AGREEMENT

BETWEEN

COUNTY OF SANTA CLARA
AND

TRC ENGINEERS, INC.
FOR

PROFESSIONAL ENGINEERING SERVICES
FOR THE

DESIGN & CONSTRUCTION SUPPORT
FOR THE

REPLACEMENT OF ALAMITOS CREEK BRIDGE
(BRIDGE NO. 37C0159 NEW BRIDGE NO. 37C0603)
AT

ALAMITOS ROAD
ON A TASK ORDER BASIS

FEDERAL PROJECT NO. STPLZ-5937(058)

January 2009
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Agreement for Professional Engineering Services for the Design & Construction Support for the Replacement of Alamitos Creek Bridge (Bridge No. 37C0159 New Bridge No. 37C0603) at Alamitos Road on a Task Order Basis – January 2009.
II

Agreement for Professional Engineering Services for the Design & Construction Support for the Replacement of Alamitos Creek Bridge (Bridge No. 37C0159 New Bridge No. 37C0609) at Alamitos Road on a Task Order Basis — January 2009.
AGREEMENT
BETWEEN
COUNTY OF SANTA CLARA
AND
TRC ENGINEERS, INC.
FOR
PROFESSIONAL ENGINEERING SERVICES
FOR THE
DESIGN & CONSTRUCTION SUPPORT
FOR THE
REPLACEMENT OF ALAMITOS CREEK BRIDGE
(BRIDGE NO. 37C0159 NEW BRIDGE NO. 37C0603)
AT
ALAMITOS ROAD
ON A TASK ORDER BASIS

This Agreement is made and entered into as of the date it is fully executed between County of Santa Clara (COUNTY), a political subdivision of the State of California, and TRC Engineers, Inc., a California corporation located at 10680 White Rock Road Suite 100, Rancho Cordova, CA. 95670 (CONSULTANT).

WHEREAS, the COUNTY's Roads and Airports Department (DEPARTMENT), is the administrative, planning, and engineering staff for COUNTY, and provides the lead management role for road-related project improvements; and

WHEREAS, the DEPARTMENT was authorized by the Board of Supervisors to select a professional consultant in accordance with Board-approved policies on contracting with consultants for professional services, and in accordance therewith, the COUNTY now desires to contract with CONSULTANT to provide engineering and other professional technical services for the DESIGN AND CONSTRUCTION SUPPORT FOR THE REPLACEMENT OF ALAMITOS CREEK BRIDGE (BRIDGE NO. 37C0159 NEW BRIDGE NO. 37C0603) AT ALAMITOS ROAD (PROJECT) in the County of Santa Clara.

NOW, THEREFORE, COUNTY and CONSULTANT agree as follows:

Agreement for Professional Engineering Services for the Design & Construction Support for the Replacement of Alamitos Creek Bridge (Bridge No. 37C0159 New Bridge No. 37C0603) at Alamitos Road on a Task Order Basis—January 2009.
I. DESCRIPTION OF PROJECT

A. The PROJECT, which is the subject of this Agreement, is the Design & Construction Support for the Replacement of Alamitos Creek Bridge (Bridge No. 37C0159 New Bridge No. 37C0603) at Alamitos Road in the County of Santa Clara. CONSULTANT will perform SERVICES pursuant to Task Orders (See Sample Task Order) to be negotiated by both parties and issued by the DEPARTMENT’S Project Manager.

B. In the performance of its tasks, the CONSULTANT must exercise that degree of professional skill, efficiency, and judgment ordinarily employed by other similarly skilled consultants in accordance with the standard of care generally recognized as applying to CONSULTANT’s area of specialty in the State of California. The CONSULTANT will mutually cooperate with and coordinate all of its activities with the DEPARTMENT’s Project Manager, or other COUNTY staff as directed by the DEPARTMENT’s Project Manager.

II. SCOPE OF WORK

A. GENERAL

CONSULTANT’s services are described in Attachment A – Scope of Work. CONSULTANT will provide professional engineering and technical services in the areas of, but not limited the Design and Construction Support for the replacement of Alamitos Creek Bridge (Bridge No. 37C0159 New Bridge No. 37C0603), including Environmental Studies, Hydraulic Studies, Geotechnical Studies, Preparation of the Plans, Specifications, and Construction Cost Estimates (PS&E), Project Schedules, and to Provide services during the Construction Phase, as necessary to accomplish the work tasks described in Attachment A - Scope of Work.

B. PROJECT SCHEDULE

CONSULTANT will provide the Services according to the schedule for performance described in Attachment B - Project Schedule. Time is of the essence in this Agreement.

Agreement for Professional Engineering Services for the Design & Construction Support for the Replacement of Alamitos Creek Bridge (Bridge No. 37C0159 New Bridge No. 37C0603) at Alamitos Road on a Task Order Basis – January 2009.
C. DELIVERABLES

1. The CONSULTANT shall deliver to the DEPARTMENT’s Project Manager the Deliverables in the forms and quantities indicated in Attachment A - Scope of Work in accordance with Attachment B - Project Schedule. Department’s Project Manager or Director may adjust the Project Schedule dates as an administrative modification to this Agreement.

