RESOLUTION - ACTION REQUESTED 2017-216

MEETING: April 18, 2017

TO: The Board of Supervisors

FROM: Mike Healy, Interim Public Works Director

RE: Approve an Agreement with Willdan Eng. for Bridge Preventive Maintenance Phase I

RECOMMENDATION AND JUSTIFICATION:
Approve an Agreement with Willdan Engineering to provide Engineering Consulting Services on the Bridge Preventive Maintenance Program (BPMP) - Phase I, Project No. BPMP-5940(123) in the not-to-exceed amount of $204,000; and authorize the Board of Supervisors Chair to sign the Agreement.

Willdan Engineering will provide Project Management, Environmental Review, Engineering Design, Bid Assistance, and Construction Support for the project.

Staff prepared the necessary Federal documents to Request Fund Authorization (RFA) for fourteen (14) bridges under Phase I, with minimal environmental review, for which the E-76 (attached) was approved to commence the project.

This project is Federally funded - 88.53%, with a match money of 11.47% from the County of Mariposa.

The Federal Highway Administration (FHWA) administers the BPMP under the Federal Highway Bridge Program as part of the current Federal Transportation Bill, MAP-21. Caltrans Local Assistance manages the program in the State of California.

BACKGROUND AND HISTORY OF BOARD ACTIONS:
The Board recently approved the Program Supplement Agreement form Caltrans for funds, per Resolution 2017-101.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:
The Board could chose not to approve the award, resulting in the County's Bridge Maintenance Program being aborted and the funds disencumbered and/or de-obligated.

FINANCIAL IMPACT:
Sufficient funds are available to fund the 11.47% Local Share to accomplish this Project.
ATTACHMENTS:
Willdan Br Mt Ph. 1 17-020 (PDF)
Willdan E-76 & BAF for 17-020 (PDF)
Bridge Preventive Maintenance Program (PDF)

CAO RECOMMENDATION
Requested Action Recommended

Dallin Kimble
Dallin Kimble, Interim CAO 4/6/2017

RESULT: ADOPTED BY CONSENT VOTE [UNANIMOUS]
MOVER: Merlin Jones, District II Supervisor
SECONDER: Rosemarie Smallcombe, District I Supervisor
AYES: Smallcombe, Jones, Long, Cann, Menetrey
## BUDGET ACTION FORM

<table>
<thead>
<tr>
<th>FUND</th>
<th>DEPT/DIV</th>
<th>ACCOUNT</th>
<th>DESCRIPTION</th>
<th>PROJECT</th>
<th>INCREASE</th>
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<tr>
<td>512</td>
<td>1312-306</td>
<td>6748</td>
<td>Bridge Replace/Repair</td>
<td>(204,000)</td>
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<td></td>
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<tr>
<td>512</td>
<td>1312-782</td>
<td>418</td>
<td>Professional Services</td>
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### TRANSFER BETWEEN FUNDS

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### TOTALS

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### ACTION REQUESTED:

- ( ) Budget appropriation by Board of Supervisors (4/5ths Vote Required): Amending the total amount available in the county budget, or in any one fund of the budget, or appropriating Reserve for Contingencies

- (X) Transfer by Board of Supervisors (3/5ths Vote Required): Moving existing appropriations from one budget to another, or between categories within a budget unit.

### JUSTIFICATION:

Recognize anticipated revenue from bridge program.

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**DEPT HEAD SIGNATURE**

**DATE:** 4/17/17

**APPROVED BY RES NO. 17-220 CLERK**

**DATE:** 4/18/17

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**512 Bridge Repair/Replace**

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Budget Action Form Revised 11/95
AGREEMENT FOR
BRIDGE PREVENTIVE MAINTENANCE PROGRAM PHASE I

THIS AGREEMENT ("Agreement") is made and entered into this ____ day of __________, 2017, by and between the County of Mariposa, a political subdivision of the State of California, ("County"), and Willdan Engineering, a ("Contractor"), pursuant to the following terms and conditions.

WITNESSETH:

1. TERM

The term of this Agreement shall commence on April 11, 2017 and terminate on December 31, 2018 unless extended as provided by this Agreement.

