and collector roadways.

The Consultant's Team consists of

Harris & Associates – Prime Consultant

Applied Materials & Engineering – Field Inspection Subconsultant

Consultant shall provide said Services, and is the prime consultant, with the other consultants serving as subconsultants. Consultant, its team, their expertise, experience and proposed staffing, is set forth in Consultant's Proposal dated July 7, 2008, incorporated into this Appendix by this reference, and attached to this Appendix as its Exhibit 1.

I. SCOPE OF WORK

A. Project Start Up:

1. Consultant will schedule a meeting with the COUNTY project manager to kick-off the project; establish communication channels and protocols; discuss the scope of work, schedule, and budget; and gather available information.
2. Consultant will prepare a detailed schedule and budget for review and approval by the COUNTY. Consultant will finalize the schedule and budget incorporating any feedback received from the COUNTY. The agreed upon schedule shall be incorporated into this Agreement upon its adoption by the parties and thereafter Contractor shall perform all services under this Agreement in conformance with the schedule.

B. Update Pavement Management System:

1. Consultant shall update the pavement management system currently used by COUNTY.
2. Consultant will enter Maintenance and Rehabilitation History, if available.
3. Consultant will establish or update the decision tree within the pavement management system based on the COUNTY's preferred treatment strategies. All existing and desired treatments and unit costs will be entered.
4. Consultant will perform pavement inspections on the number of centerline miles for arterial, collector and residential/local roadways listed in the cost proposal dated October 17, 2008, incorporated into this Appendix by this reference, and attached to this Appendix as its Exhibit 2. Centerline miles for arterial and collector roadways that will be inspected as part of the MTC P-TAP are not included in this AGREEMENT and will be deducted from the total

mileage. Pavement inspections will not be performed on roadway segments that received asphalt concrete overlay in 2007 or 2008, and on roadways that received chip/cape/slurry seals in 2007. Consultant will be required to display competency in performing inspection. At the discretion of, and under the direction of COUNTY, Consultant may be required to demonstrate its ability to perform MTC PMP Distress Survey in a manner consistent with MTC's practices and procedures.

5. Management Sections. Consultant will divide the network of roadways into Management Sections. The exact management sections to be inspected will be determined by the COUNTY and the Consultant.
6. Method of Inspection. According to MTC, the most appropriate method to determine the Pavement Condition Index (PCI) of management sections is to conduct a walking distress survey. The distress definitions and descriptions are included in the MTC-published "Pavement Condition Index Distress Identification Manual for Asphalt and Surface Treatment Pavements," 3rd Edition, October 2002 and the "Pavement Condition Index Distress Identification Manual for Jointed Portland Cement Concrete Pavements," 2nd Edition, October 2002. The densities of all distress types and severities present are recorded and used to calculate the PCI for each inspection unit inspected. Those PCI values are then used to calculate the section PCI. Consultant will be required to provide written inspection reports for each management section.

Automated surveys will not be allowed.

7. Consultant will implement a QA/QC process where someone other than the initial pavement inspectors performs a re-inspection of at least 5% of the total number of management sections. Re-inspection results should be within +/- 5 PCI points. Re-inspection results greater than +/- 10 PCI points shall be re-inspected. All re-inspection shall be at no cost to the County. If re-inspection results are not within +/- 10 PCI points, Consultant shall provide a plan, for County approval, to achieve re-inspection results within +/- 10 PCI points. The COUNTY reserves the right to perform inspections to review the consultant's work. Prior to the completion of 25% of the inspections, QA/QC on management sections inspected by the sub-consultant will be required.
8. Consultant will perform data entry of all distressed found during pavement inspection into the pavement management system. Once completed, the consultant will calculate the PCI.
9. Consultant will perform data entry of all recent maintenance and repair work since last update into pavement management system. Once completed, the consultant will calculate the PCI.
10. Consultant will estimate available revenues for pavements over the next five years. Past trends should also be determined with an extension of trends over the next five years.
11. Consultant will run at least three budget scenarios analyses and show impacts. The three include:
 - a) Unconstrained Needs distributed evenly over five years;
 - b) Estimated future revenues based on historical data (trends); and
 - c) The "Break Even" point if trends not providing the status quo.
12. Consultant will provide recommendations, if shortfalls exist, for how the COUNTY can employ better preventive maintenance strategies or increase funding by proposing a preferred future budget level.