2. Computer-generated documents to be furnished electronically to the DEPARTMENT shall be in AUTOCAD 2005 or later, Microsoft Word, Microsoft Excel, and Microsoft Project, as applicable, and as needed by the DEPARTMENT’s Project Manager.

D. MEETINGS

In addition to the PROJECT site visits and periodic progress meetings required under Attachment A, and when notified, the CONSULTANT shall attend meetings with COUNTY’s officials and staff, commissions, and user groups as required for the performance of CONSULTANT’s services pursuant to this Agreement. The DEPARTMENT’s Project Manager shall coordinate all meetings between the CONSULTANT and the COUNTY’s staff, officials and others as appropriate.

E. PROJECT PROGRESS

1. To ensure an understanding of the PROJECT objectives and to maintain the proposed schedule, CONSULTANT shall provide DEPARTMENT’s Project Manager with a project status on a monthly basis for the duration of the PROJECT.

2. CONSULTANT shall prepare, for each meeting, a meeting agenda, an updated PROJECT schedule, including any pertinent information requested by the DEPARTMENT’s Project Manager or any action required of the DEPARTMENT or others.

3. CONSULTANT shall submit to the DEPARTMENT as part of the monthly invoices, a report of the tasks performed as specified in Article V -- Compensation.

F. DESIGN STANDARDS

CONSULTANT shall exercise due professional care to prepare the deliverables

Agreement for Professional Engineering Services for the Design & Construction Support for the Replacement of Alamitos Creek Bridge (Bridge No. 37C0159 New Bridge No. 37C0603) at Alamitos Road on a Task Order Basis - January 2009.
pursuant to this Agreement. Deliverables shall be prepared in accordance with the COUNTY’S regulations, policies and procedures, and in compliance with the following:

1. The English Customary Unit System shall be used in all working papers and construction contract documents.

2. All design work shall be in accordance with the most current version of the following, if applicable:
   (a) American Association of State Highway & Transportation Officials (AASHTO) Standards, 
   (b) ADA & Pedestrian Facilities Standards, 
   (c) Caltrans Bridge Design Aids Manual, 
   (d) Caltrans Bridge Design Details Manual, 
   (e) Caltrans Bridge Memo to Designers, 
   (f) Caltrans Bridge Design Practice Manual, 
   (g) Caltrans Bridge Design Specifications Manual, 
   (h) Caltrans Flexible Pavement Structural Section Design Manual, 
   (i) Caltrans Highway Design Manual, 
   (j) Caltrans Traffic Manual, 
   (k) Caltrans Seismic Design Criteria Manual, 
   (l) Caltrans Standard Plans & Specifications, 
   (m) Caltrans Standard Signs Manual, 
   (n) Caltrans Structural Detailing Standards Manual, 
   (o) County of Santa Clara Bicycle Accommodation Guidelines 
   (p) County of Santa Clara Standard Details and Specifications Manuals, 
   (q) Highway Capacity Manual, 
   (r) Manual on Uniform Traffic Control Devices (MUTCD) & MUTCD California Supplement, 
   (s) Flexible Pavement Structural Section Design Guide for California Cities & Counties, 
   (t) National Pollutant Discharge Elimination System (NPDES) Permit 

Agreement for Professional Engineering Services for the Design & Construction Support for the Replacement of Alamitos Creek Bridge (Bridge No. 37C0159 New Bridge No. 37C0603) at Alamitos Road on a Task Order Basis – January 2009.
Requirements of the Santa Clara Valley Urban Runoff Pollution Prevention Program,

(u) National Transportation Communications for ITS Protocol (NTCIP) Standards. CONSULTANT shall use due professional care to prepare Project Study Reports based on current Caltrans' PREPARATION GUIDELINES FOR PROJECT STUDY REPORTS (APPENDIX I) and with the DEPARTMENT's latest Standard Details and Standard Specifications manuals, supplemented by Caltrans' latest State Standard Plans and Standard Specifications.

III. RESPONSIBILITIES OF THE DEPARTMENT

A. The DEPARTMENT has designated Amir Douraghy as Project Manager, who will serve as a central point of contact to perform overall project management duties, such as administering CONSULTANT’s contract, monitoring PROJECT’s progress and coordinating with other DEPARTMENT’s staff.

B. The DEPARTMENT will provide the following:

1. Existing Reports:
   a) Alamitos Road -- Alamitos Creek Slip Out Repair (Phase I) Conceptual Report Dated March 2003, Prepared by HNTB.


3. Property Acquisition and Related Services.

4. Traffic Data.

5. Construction Administration and Inspection.

6. Coordination with Santa Clara Valley Water District (SCVWD).

7. Title Sheet.


IV. CONSULTANT'S PERSONNEL

A. CONSULTANT will provide all qualified personnel required to perform the services

Agreement for Professional Engineering Services for the Design & Construction Support for the Replacement of Alamitos Creek Bridge (Bridge No. 37C0159 New Bridge No. 37C0603) at Alamitos Road on a Task Order Basis — January 2009.
under this Agreement, CONSULTANT’s key personnel are listed on Attachment C — Consultant’s Key Personnel and Sub-consultants.