2. SERVICES

Contractor shall perform a Bridge Preventive Maintenance Program – Phase I as described in Exhibit A, "Scope of Work," which is attached hereto and incorporated herein by reference. Contractor shall provide all staffing and materials necessary to perform the Scope of Work. Contractor shall also comply with the requirements set forth in "Addendum for Federally Funded Projects below $1,000,000" which is attached hereto and incorporated herein by reference.

3. COMPENSATION

Contractor shall be compensated for services performed in an amount not to exceed $204,000.00. The Contractor’s hourly rates are listed in Exhibit C, "Cost Proposal." The County shall pay Contractor within thirty (30) days of receipt of an approved invoice.

4. INSURANCE

Contractor shall procure and maintain for the duration of the agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, or employees.

A. MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

(1) Commercial General Liability (CGL): Insurance Services Office (ISO)Form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than
$2,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.

(2) Automobile Liability: ISO Form Number CA 00 01 covering any auto, (Code 1), or if Contractor has no owned autos, hired (Code 8) and non-owned autos (Code 9), with limits no less than $1,000,000 per accident for bodily injury and property damage.

(3) Workers’ Compensation insurance as required by the State of California, with Statutory Limits, and Employer’s Liability Insurance with limit of no less than $2,000,000 per accident for bodily injury or disease.

(4) Professional Liability (Errors and Omissions) Insurance appropriate to the Contractor’s profession, with limit no less than $1,000,000 per occurrence or claim, $2,000,000 aggregate. If the Contractor maintains broader coverage and/or higher limits than the minimums shown above, the County requires and shall be entitled to the broader coverage and/or higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the County.

B. OTHER INSURANCE PROVISIONS

The insurance policies are to contain, or be endorsed to contain, the following provision:

(1) Additional Insured Status: The County, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor’s insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 forms if a later edition is used).

(2) Primary Coverage: For any claims related to this Agreement, the Contractor’s insurance coverage shall be primary insurance as respects the County, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees, or volunteers shall be excess of the Contractor’s insurance and shall not contribute with it.

(3) Notice of Cancellation: Each insurance policy required above shall state that coverage shall not be canceled, except with notice to the County.

(4) Waiver of Subrogation: Contractor hereby grants to County a waiver of any right to subrogation which any insurer of said Contractor may acquire against the County by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the County has received a waiver of subrogation endorsement from the insurer.
(5) Deductibles and Self-Insured Retentions: Any deductibles or self-insured retentions must be declared to and approved by the County. The County may require the Contractor to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

(6) Acceptability of Insurers: Insurance is to be placed with insurers with a current A.M. Best’s rating of no less than A: VII, unless otherwise acceptable to the County.

(7) Verification of Coverage: Contractor shall furnish the County with original certificates and amending endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the County before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor’s obligation to provide them. The County reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

(8) Subcontractors: Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that County is an additional insured on insurance required from subcontractors.

(9) Special Risks or Circumstances: County reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

5. HOLD HARMLESS/INDEMNIFICATION

To the fullest extent permitted by law, Contractor shall hold harmless, defend at its own expense, and indemnify County its officers, employees, agents, and volunteers, against any and all liability, claims, losses, damages, or expenses, including reasonable attorney’s fees, arising from all acts or omissions to act of contractor or its officers, agents, or employees in rendering services under this contract; excluding, however, such liability, claims, losses, damages, or expenses arising from Entity’s sole negligence or willful acts.

6. INDEPENDENT CONTRACTOR

It is the expressed intention of the parties that Contractor is an independent contractor and not an employee, agent, joint venturer or partner of County. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between County and Contractor or any employee or agent of Contractor. Both parties acknowledge that Contractor is not an employee for state or federal tax purposes. Contractor shall retain the right to perform services for others during the term of this Agreement.

7. PUBLIC EMPLOYEES RETIREMENT SYSTEM (CALPERS)
In the event that Contractor or any employee, agent, or subcontractor of Contractor providing services under this Agreement is determined by a court of competent jurisdiction or the Public Employees Retirement System (CalPERS) to be eligible for enrollment in CalPERS as an employee of the County, Contractor shall indemnify, defend, and hold harmless County for the payment of any employee and/or employer contributions for CalPERS benefits on behalf of Contractor or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of County.