13. Consultant will provide one-on-one MTC PMP training to COUNTY, if requested by COUNTY.
 14. Consultant will deliver a draft updated pavement management database, and Budget Options Report (BOR) containing the above information, to the COUNTY for review.
 15. Consultant will provide follow-up support to the COUNTY.
- C. *Final Report:*** Consultant will deliver an updated pavement management database, and BOR containing all required information, to the COUNTY.

II. MILESTONE SCHEDULE

The Milestone Schedule is as follows:

- A. *Project Status Reports:*** Consultant will provide project status reports on a monthly basis, commencing 30 days following the effective date of this agreement.
- B. *Draft Project Report:*** Consultant will provide draft project report to be reviewed by the COUNTY no later than 4 months from the effective date of this agreement.
- C. *Final Project Report:*** Consultant will provide final project report within 2 weeks of receiving comments from the COUNTY on the draft project report.

END OF APPENDIX A

APPENDIX B

PAYMENTS TO CONSULTANT

This is an appendix attached to, and made a part of the Agreement dated December 9, 2008, between the County of Alameda ("County") and Harris & Associates ("Consultant"), providing for professional services.

I. AMOUNT OF COMPENSATION FOR SERVICES OF CONSULTANT

- A. The amount of compensation to be paid to Consultant for all services under this Agreement shall not exceed *eighty-two thousand two hundred eighty dollars (\$82,280)* referred to hereafter as the Not To Exceed Amount ("NTE"). Total compensation due Consultant shall be the actual amount invoiced based upon the Consultant's hourly billing, which may be less than the NTE amount. Reimbursable Expenses are included in the NTE. The NTE also includes within its scope the scope of all subconsultants and their reimbursables, and shall constitute full compensation for the Services.
- B. "Reimbursable Expenses" means job related expenses directly incurred by Consultant in the performance of services provided under the Agreement. Reimbursable expenses include mail and overnight delivery services, reproduction of reports, drawings, specifications, photographs and similar. Normal travel expenses to and from the site are included in the base contract. Out-of-State travel in connection with the project shall be approved in advance by County.

II. MONTHLY BILLING BREAKDOWN

- A. Consultant shall submit a Monthly Billing Breakdown for County's approval along with each monthly invoice for Services which have been properly performed as of the last day of the immediately preceding month. The "Monthly Billing Breakdown" shall itemize separate categories for each consultant, each phase of work, along with the billing period defining the time line and cost for each category.
- B. County shall make monthly payments to Consultant in accordance with approved Monthly Billing Breakdown, as described in II.A above.

III. METHODS OF PAYMENT TO CONSULTANT

- A. Consultant shall submit monthly invoices in accordance with the approved "Monthly Billing Breakdown" specifying the percentage complete for each billing category and itemized reimbursable expenses supported by invoices and appropriate backup documentation. Each invoice shall report on Consultant's total billings.

IV. DEFINITIONS

- A. "Additional Services" mean services beyond the scope of the Services defined in this Agreement. Additional Services must be authorized in writing prior to proceeding.
- B. The Billing Rates used as a basis for payment apply to all of Consultant's and Subconsultants' principals, professional personnel and others engaged directly on the Project, and are set forth in the rate schedules incorporated into this Appendix by this reference, and attached to this Appendix as its Exhibit 1. The Billing Rates shall remain constant throughout this Agreement, and shall not be adjusted for inflation, salary adjustments, cost changes, or any other reason.

END OF APPENDIX B

APPENDIX C

INSURANCE REQUIREMENTS

This is an appendix attached to, and made a part of the Agreement dated December 9, 2008, by and between the County of Alameda, ("County") and Harris & Associates ("Consultant"), providing for professional services.