B. CONSULTANT may retain sub-consultants for any appropriate portion of the PROJECT’s work. The designated sub-consultants are listed on Attachment C — Consultant’s Key Personnel and Sub-consultants.

C. CONSULTANT’s key personnel and sub-consultants as listed on Attachment C shall be assigned to perform work for the duration of the PROJECT.

D. The DEPARTMENT’s Director or his designee may approve any revisions to CONSULTANT’s key personnel or designated Sub-consultant as an administrative modification to this Agreement as documented in a task order.

V. COMPENSATION

A. COUNTY’s maximum compensation limit for services under this Agreement is the not-to-exceed amount of $600,000. This maximum compensation limit includes services authorized under Article VII — Additional Services.

B. The CONSULTANT’s Fee Schedule, Attachment HI, sets forth in detail the estimated fee for each task and/or phase of the PROJECT including the hourly rates for its staff and sub-consultant staff in accordance with work classification (i.e., Project Manager, Project Engineer I, Project Engineer II, Drafting Technician, Environmental Specialist, etc.). The COUNTY may adjust the funds allocated for each task or phase of the PROJECT as an administrative modification as documented in a task order to the Agreement so long as the maximum compensation amount is not exceeded. No change to the hourly rates is permitted during the contract duration except as provided in Attachment B. Mileage will be charged per the current IRS standard mileage rate at the time costs occur.

C. COUNTY will compensate the CONSULTANT for services performed in accordance with this Agreement in the form of progress payments based on submitted invoices which show satisfactory performance acceptable to the DEPARTMENT’s Project Manager. Such invoices shall be submitted within 30 calendar days of the work performed days but no more often than every four weeks.
Invoices shall contain the following information:

1. Consultant contract number (if one is assigned by DEPARTMENT after award of the contract);
2. Serial identification of invoices by number (e.g. "Invoice No. 1", "Invoice No. 2");
3. The beginning and ending dates of the billing period;
4. A description of the work performed and percentage of work completed for tasks during the billing period;
5. Names and classifications of staff, including hourly rate and hours, providing services for each task;
6. Allowable reimbursable expenses as specified in Article V.D.1 here in below;
7. Backup receipts, invoices for reimbursable expenses, regardless of the amount;
8. A Summary of Costs by Tasks (sample to be provided by the DEPARTMENT's Project Manager upon award of the contract) to be submitted with each invoice containing the following information for each task:
   (a) Task and Phase number & description,
   (b) Allocated task budget,
   (c) Percentage completed of task,
   (d) Amount previously earned,
   (e) Amount earned & retained for this period,
   (f) Total amount earned & retained to-date,
   (g) Net amount due for the billing period,
   (h) Available task budget, and
   (i) A footnote section listing any modifications to and/or additions of task budgets with approval date and description of task budgets modified and/or added.

D. Reimbursable and Non-reimbursable Expenses

1. The following expenditures are reimbursed by COUNTY subject to the provisions in Article V -- Compensation. No markup by CONSULTANT shall be allowed for Reimbursable Expenses. If there is any conflict between this provision and any other provision, attachment or exhibit of this Agreement, this provision shall prevail.

Agreement for Professional Engineering Services for the Design & Construction Support for the Replacement of Alamitos Creek Bridge (Bridge No. 37C0159 New Bridge No. 37C0603) at Alamitos Road on a Task Order Basis -- January 2009.
(a) Transportation expenses between: the DEPARTMENT’s offices and PROJECT job site; the CONSULTANT’s office and the DEPARTMENT’s offices and meeting locations other than DEPARTMENT’s offices when CONSULTANT’s attendance is required. Reimbursement is made on the basis of the COUNTY’s most current mileage reimbursement rate to be provided by the DEPARTMENT’s Project Manager. This method of reimbursement applies to CONSULTANT-owned vehicle or its employee-owned vehicle, as well as CONSULTANT-rented vehicle. Rental vehicle expenditures are not reimbursed by COUNTY.

(b) Out-of-area travel expenses for transportation, lodging, meals, and long distance business related telecommunication, incurred by CONSULTANT in connection with the PROJECT. Reimbursement is made by COUNTY provided that the expenses are reasonable and do not exceed the reimbursement limits allowed for County employees in accordance with COUNTY’s Travel Policy Desk Reference Manual. Prior approval by the DEPARTMENT’s Project Manager is required for out-of-area travel. Out-of-area travel consists of traveling beyond the counties of Santa Clara, San Benito, Santa Cruz, San Mateo, San Francisco, Alameda, and Contra Costa.

(c) Meal expenses for out-of-area travel or in connection with meetings attended by CONSULTANT beyond the normal regular 8AM-5PM working hours and at the request of the DEPARTMENT’s Project Manager. Actual expenditures may not exceed the maximum allowable rates identified in the COUNTY’s Travel Policy Desk Reference Manual. The set rates include tax and tip. The cost of alcoholic beverages is not reimbursable.