8. STATE AND FEDERAL TAXES

As Contractor is not County’s employee, Contractor is responsible for paying all required state and federal taxes. In particular:

a. County will not withhold FICA (Social Security) from Contractor’s payments;
b. County will not make state or federal unemployment insurance contributions on behalf of Contractor;
c. County will not withhold state or federal income tax from payment to Contractor;
d. County will not make disability insurance contributions on behalf of Contractor;
e. County will not obtain workers’ compensation insurance on behalf of Contractor.

9. ASSIGNMENT

It is understood and agreed that this Contract contemplates personal performance by the Contractor and is based upon a determination of its unique personal competence and experience and upon its specialized personal knowledge. Assignments of any or all rights, duties or obligations of the Contractor under this Contract will be permitted only with the express written consent of the County.

10. NOTICE

Any and all notices, reports or other communications to be given to County or Contractor shall be given to the persons representing the respective parties at the following addresses:

**CONTRACTOR:**
Willdan Engineering
2014 Tulare Street, Suite 515
Fresno, CA 93721

**COUNTY:**
Public Works
County of Mariposa
5356 Ben Hur Rd.
Mariposa, CA 95338
Phone: (209) 966-5356

11. COMPLIANCE

Contractor shall comply with all federal, state and local laws, codes, ordinance and regulations applicable to Contractor’s performance under this Agreement, including, but not limited to, laws related to prevailing wages. Specifically, Contractor shall not engage in unlawful employment discrimination, including, but not limited to, discrimination based upon a person’s race, religion,
color, national origin, ancestry, physical handicap, medical condition, marital status, gender, citizenship or sexual orientation, as prohibited by state or federal law.

12. **PUBLIC RECORDS ACT**

Contractor is aware that this Agreement and any documents provided to the County may be subject to the California Public Records Act and may be disclosed to members of the public upon request. It is the responsibility of the Contractor to clearly identify information in those documents that it considers to be confidential under the California Public Records Act. To the extent that the County agrees with that designation, such information will be held in confidence whenever possible. All other information will be considered public.

13. **ENTIRE AGREEMENT AND MODIFICATION**

This Agreement contains the entire agreement of the parties relating to the subject matter of this Agreement and supersedes all prior agreements and representations with respect to the subject matter hereof. This Agreement may only be modified by a written amendment hereto, executed by both parties; however, matters concerning the scope of services which do not affect the agreed price may be modified by mutual written consent of the Contractor and Mike Healy, Interim Public Works Director. If there are exhibits attached hereto, and a conflict exists between the terms of this Agreement and any exhibit, the terms of this Agreement shall control.

14. **ENFORCEABILITY AND SEVERABILITY**

The invalidity or enforceability of any term or provisions of this Agreement shall not, unless otherwise specified, affect the validity or enforceability of any other term or provision, which shall remain in full force and effect.

15. **TERMINATION AND RIGHTS UPON TERMINATION**

A. This Agreement may be terminated upon mutual written consent of the parties, or as a remedy available at law or in equity. In the event of the termination of this Agreement, Contractor shall immediately be paid all fees earned as of the effective date of termination.

B. Either party may terminate this Agreement for convenience upon 30 calendar days’ written notice to the other party. Upon termination for convenience, Contractor shall be entitled to compensation for services performed acceptably up to the effective date of termination, as set forth in Exhibit B.

C. Should Contractor default in the performance of this Agreement or materially breach any of its provisions, County, at its option, may terminate this Agreement by giving written notification to Contractor. The termination date shall be the effective date of the notice. For the purposes of this subsection, default or material breach of this Agreement shall include, but not be limited to, any of the following: failure to perform required services in a timely manner, willful destruction of County property, dishonesty, or theft.
16. NO WAIVER

The failure to exercise any right to enforce any remedy contained in this Agreement shall not operate as to be construed to be a waiver or relinquishment of the exercise of such right or remedy, or of any other right or remedy herein contained.

17. DISPUTES

Should it become necessary for a party to this Agreement to enforce any of the provisions hereof, the prevailing party in any claim or action shall be entitled to reimbursement for all expenses so incurred, including reasonable attorney's fees.

It is agreed by the parties hereto that unless otherwise expressly waived by them, any action brought to enforce any of the provisions hereof or for declaratory relief hereunder shall be filed and remain in a court of competent jurisdiction in the County of Mariposa, State of California.