- A. Consultant is required to maintain at all times during the performance of this Agreement the following insurance coverage:
1. Workers' Compensation Employers' Liability limits not less than \$1,000,000 each occurrence, \$1,000,000 per disease, and \$1,000,000 each employee. Consultant's Workers' Compensation Insurance policy shall contain a Waiver of Subrogation. In the event Consultant is self-insured, it shall furnish Certificate of Permission to Self-Insure signed by Department of Industrial Relations Administration of Self-Insurance, State of California. Employers' Liability Coverage endorsement shall specify as entity and endorsement holder the County, its Board of Supervisors, the individual members thereof, and all County officers, agents, employees and volunteers.
 2. Occurrence-based Commercial General Liability Insurance or Business Owners Policy with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations. This liability insurance shall include but shall not be limited to protection against claims arising from bodily and personal injury (including death resulting therefrom) and damage to property resulting from Consultant's or subcontractor's or subconsultant's operations.
 3. Occurrence-based Comprehensive or Business Owners Automobile Liability Insurance with limits not less than \$1,000,000 million each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned and Non-owned and hired auto coverage, as applicable.
- B. General Liability and Automobile Liability Insurance policies shall be endorsed to provide the following:
1. Name as Additional Insured County, its Board of Supervisors, the individual members thereof, and all County officers, agents, employees and volunteers.
 2. That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought, but the addition of one or more entities shall not affect the insurer's limit of liability.
- C. All policies shall be endorsed to provide thirty (30) days advance written notice to County of cancellation, and certificates of all policies and endorsements shall be mailed to County as provided in the Agreement per paragraph 17.1.3.
- D. County may, at its sole option, terminate this Agreement on 15 days notice to Consultant (but during such 15 day period Consultant has the opportunity to cure the default), in the event of any lapse of required insurance coverage. County may, at its option, secure sufficient insurance coverage to replace any required insurance coverage which has lapsed, and Consultant hereby acknowledges its liability to reimburse County for all costs associated with such replacement insurance coverage.
- E. Insurance shall be maintained through an insurer with a minimum A.M. Best Rating of A- or better and with deductible amounts acceptable to County. Should any of the required insurance be provided under a claims-made form, Consultant shall maintain such coverage continuously

throughout the term of this Agreement, without lapse, and shall provide a discovery period for a period of three years beyond the Agreement expiration, to the effect that, should occurrences during the Agreement term give rise to claims made within four-years after expiration of the Agreement, such claims shall be covered by such claims-made policies.

- F. Certificates of insurance, in form and with insurers satisfactory to County, evidencing all coverages above shall be furnished to County before commencing any operation under this Agreement, with complete copies of policies promptly upon County request.
- G. Approval of the insurance by County shall not relieve or decrease the liability of Consultant hereunder.
- H. If Consultant is an association or partnership, the association or partnership shall be insured by any one of the following methods:
 - 1. Separate insurance policies issued with the association or partnership as named insured.
 - 2. All insurance policies required by this Agreement of one of the participants to include the association or partnership as named insured.
 - 3. The association or partnership must be a named insured on all of the policies required by this Agreement.

END OF APPENDIX C

APPENDIX D

COUNTY OF ALAMEDA DEBARMENT AND SUSPENSION CERTIFICATION For Procurements Over \$25,000

The contractor, under penalty of perjury, certifies that, except as noted below, contractor, its principals, and any named and unnamed subcontractor:

- 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 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 years.

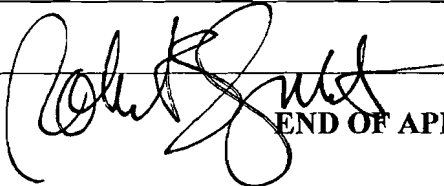
If there are any exceptions to this certification, insert the exceptions in the following space.

Exceptions will not necessary result in denial of award, but will be considered in determining contractor responsibility. For any exception noted above, indicate below to whom it applies, initiating agency, and dates of action.

Notes: Providing false information may result in criminal prosecution or administrative sanctions. The above certification is part of the Standard Services Agreement. Signing this Standard Services Agreement on the signature portion thereof shall also constitute signature of this Certification.

CONTRACTOR: Harris & Associates

PRINCIPAL: Robert S. Guletz TITLE: Vice President

SIGNATURE:  DATE: Nov 17, 2008

END OF APPENDIX D

APPENDIX E

COUNTY OF ALAMEDA CONTRACT COMPLIANCE REPORTING REQUIREMENTS

Upon receipt of signed contract documents, prime contractor shall immediately enter/assign subcontractors in the System, confirm payments received from the COUNTY within 5 business days in the System, immediately enter payments made to subcontractors and ensure that subcontractors confirm they received payments within 5 business days in the System. Subcontractors shall confirm their payments received from the prime contractor within 5 business days in the System.