(d) Charges for document printing and shipping performed by third-party vendors.

(e) Fees paid to Sub-consultant’s services and reimbursable expenditures as defined herein above.

(f) Fees paid on behalf of the COUNTY in connection with encroachment permit applications, environmental study, utility as-built drawings, and as requested by the DEPARTMENT.
(g) Other fees as specified on Attachment D3 – Fee Schedule.

2. The following expenditures are not reimbursed separately by COUNTY and shall be considered as overhead expenses included in the Billable Hourly Rate as stated in Attachment E – Consultant’s Hourly Rate Schedule:

   (a) Charges relating to computer usage, including computer rental and software acquisition or upgrade, required for executing the PROJECT tasks.

   (b) Telephone, cellular, and fax (local and long distance) charges, except as specified in Article V.D.1. (b).

   (c) Labor charges for invoice preparation.

   (d) Office related expenses, including in-house printing expenses.

3. COST PRINCIPLES

   (a) CONSULTANT agrees to exercise due professional care to comply with all federal procedures in accordance with CFR Title 49 - Transportation, Part 18 - Uniform Administrative Requirements for Grants and Cooperative Agreements to the State and Local Governments.

   (b) CONSULTANT agrees that the CFR Title 48 – Federal Acquisition Regulations System, Part 31 – Contract Cost Principles and Procedures, shall be used to determine which individual items of cost are allowable under this Agreement. CONSULTANT shall not be paid for unallowable costs identified in CFR Title 48 – Federal Acquisition Regulations System, Part 31 – Contract Cost Principles and Procedures, Section 31.205-33 (c).

   (c) Any expenditure made to the CONSULTANT, which is determined by subsequent audit to be not allowable under CFR Title 48, Part 31, must be repaid by the CONSULTANT to the COUNTY, the State and Federal Governments.

   (d) Any subcontracts, entered into as a result of this Agreement, shall contain all of the provisions of this Article.

B. For each invoice, the COUNTY shall retain 10% of the amount earned. Such retention shall apply to all progress payments, regardless of the percentage completion. Upon CONSULTANT’s completion of each task and application for retention release of said

Agreement for Professional Engineering Services for the Design & Construction Support for the Replacement of Alamitos Creek Bridge (Bridge No. 37C0159 New Bridge No. 37C0603) at Alarnites Road on a Task Order Basis—January 2009.
task, and the County Project Manager's acceptance of said task, COUNTY shall release retention withheld for said task. COUNTY will release retention for a task if and when the COUNTY determines that CONSULTANT is unable to complete such task due to circumstances that are beyond CONSULTANT's control. The COUNTY shall pay the undisputed portion of invoices, less retention, within 30 days of receipt of the invoice. If the COUNTY disputes all or a portion of the invoice, the COUNTY will pay the undisputed portion and notify the CONSULTANT of the disputed item within 7 days of receipt of the invoice. Both parties shall work diligently to resolve the disputed issue.

VI. PERFORMANCE PERIOD

A. The term of this Agreement commences upon execution of this Agreement by the COUNTY. The CONSULTANT shall commence work only after written notification to proceed by the DEPARTMENT's Project Manager. The Agreement shall terminate on December 31, 2012 unless extended by mutual agreement or terminated earlier in accordance with Article XI – Termination of Agreement in this Agreement.

B. Neither party shall be considered in default in the performance of its obligations to the extent the performance of such obligation, is prevented or delayed by any cause, existing or future, which is beyond the reasonable control of the affected party, or by a strike, lockout or other labor difficulty, the settlement, of which shall be within the sole discretion of the party involved. Each party shall give notice promptly to the other of the nature and extent of any force majeure claimed to delay, hinder or prevent performance of the services required by the terms of this Agreement.

VII. ADDITIONAL SERVICES

CONSULTANT shall perform Additional Services related to the PROJECT as the COUNTY directs in writing, up to an amount not to exceed $13,084. The CONSULTANT shall not commence Additional Services beyond the Scope of Work defined in Article II – Scope of Work, except by prior, separate written authorization from the DEPARTMENT's Project Manager, including a description of the services to

Agreement for Professional Engineering Services for the Design & Construction Support for the Replacement of Alamitos Creek Bridge (Bridge No. 37C0159 New Bridge No. 37C0603) at Alamitos Road on a Task Order Basis – January 2009.
be performed, schedule of performance, method and amount of payment.

VIII. INSURANCE AND INDEMNIFICATION REQUIREMENTS

Indemnification and insurance requirements are set forth in Attachment F—Insurance and Indemnification Requirements.

IX. TERMINATION OF AGREEMENT

A. The COUNTY reserves the right to terminate this Agreement, in whole or in part, for the convenience of the COUNTY by giving written notice specifying the effective date and scope of such termination.