18. CAPTIONS

The captions of this Agreement are for convenience in reference only and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

19. NUMBER AND GENDER

In this Agreement, the neutral gender includes the feminine and masculine, the singular includes the plural, and the word “person” includes corporations, partnerships, firms or associations, wherever the context so requires.

20. MANDATORY AND PERMISSIVE

"Shall" is mandatory. "May" is permissive.

21. SUCCESSORS AND ASSIGNS

All representations, covenants and warranties specifically set forth in this Agreement, by or on behalf of, or for the benefit of any or all of the parties hereto, shall be binding upon and inure to the benefit of such party, its successors and assigns.

22. COUNTERPARTS

This Agreement may be executed simultaneously and in several counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument.

23. OTHER DOCUMENTS

The parties agree that they shall cooperate in good faith to accomplish the object of this Agreement and, to that end, agree to execute and deliver such other and further instruments and documents as may be necessary and convenient to the fulfillment of these purposes.
24. CONTROLLING LAW

The validity, interpretation and performance of this Agreement shall be controlled by and construed under the laws of the State of California.

25. AUTHORITY

Each party and each party’s signatory warrant and represent that each has full authority and capacity to enter into this Agreement in accordance with all requirements of law. The parties also warrant that any signed amendment or modification to the agreement shall comply with all requirements of law, including capacity and authority to amend or modify the Agreement.

26. NEGOTIATED AGREEMENT

This Agreement has been arrived at through negotiation between the parties. Neither party is to be deemed the party which prepared this Agreement within the meaning of California Civil Code section 1654. Each party represents and warrants that in executing this Agreement it does so with full knowledge of the rights and duties it may have with respect to the other party. Each party also warrants and represents that it has received independent legal advice from its attorney with respect to the matters set forth in this Agreement and the rights and duties arising out of this Agreement, or that such party willingly foregoes any such consultation.

27. NO RELIANCE ON REPRESENTATIONS

Each party warrants and represents that it is not relying and has not relied upon any representation or statement made by the other party with respect to the facts involved or its rights or duties. Each party understands and agrees that the facts relevant, or believed to be relevant to this Agreement, have been independently verified. Each party further understands that it is responsible for verifying the representations of law or fact provided by the other party.

28. WARRANTY

County has relied upon the professional ability and training of Contractor as a material inducement to enter into this Agreement. Contractor hereby warrants that all work shall be performed in accordance with generally accepted professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Contractor’s work by County shall not operate as a waiver or release.

29. FUNDING AVAILABILITY

It is mutually agreed that if the County budget of the current fiscal year and/or any subsequent fiscal years covered under this Agreement does not appropriate sufficient funds for this Agreement, this Agreement shall be of no further force and effect. In this event, the County shall have no liability to pay any funds whatsoever to Contractor or to furnish any other considerations under this Agreement and Contractor shall not be obligated to perform any provisions of this Agreement. Contractor’s assumption of risk of possible non-appropriation is part of the consideration for this Agreement. County budget decisions are subject to the discretion of the Board of Supervisors.
If funding for any fiscal year is reduced or deleted by the County budget for purposes of this Agreement, the County shall have the option to either cancel this Agreement with no liability occurring to the County, or offer an Agreement amendment to Contractor to reflect the reduced amount.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first written above.

Funding Source:

COUNTY OF MARIPOSA

Marshall Long, Chair

CONTRACTOR

Willdan Engineering

Sr. Vice Pres.: D. L. Hult

APPROVED AS TO LEGAL FORM:

Steven W. Dahlem
County Counsel

ATTEST:

Rene LaRoche
Clerk of the Board
Bridge Preventive Maintenance Program - Phase 1 Scope
(Bridges with Minimal Environmental Effects – 14 EA)

The County is responsible for the maintenance of approximately 53 vehicle bridges. In August 2014, the County contracted with Willdan Engineering (Willdan) to prepare a list of bridges and work items that could be funded under the Federal Highway Bridge Program’s Preventive Maintenance Program (BPMP). This resulted in the identification of preventative maintenance work for 25 of the County’s bridges. The preventive maintenance work is intended to extend the life of the bridges and avoid or delay costlier rehabilitation or replacement projects in the future.