Alameda COUNTY Contract Compliance System training and ongoing support are provided at no charge to contractors and participating sub-contractors awarded a contract as a result of this bid process for this project. Contractors having contracts with the COUNTY which have a start date on or after July 1, 2007 should schedule a representative from their office/company, along with each of their subcontractors, to attend training. The training schedule may be viewed online at http://www.elationsys.com/elationsys/support_1.htm or call Elation Systems at (510) 764-1870. A special access code will be provided to contractors and subcontractors participating in this contract awarded to allow use of the System free of charge.

It is the Contractor's responsibility to ensure that they and their subcontractors are registered and trained as required to utilize the Alameda County Contract Compliance System. Training sessions are approximately one hour and will be held periodically in a number of locations throughout Alameda County.

END OF APPENDIX E



1333 Broadway
Suite 300
Oakland, CA 94612

Telephone:
510/893-3347

Facsimile:
510/893-6489

Webpage:
www.ACTIA2022.com

April 7, 2008

Julia Oseland
Harris and Associates
7700 Edgewater Drive Suite 742
Oakland, CA 94621-

**RE: CERTIFICATION WITH THE ALAMEDA COUNTY
TRANSPORTATION IMPROVEMENT AUTHORITY**

*Alice Lai-Bitker, Chair
Supervisor, District 3*

*Mark Green, Vice-Chair
Mayor, City of Union City*

*Keith Carson
Supervisor, District 5*

*Henry Chang, Jr.
Vice Mayor, City of Oakland*

*Scott Haggerty
Supervisor, District 1*

*Beverly Johnson
Mayor, City of Alameda*

*Marshall Kamena
Mayor, City of Livermore*

*Janet Lockhart
Mayor, City of Dublin*

*Nate Miley
Supervisor, District 4*

*Anthony Santos
Mayor, City of San Leandro*

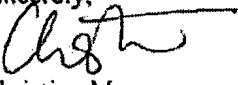
*Gail Steele
Supervisor, District 2*

Dear Ms.  Oseland:

Thank you for submitting your certification application. Upon review of the information contained in your application, the Alameda County Transportation Authority (ACTIA) has determined that your firm meets the criteria for certification as a Local Business Enterprise. Your firm has been certified with ACTIA and will be eligible to meet LBE participation goals on ACTIA's contracts.

Your certification will be valid for two years from the date of this letter. You must notify ACTIA if, within the next twenty-four month period, changes occur in the location or ownership of your business. ACTIA reserves the right to request additional information and to conduct an on-site visit for the purpose of verification during the term of your certification.

Should you have any questions or need additional information regarding this matter please contact our certification consultant, Mason Tillman Associates, Ltd., at (510) 835-9012.

Sincerely,

Christine Monsen
Executive Director

*Christine Monsen
Executive Director*

cc: Eleanor Mason Ramsey, Ph.D., President
Mason Tillman Associates, Ltd.
Affirmative Action Consultant

ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YY)
11/07/08

PRODUCER 0757776 1-800-877-4560
Hub International of California Insurance Services
400 Taylor Blvd. #300
Pleasant Hill, CA 94523

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURERS AFFORDING COVERAGE

INSURED
Harris & Associates Inc.
Attn: Susan Mandilag
120 Mason Circle
Concord, CA 94520

INSURER A: OneBeacon America Insurance Co.
INSURER B: Hartford Fire Insurance Company
INSURER C: American Guarantee & Liability
INSURER D: Alaska National Insurance Company
INSURER E: Colony National Insurance Company

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
A	GENERAL LIABILITY	718009690-0002	08/01/08	08/01/09	EACH OCCURRENCE	\$ 1,000,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY				FIRE DAMAGE (Any one fire)	\$ 1,000,000
	<input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR				MED EXP (Any one person)	\$ 10,000
	<input checked="" type="checkbox"/> "X" "C" "U"				PERSONAL & ADV INJURY	\$ 1,000,000
	<input checked="" type="checkbox"/> Sev. of Interest				GENERAL AGGREGATE	\$ 2,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC				PRODUCTS - COMP/OP AGG	\$ 2,000,000
B	AUTOMOBILE LIABILITY	57UENUL6878	08/01/08	08/01/09	COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000
	<input checked="" type="checkbox"/> ANY AUTO				BODILY INJURY (Per person)	\$
	<input type="checkbox"/> ALL OWNED AUTOS				BODILY INJURY (Per accident)	\$
	<input type="checkbox"/> SCHEDULED AUTOS				PROPERTY DAMAGE (Per accident)	\$
	GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT	\$
	<input type="checkbox"/> ANY AUTO				OTHER THAN AUTO ONLY: EA ACC	\$
C	EXCESS LIABILITY	AUC9305561-06	08/01/08	08/01/09	EACH OCCURRENCE	\$ 1,000,000
	<input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE				AGGREGATE	\$ 1,000,000
	<input type="checkbox"/> DEDUCTIBLE					\$
	RETENTION \$					\$
D	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	08HWD40007	08/01/08	08/01/09	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER	
	E.L. EACH ACCIDENT				\$ 1,000,000	
	E.L. DISEASE - EA EMPLOYEE				\$ 1,000,000	
	E.L. DISEASE - POLICY LIMIT				\$ 1,000,000	
E	OTHER Excess Liability	AR6460401	08/01/08	08/01/09	\$10,000,000 excess	\$ 1,000,000 \$ \$