B. In the event of COUNTY's termination of this Agreement for convenience or default, reproducible copies and electronic files of all finished or unfinished documents, data, studies, maps, photographs, and reports prepared by the CONSULTANT under this Agreement as instruments of professional services shall become the property of the COUNTY, including the non-exclusive ownership of the copyright. The CONSULTANT shall be entitled to receive compensation for services performed prior to the notice of termination that the County determines were performed in accordance with the provisions of this Agreement and to the satisfaction of the COUNTY, as well as reasonable termination costs.

C. The CONSULTANT may retain a record copy of all documentation in the event of termination.

D. The COUNTY may terminate this Agreement should CONSULTANT materially fail to perform in the manner required, provided that the DEPARTMENT shall have given prior notice to CONSULTANT of such material failure to perform and ten (10) days for CONSULTANT to cure the reported failure.

B. Should the COUNTY terminate this Agreement for CONSULTANT's material failure to perform and it is subsequently proven to be in error, the termination shall be considered to have been for the COUNTY's convenience pursuant to Paragraph A of this Article IX—Termination of Agreement.

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X. **EQUAL EMPLOYMENT OPPORTUNITY**

A. The CONSULTANT shall comply with all applicable Federal, State, and local laws and regulations including Santa Clara County’s policies concerning nondiscrimination and equal opportunity in contracting. Such laws include but are not limited to the following: Title VII of the Civil Rights Act of 1964 as amended; Americans with Disabilities Act of 1990; The Rehabilitation Act of 1973 (Sections 503 and 504); California Fair Employment and Housing Act (Government Code sections 12900 et seq.); and California Labor Code sections 1101 and 1102.

B. The CONSULTANT shall not discriminate against any sub-consultants/sub-contractors, employee, or applicant for employment because of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status in the recruitment, selection for training including apprenticeship, hiring, employment, utilization, promotion, layoff, rates of pay or other forms of compensation. Nor shall the CONSULTANT discriminate in provision of services provided under this contract because of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status.

XI. **INTEREST OF PUBLIC OFFICIALS**

No member, officer or employee of the COUNTY during his/her tenure or for one year thereafter shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.

XII. **CONFLICT OF INTEREST**

A. The CONSULTANT shall disclose any financial, business, or other relationship with the DEPARTMENT that may have an impact upon the outcome of this Agreement, or any ensuing DEPARTMENT’s construction project. The CONSULTANT shall also list
current clients who may have a financial interest in the outcome of this Agreement or any ensuing DEPARTMENT’s construction project.

B. The CONSULTANT hereby agrees that it does not now have, nor shall it acquire any financial or business interest that would conflict in any manner or degree with the performance of services under this Agreement.

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

D. Except for sub-consultants whose services are limited to providing surveying or materials testing information, no sub-consultant who has provided design services in connection with this Agreement shall be eligible to bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this Agreement.

E. Any subcontract in excess of $25,000, entered into as a result of this Agreement, shall contain all of the provisions of this Section.

XIII. ASSIGNABILITY AND SUBCONTRACTING

A. Except as otherwise provided by this Agreement, CONSULTANT shall not assign or subcontract any interest in this Agreement nor performance required hereunder, and shall not transfer any interest in the same (whether by assignment or novation), without prior written consent of the DEPARTMENT’s Project Manager.

B. Nothing contained in this Agreement or otherwise shall create any contractual relationship between the COUNTY and any sub-consultants/sub-contractors, and no subcontract shall relieve the CONSULTANT of its responsibilities and obligation hereunder. The CONSULTANT agrees to be as fully responsible to the COUNTY for the acts and omissions of its sub-consultants/sub-contractors and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of
persons directly employed by the CONSULTANT. The CONSULTANT’s obligation to pay its sub-consultants/sub-contractors is an independent obligation from the COUNTY’s obligation to make payments to the CONSULTANT.

C. CONSULTANT shall pay its sub-consultants/sub-contractors within ten (10) calendar days from receipt of each payment made to the CONSULTANT by the COUNTY.

D. Any subcontract in excess of $25,000, entered as a result of this Agreement, shall contain all of the provisions of this Section.

XIV. IDENTIFICATION OF DOCUMENTS

The format and manner of identification of the CONSULTANT on all reports, maps, and other documents completed as a part of this Agreement other than documents prepared exclusively for internal use by the DEPARTMENT shall be approved by the DEPARTMENT’s Project Manager.

XV. OWNERSHIP OF DOCUMENTS

A. All documents, reports, electronic files, and materials prepared by the CONSULTANT specifically in the performance of this Agreement as instruments of professional services shall become the property of the COUNTY upon payment in accordance with this Agreement, including instruments of service provided after termination of the Agreement.

B. The DEPARTMENT shall indemnify, defend and hold harmless the CONSULTANT, its employees and sub-consultants from and against any and all claims, suits, actions, judgments, demands, losses, costs, expenses, damages and liability caused by, resulting from, or arising out of the DEPARTMENT’s reuse of CONSULTANT’s copyrighted documents where such reuse was without express written consent of the CONSULTANT.