The County has received a proposal from Willdan Engineering for the next phase of the implementation of the County’s BPMP. This phase is completion of the Preliminary Engineering (PE) phase as identified in the Caltrans Local Assistance Procedures Manual (LAPM). The PE phase consists of environmental studies, NEPA and CEQA document completion, preliminary design, final design and permits. The proposal describes how Willdan and its subconsultant will accomplish the PE phase for the County. Willdan and their subconsultant, Sycamore Environmental Consultants, Inc. (Sycamore), will work with Caltrans District 10 to establish the most streamlined project delivery and NEPA compliance requirements for the delivery of these bridge preventive maintenance work items.

Willdan’s proposal separates the bridges into two groups (Phase 1 and Phase 2) to streamline the delivery of the BPMP work for construction. Fourteen bridges are in the Phase 1 “minimal environmental” work group. This group does not need to perform in-channel work as part of preventative maintenance activities. As a result, these bridges do not require the same level of environmental technical studies. Eleven bridges are in the Phase 2 work group which requires the typical suite of environmental technical studies for repair or rehabilitation projects which require in-channel work. The grouping will allow the County to quickly deliver over half the bridges through the environmental and design phases and into construction.

All work processes and products will be completed in strict accordance with the most recent version of Caltrans Local Assistance Procedures Manual as necessary to secure project authorization from Caltrans/FHWA for the Bridge Preventive Maintenance Program. In addition, the project will conform with state and federal design and environmental standards.

All work products are subject to review and approval by the County. As such, all deliverables will be provided to the County in draft and final versions. The County’s comments on draft submittals shall be addressed by Willdan and incorporated into the final submittal where appropriate.

The following is a summary of the costs and associated tasks for completing the plans, specifications, and estimates (PS&E) for the 14 bridges in Phase 1 with the minimal amount of required environmental required as necessary to complete the BPMP work:

<table>
<thead>
<tr>
<th>Minimal Environmental Work Required (14 Bridges)</th>
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<tbody>
<tr>
<td><strong>Task</strong></td>
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<tr>
<td>1. Project Management</td>
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<tr>
<td>2. Environmental Review</td>
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<tr>
<td>3. Engineering Design Phase</td>
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<tr>
<td>4. Bid Period Assistance</td>
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<tr>
<td><strong>TOTAL</strong></td>
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<td>Mariposa County PE Oversight Funds</td>
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<td><strong>GRAND TOTAL</strong></td>
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(Not to Exceed ... $204,000.00)
EXHIBIT “B”

Addendum Federally Funded Projects
(below $1,000,000)

Contractor: Willdan Engineering
Project: Bridge Preventive Maintenance Program Phase I

In addition to, and notwithstanding, the requirements set forth in the Agreement, CONTRACTOR agrees to the following:

1. CONFIDENTIALITY OF DATA

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

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

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

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

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

2. PERFORMANCE PERIOD

A. This agreement shall go into effect contingent upon approval by the COUNTY, and the CONTRACTOR shall commence work after notification to proceed by the COUNTY. The agreement shall end on December 31, 2018 unless extended by agreement amendment.

B. The CONTRACTOR is advised that any recommendation for agreement award is not binding on the COUNTY until the agreement is fully executed and approved by the COUNTY.
3. CONFLICT OF INTEREST

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

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

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

D. The CONTRACTOR hereby certifies that neither CONTRACTOR, nor any firm affiliated with the CONTRACTOR will bid on any construction agreement, or on any agreement 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.

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

4. COST PRINCIPLES AND ADMINISTRATIVE REQUIREMENTS

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

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

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

D. All subcontracts in excess of $25,000 shall contain the above provisions.
5. ALLOWABLE COSTS AND PAYMENTS

A. The method of payment for the following items shall be at the rate specified for each item, as described in this Article. The specified rate shall include full compensation to CONTRACTOR for the item as described, including but not limited to, any repairs, maintenance, or insurance, and no further compensation will be allowed therefore.

B. The specified rate to be paid for vehicle expense for CONTRACTOR’S field personnel shall be as per the approved Cost Proposal.