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS
Evidence of PROFESSIONAL LIAB. on following Supplement page.
General & Auto Liability Additional Insured status granted, if required by written contract/agreement, per attached OneBeacon America Additional Insured endorsement and CA2048 0299.

RE: Pavement Distress Survey & Report Preparation for PMP Certification (HA #081-0319)

CERTIFICATE HOLDER 081-0319 Alameda County Maritoni U. Maravilla PWA-Road Design and Planning 399 Elmhurst Street Hayward, CA 94544-1307	ADDITIONAL INSURED; INSURER LETTER: USA	CANCELLATION Ten Day Notice for Non-Payment of Premium SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL SEND BY MAIL <u>30</u> DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL NOT BE A BASIS FOR CANCELLATION OF ANY POLICY OR THE INSURER'S OBLIGATION TO DEFEND OR SETTLE ANY CLAIMS. AUTHORIZED REPRESENTATIVE <i>Sue Allen</i>
--	--	--

ACORD 25-S (7/97) smandilag
10277746

© ACORD CORPORATION 1988



WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT -- CALIFORNIA

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

You must maintain payroll records accurately segregating the remuneration of your employees while engaged in the work described in the Schedule.

The additional premium for this endorsement shall be 2% of the California workers' compensation premium otherwise due on such remuneration.

Schedule

Person or Organization

Job Description

ALL PERSONS OR ORGANIZATIONS THAT ARE PARTIES TO A CONTRACT THAT REQUIRES YOU TO OBTAIN THIS AGREEMENT, PROVIDED YOU EXECUTED THE CONTRACT BEFORE THE LOSS.

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated. **The information below is required only when this endorsement is issued subsequent to preparation of the policy.**

Endorsement Effective **8/1/2008**

Policy No. **08HWD40007**

Insured **Harris & Associates, Inc.**

Endorsement No.

POLICY #: 718009690-0002
INSURED: Harris & Associates Inc.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY

ADDITIONAL INSURED

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART and GL CONTRACTORS
EXTENDER FORM VCG 206 02 05

- a. COMMERCIAL GENERAL LIABILITY COVERAGE FROM CG 00 01 12 04 is amended by the following wording.
- b. GL CONTRACTORS EXTENDER paragraph 1. ADDITIONAL INSURED – REQUIRED IN CONTRACT, AGREEMENT OR PERMIT is deleted and replaced by the following wording.
 1. WHO IS AN INSURED – (Section II) is amended to include as an additional insured any person or organization you are required to add as an additional insured under this policy in a written contract or written agreement in effect during this policy period and signed and executed by you prior to the loss for which coverage is sought. The person or organization does not qualify as an additional insured with respect to the independent acts or omissions of such person or organization. The person or organization is only an additional insured with respect to liability for “bodily injury”, “property damage” or “personal and advertising injury” caused by “your work” performed under the written contract or written agreement.
 2. The insurance provided to the additional insured is limited as follows:
 - a) This endorsement shall not increase the limits stated in Section III – LIMITS OF INSURANCE.
 - b) The insurance provided to the additional insured does not apply to “bodily injury”, “property damage”, or “personal and advertising injury” arising out of an architect’s, engineer’s or surveyor’s rendering of or failure to render any professional services including:
 - I. The preparing, approving or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders, or drawings and specifications; and
 - II. Supervisory or inspection activities performed as part of any related architectural or engineering activities.
 - c) This insurance does not apply to “bodily injury” or “property damage” caused by “your work” included in the “products-completed operations hazard” unless you are required to provide such coverage for the additional insured by a written contract or written agreement in effect during this policy period and signed and executed by you prior to the loss for which coverage is sought.
3. Subpart (1)(a) of the Pollution exclusion (Section I – Coverages, part 2. f. of the Commercial General Liability Coverage form) does not apply to you if the “bodily injury” or “property damage” arises out of “your work” performed on premises which are owned or rented by the additional insured at the time “your work” is performed.
4. Any coverage provided by this endorsement to an additional insured shall be excess over any other valid and collectible insurance available to the additional insured whether primary, excess, contingent or on any other basis unless a written contract or written agreement in effect during this policy period and signed and executed by you prior to the loss for which coverage is sought specifically requires that this insurance apply on a primary or non-contributory basis.
5. As a condition of coverage, each additional insured must:
 - a) Give us prompt written notice of any “occurrence” or offense which may result in a claim and prompt written notice of “suit”.
 - b) Immediately forward all legal papers to us, cooperate in the defense of any actions, and otherwise comply with policy conditions.