C. Regarding CONSULTANT and its sub-consultants copyrighted reports or other products, CONSULTANT and its sub-consultants agree that the COUNTY shall have the royalty-free nonexclusive and irrevocable right to reproduce, publish, or otherwise
use, and to authorize others to use all copyrighted material produced under this Agreement, subject to the provisions of clause B. of this Article.

D. Any subcontract in excess of $25,000, entered as a result of this Agreement, shall contain all of the provisions of this Section.

XVI. COMMUNICATION WITH THE MEDIA AND CONFIDENTIALITY OF DATA

A. Any media inquiry relating to any matter regarding the PROJECT must be referred immediately to the DEPARTMENT's Project Manager. CONSULTANT shall not make any statement to the media relating to the PROJECT without prior approval from the DEPARTMENT's Project Manager.

B. CONSULTANT shall not issue any news release or public relations item of any nature, whatsoever, regarding work performed or to be performed under this Agreement without the COUNTY's prior review and permission.

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

D. Permission to disclose information on one occasion, or public hearing held by the DEPARTMENT relating to the Agreement, shall not authorize the CONSULTANT to further disclose such information or disseminate the same on any other occasion.

B. All information related to the construction estimate is confidential and shall not be disclosed by the CONSULTANT to any entity other than the DEPARTMENT's Project Manager.

F. Any subcontract entered into as a result of the Agreement shall contain all of the provisions of this Section.
XVII. RETENTION OF RECORDS AND AUDIT

A. CONSULTANT and its sub-consultants shall maintain all records pertaining to the PROJECT. The records must be made available at their respective offices at all reasonable times during the contract period and for a minimum period of three (3) years after the final payment to CONSULTANT by the DEPARTMENT. CONSULTANT and its sub-consultants agree to make all records available for inspection and audit by the duly authorized representatives of the COUNTY, State of California, federal government including FHWA, and furnish copies of the records if requested.

B. Any subcontract in excess of $25,000, entered as a result of this Agreement, shall contain all of the provisions of this Section.

XVIII. LIMITS OF THE AGREEMENT

A. This Agreement constitutes the sole understanding of the parties hereto and supersedes all prior negotiations, statements, instruction, representations or Agreements, whether written or oral.

B. This Agreement shall be amended only by written instrument signed by both the COUNTY and the CONSULTANT.

XIX. COMPLIANCE WITH ALL LAWS

CONSULTANT must exercise due professional care to comply with all Federal, State, and Local laws applicable to the PROJECT.

XX. APPLICABLE LAW AND VENUE

This Agreement is governed by and construed in accordance with the laws of the State of California. The parties agree that the venue is proper only in the County of Santa Clara unless otherwise agreed to by the COUNTY.
XXI. INDEPENDENT CONTRACTOR

A. CONSULTANT agrees to perform all work and services described herein as an independent contractor and not as an officer, agent, or employee of the COUNTY. CONSULTANT shall be solely responsible for the acts and omissions of its officers, agents, employees, Consultants and sub-consultants, if any.

B. Nothing herein shall be considered as creating a partnership or joint venture between COUNTY and CONSULTANT. No person performing any of the work or services described hereunder shall be considered an officer, agent, or employee of COUNTY, nor shall any such person be entitled to any benefits available or granted to employees of COUNTY.

XXII. NON-WAIVER

A. In the event any provisions of this Agreement are held to be invalid and unenforceable, the remaining provisions remain valid and binding on the parties. One or more waivers by either party of any provision, term, condition or covenant shall not be construed by the other party as a waiver of a subsequent breach.

B. A failure by the COUNTY to require full compliance with any requirement or condition of this Agreement shall not be deemed to be a waiver of that requirement or condition or of any subsequent breach of the same or any other requirement or condition. Acceptance by the COUNTY of performance or fulfillment of a requirement or a condition by the CONSULTANT including payment to the CONSULTANT by the COUNTY, shall not be deemed to be a waiver of any preceding breach by the CONSULTANT, regardless of the COUNTY’s knowledge or such preceding breach at the time of acceptance.

XXIII. TIMELY APPROVALS

Whenever the approval of the COUNTY or the CONSULTANT is required pursuant to this Agreement, such approval will not be unreasonably withheld or delayed.
XXIV. SEVERABILITY

Should any part of this Agreement be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect the validity of the remainder of this Agreement which shall continue in full force and effect; provided that the remainder of the Agreement can, absent the excised portion, be reasonably interpreted to give effect to the intentions of the parties.

XXV. CONTRACTING PRINCIPLES

A. This Agreement is a Type I Service contract, subject to the Resolution on Contracting Principles adopted by the Board of Supervisors on October 28, 1997. Accordingly, the CONSULTANT shall comply with all of the following:

1. The CONSULTANT shall during the term of this contract, exercise due professional care to comply with all applicable Federal, State, and local rules, regulations and laws.

2. The CONSULTANT shall maintain financial records adequate to show the COUNTY funds paid under the contract were used for purposes consistent with the terms of the contracts. These records shall be maintained during the term of this contract and for a period of three (3) years from termination of this contract or until all claims if any, have been resolved, whichever period is longer, or longer if otherwise required under other provisions of this contract.

B. The failure of the CONSULTANT to comply with this Section or any portion thereof may be considered a material breach of this contract and may, at the option of the COUNTY, constitute grounds for the termination and/or non-renewal of the contract. The CONSULTANT shall be provided with reasonable notice of any intended termination or non-renewal on the ground of non-compliance with this Section, and the opportunity to respond and discuss the COUNTY’s intended action.

C. See Attachment G – Certification of Compliance with County Contracting Principles and Attachment H – Declaration of Contractor.
XXVI. DISPUTE RESOLUTION PROCEDURES

A. Mediation
   1. Voluntary Mediation
      
      (a) In the event a dispute or issue is not resolved by negotiation, DEPARTMENT and CONSULTANT agree to attempt to resolve the matter by Mediation. Negotiations to resolve disputes before and during Mediation are initiated for settlement purposes only and are not binding unless otherwise agreed by DEPARTMENT and CONSULTANT.

      (b) Mediation is voluntary, non-binding, and intended to provide an opportunity for the parties to evaluate each other's cases and arrive at a mutually agreeable solution.

      (c) These provisions relating to voluntary Mediation shall not be construed or interpreted as mandatory arbitration.

B. Neither the pendency of a dispute, nor its consideration by the DEPARTMENT will excuse the CONSULTANT from full and timely performance in accordance with the terms of this Agreement.

XXIX. AUDIT REVIEW PROCEDURES

A. Any dispute concerning a question of fact arising under an interim or post audit of this Agreement shall be reviewed by the DEPARTMENT's Director who will furnish the decisions to CONSULTANT in writing within 30 days after receiving a written request from CONSULTANT.

B. Not later than 30 days after issuance of the final audit report, the CONSULTANT may request a review by the DEPARTMENT’s Director of unresolved audit items. The DEPARTMENT’s Director will furnish the decisions to CONSULTANT in writing within 30 days after receiving a written request from CONSULTANT.

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

XXX. NATIONAL LABOR RELATIONS BOARD CERTIFICATION

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

XXXI. PREVAILING WAGE RATES

A. This is an Agreement for Public Work subject to California Labor Code §1771, et seq., and the applicable implementing regulations. The California Labor Code requires the payment of not less than the general prevailing wage rate of per diem wages and rates for holiday and overtime and adherence to all labor standards and regulations. The General Prevailing Wage Rates may be adjusted by the State throughout the term of this Agreement. Notwithstanding any other provisions of the Agreement, CONSULTANT shall not be entitled to any adjustment in compensation rates in the event there are adjustments to the General Prevailing Wage Rates.

B. Labor Code §1720 includes “Inspection and Land Surveying” work in its definition of “Public Works” for which prevailing wages must be paid pursuant to Labor Code §1771. If CONSULTANT’s Scope of Work includes such work, CONSULTANT must comply with California’s General prevailing wage requirements in accordance with California Labor Code, Section 1770, et seq., and all other Federal, State, and Local laws, regulations and ordinances.

1. CONSULTANT shall comply with California Labor Code §1775, whereby CONSULTANT shall be assessed a penalty for each calendar day or portion thereof, for each worker paid less than the stipulated prevailing rates for such work or craft in which such worker is employed for any work done pursuant to the Agreement for Professional Engineering Services for the Design & Construction Support for the Replacement of Alamitos Creek Bridge (Bridge No. 37C0159 New Bridge No. 37C0603) at Alamitos Road on a Task Order Basis—January 2009.
Agreement by CONSULTANT or any Sub-consultant in violation of the California Labor Code and in particular §1770 through §1780. In addition to said penalty and pursuant to §1775, CONSULTANT shall pay each worker the difference between such stipulated prevailing wages and the amount paid to each worker for each calendar day or portion thereof for which worker was paid less than the stipulated prevailing wage rate.

2. CONSULTANT and each Sub-consultant must, pursuant to California Labor Code §1776, submit a certified weekly payroll within ten (10) days after the DEPARTMENT’s request for submission of certified weekly payroll records. The certified payroll must include the date of actual payment of wages for each worker employed on the Project and a breakdown of each payment including all fringe benefits included in such wage for each worker. The responsibility for compliance with California Labor Code §1776 is the responsibility of the prime CONSULTANT.

3. CONSULTANT must submit two (2) copies of said payroll to the DEPARTMENT’s Project Manager on the California Department of Industrial Relations standard Form A-1-131 “Public Works Payroll Reporting Form.” Other forms may be used provided they exactly duplicate the format, dimensions and wording of Form A-1-131.

4. Pursuant to the provisions of California Labor Code §1770 and following the California Department of Industrial Relations has ascertained the general prevailing rate of wages (which rate includes employer payments for health and welfare, vacation, pension, and similar purposes) applicable to the Work, for straight time, overtime, Saturday, Sunday and Holiday work. The Holiday wage rate listed shall be applicable to all holidays recognized in the collective bargaining agreement of each craft, classification, or type of workers concerned. Said prevailing wage rates are on file in the Office of the Clerk of the Board of Supervisors, incorporated herein by reference, and copies of which are available to any interested party on request. The rates are also available on the State of California Department of Industrial Relations website at http://www.dir.ca.gov/.