@VANTAGE FOR GENERAL LIABILITY – CONTRACTORS

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

Policy Number: 718009690-0002
Insurer: OneBeacon America Insurance Co.
Policy Period: August 1, 2008 to August 1, 2009
Named Insured: Harris & Associates Inc.

5. BLANKET WAIVER OF SUBROGATION

Section IV - Transfer of Rights of Recovery Against Others to Us Condition is amended to add the following:

We will waive any right of recovery we may have against any person or organization because of payments we make for injury or damage arising out of your ongoing operations done under a written contract or agreement with that person or organization and included in "your work" or the "products-completed operations hazard". This waiver applies only to persons or organizations with whom you have a written contract, executed prior to the "bodily injury" or "property damage", that requires you to waive your rights of recovery.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

DESIGNATED INSURED

This endorsement modifies insurance provided under the following:

- BUSINESS AUTO COVERAGE FORM
- GARAGE COVERAGE FORM
- MOTOR CARRIER COVERAGE FORM
- TRUCKERS COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by this endorsement.

This endorsement identifies person(s) or organization(s) who are "insureds" under the Who Is An Insured Provision of the Coverage Form. This endorsement does not alter coverage provided in the Coverage Form.

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

Endorsement Effective:	8/1/2008
Named Insured:	Harris & Associates Inc.

SCHEDULE

<p>Name of Person(s) or Organization(s):</p> <p>Any person or organization with whom you agreed, pursuant to a written contract or written agreement to provide insurance such as is afforded under this policy.</p>
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(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to the endorsement.)

Each person or organization shown in the Schedule is an "insured" for Liability Coverage, but only to the extent that person or organization qualifies as an "insured" under the Who Is An Insured Provision contained in **Section II** of the Coverage Form.

Subject to all other terms and provisions of the policy, such insurance as provided by this endorsement shall be deemed primary, but only with respect to work performed by or for the named insured in connection with the above described contract. Any other insurance maintained by the Additional Insured(s) shall be excess and non-contributory.

Excerpts from: Hartford form HA 99 16 03 02

COMMERCIAL AUTOMOBILE BROAD FORM ENDORSEMENT

BUSINESS AUTO COVERAGE FORM

Policy Number: 57UENUL6878
Insurer: Hartford Fire Insurance Co.
Policy Period: August 1, 2008 to August 1, 2009
Named Insured: Harris & Associates Inc.

15. WAIVER OF SUBROGATION

TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US - of SECTION IV - BUSINESS AUTO CONDITIONS is amended by adding the following:

We waive any right of recovery we may have against any person or organization with whom you have a written contract that requires such waiver because of payments we make for damages under this Coverage Form.

SUPPLEMENT TO CERTIFICATE OF INSURANCE

DATE
11/07/08

NAME OF INSURED: Harris & Associates Inc.
Attn: Susan Mandilag

PROFESSIONAL LIABILITY

Insurer: Continental Casualty Company

Policy #AEA113822501

Effective 8/1/2008 - 8/1/2009

Limits: \$5,000,000 per claim; \$10,000,000 Aggregate

For Professional Liability coverage, the Aggregate Limit is the total insurance available for all covered claims reported within the policy period. A \$150,000 deductible applies to each and every claim submitted under the policy.