Agreement for Professional Engineering Services for the Design & Construction Support for the Replacement of Alamitos Creek Bridge (Bridge No. 37C0159 New Bridge No. 37C0603) at Alamitos Road on a Task Order Basis—January 2009.
5. If CONSULTANT uses a craft or classification not shown on the prevailing wage determinations, Consultant may be required to pay the wage rate of that craft or classification most closely related to it, shown in the general determinations in effect when the Bids were received. Pursuant to California Labor Code §1773.2, CONSULTANT shall prominently post a copy of such prevailing wages at each job site.

6. Pursuant to Public Contract Code §6109, CONSULTANT shall not perform Work on this public works project with any Sub-consultant who is ineligible to perform Work on a public works project pursuant to §1771.1 or §1777.7 of the Labor Code. Any contract on a public works projects entered into between the Consultant and a debarred Sub-consultant is void as a matter of law. A debarred Sub-consultant may not receive any public money for performing Work as a Sub-consultant on a public works contract, and any public money that may have been paid to a debarred Sub-consultant by the CONSULTANT on this Project shall be returned to the COUNTY. The CONSULTANT shall be responsible for the payment of wages to workers of a debarred Sub-consultant who has been allowed to work on the Project.

7. Pursuant to Labor Code §1771.5.b.6, the COUNTY will withhold contract payments equal to the amount of underpayment and applicable penalties when, after investigation, it is established that underpayment of prevailing wages has occurred.

C. Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this Section.
XXXII. NOTICES

All notices or other communications to either party by the other shall be deemed given when made in writing and delivered or mailed to:

DEPARTMENT:
Mr. Michael J. Murdier, Director
County of Santa Clara
Roads and Airports Department
101 Skyport Dr.
San Jose, CA 95110
ATTN.: Amir Douraghy
Project Manager

CONSULTANT:
Mark Imbriani, Vice President
TRC Engineers, Inc.
10680 White Rock Road, Suite 100
Rancho Cordova, CA 95670

Agreement for Professional Engineering Services for the Design & Construction Support for the Replacement of Alamitos Creek Bridge (Bridge No. 37C0159 New Bridge No. 37C0603) at Alamitos Road on a Task Order Basis – January 2009.
XXXIII. ATTACHMENTS

The following listed Attachments referred to herein are incorporated in the Agreement.
CONSULTANT's signature is required where indicated.

Attachment A - Scope of Work
Attachment B - Project Schedule
Attachment C - Consultant's Key Personnel and Sub-Consultants
Attachment D - Sample Task Order
Attachment D1 - Task Order Scope of Work
Attachment D2 - Task Order Project Schedule
Attachment D3 - Task Order Fee Schedule
Attachment E - Consultants Hourly Rate Schedule
Attachment E1 - Fee Schedule
Attachment F - Insurance and Indemnification Requirements
Attachment G - Certification of Compliance with County Contracting Principles
Attachment H - Declaration of Contractor
Attachment I - Questionnaire for Determining Independent Contractor Withholding Status
Attachment J - Certification of Consultant
Attachment K1 - Consultant's DBE Information
Attachment K2 - Monthly report of Disadvantaged Business Enterprises (DBE) Utilization
Attachment K3 - Final Report of DBE & First Sub-consultants Utilization
Attachment L - Disclosure of Lobbying Activities
IN WITNESS WHEREOF, the COUNTY and CONSULTANT have caused their names to be subscribed hereto by their duly authorized representatives on

COUNTY OF SANTA CLARA

By: 

Liz Kilar, Chair
Board of Supervisors

Attest:
By: 

Maria Martinez, Clerk of the Board of Supervisors

Approve as to form and Legality:
By: 

Kristin Baker, Deputy County Counsel

CONSULTANT

By: 

Mark Immel, Vice President
TRC Engineers, Inc.

Agreement for Professional Engineering Services for the Design & Construction Support for the Replacement of Alumitos Creek Bridge (Bridge No. 57C0159 New Bridge No. 57C1663) at Alumitos Road on a Task Order Basis — January 2009.
IN WITNESS WHEREOF, the COUNTY and CONSULTANT have caused their names to be subscribed hereto by their duly authorized representatives on JAN 27 2009.

COUNTY OF SANTA CLARA

By: Liz Kniss, President
   Board of Supervisors

CONSULTANT

By: Mark Imbriani, Vice President
   TRC Engineers, Inc.

Signed and certified that a copy of this document has been delivered by electronic or other means to the President, Board of Supervisors.
Attest:

Maria Melmes, Clerk of the Board of Supervisors

Approved as to form and Legality:

By: Kristin Baker, Deputy County Counsel

Agreement for Professional Engineering Services for the Design & Construction Support for the Replacement of Alamitos Creek Bridge (Bridge No. 37C0159 New Bridge No. 37C0603) at Alamitos Road on a Task Order Basis—January 2009.