C. The method of payment for this agreement, except those items to be paid for on a specified rate basis, will be based on cost per unit of work. The COUNTY will reimburse CONTRACTOR for actual costs (including labor costs, employee benefits, travel, equipment-rental costs, overhead and other direct costs) incurred by CONTRACTOR in performance of the work. CONTRACTOR will not be reimbursed for actual costs that exceed the estimated wage rates, employee benefits, travel, equipment rental, overhead and other estimated costs set forth in the approved Cost Proposal, unless additional reimbursement is provided for, by agreement amendment. In no event will CONTRACTOR be reimbursed for overhead costs at a rate that exceeds the COUNTY approved overhead rate set forth in the approved Cost Proposal. In the event the COUNTY determines that changed work from that specified in the approved Cost Proposal and agreement is required, the actual costs reimbursable by the COUNTY may be adjusted by agreement amendment to accommodate the changed work.

D. All subcontracts in excess of $25,000 shall contain the above provisions.

E. Use attached LAPM Exhibit 10-H for Cost Proposal Format.

6. DEBARMENT AND SUSPENSION CERTIFICATION

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

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

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

B. For purchase of any item, service or consulting work not covered in the CONTRACTOR'S Cost Proposal and exceeding $5,000 prior authorization by the COUNTY three (3) competitive quotations must be submitted with the request, or the absence of bidding must be adequately justified.

C. Any equipment purchased as a result of this agreement is subject to the following: "The CONTRACTOR shall maintain an inventory of all non-expendable property. Nonexpendable property is defined as having a useful life of at least two years and an acquisition cost of $5,000 or more. If the purchased equipment needs replacement and is sold or traded in, the COUNTY shall receive a proper refund or credit at the conclusion of the agreement. If the agreement is terminated, the CONTRACTOR may either keep the equipment and credit the COUNTY in an amount equal to its fair market value, or sell such equipment at the best price obtainable at a public or private sale in accordance with established COUNTY procedures and credit the COUNTY in an amount equal to the sales price. If the CONTRACTOR elects to keep the equipment, fair market value shall be determined at the CONTRACTOR'S expense on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to by the COUNTY and the CONTRACTOR if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by the COUNTY."

D. All subcontracts in excess $25,000 shall contain the above provisions.

8. **FUNDING REQUIREMENTS**

A. It is mutually understood between the parties that this agreement may have been written before ascertaining the availability of funds or appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays that would occur if the agreement were executed after that determination was made.

B. This agreement is valid and enforceable only if sufficient funds are made available to the COUNTY for the purpose of this agreement. In addition, this agreement is subject to any additional restrictions, limitations, conditions, or any statute enacted by the Congress, State Legislature or COUNTY governing board that may affect the provisions, terms, or funding of this agreement in any manner.

C. It is mutually agreed that if sufficient funds are not appropriated, this agreement may be amended to reflect any reduction in funds.

D. The COUNTY has the option to void this agreement under the 30-day cancellation clause, or by mutual agreement to amend this agreement to reflect any reduction of funds.
9. NON DISCRIMINATION

A. During the performance of this agreement, the CONTRACTOR, for itself, its assignees and successors in interest agrees as follows:

B. Compliance with Regulations: The CONTRACTOR shall comply with the Regulation relative to nondiscrimination in Federally-assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, and the Federal Highway Administration (hereinafter "FHWA") Title 23, Code of Federal Regulations, Part 200 as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this agreement.

C. Nondiscrimination: The CONTRACTOR, with regard to the work performed by it during this agreement shall not discriminate on the grounds of race, color or national origin, sex, age, and disability/handicap and low income in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The CONTRACTOR shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR, Section 21.5 of the Regulations, including employment practices when this agreement covers a program set forth in Appendix B of the Regulations.

D. Solicitations for Sub-contractors, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by this agreement for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the CONTRACTOR of the CONTRACTOR's obligations under this agreement and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin, sex, age, and disability/handicap and low income.

E. Information and Reports: The CONTRACTOR shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the COUNTY or the FHWA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of the contractor is in the exclusive possession of another who fails or refuses to furnish this information the contractor shall so certify to the COUNTY, or the FHWA as appropriate, and shall set forth what efforts it has made to obtain the information.

F. Sanctions for Noncompliance: In the event of the CONTRACTOR's noncompliance with the nondiscrimination provisions of this agreement, the COUNTY shall impose such sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:

1. Withholding of payments to the CONTRACTOR under this agreement until the CONTRACTOR complies, and/or

2. Cancellation, termination or suspension of this agreement, in whole or in part.
G. Incorporation of Provisions: The CONTRACTOR shall include the provisions of paragraphs 1 through 6 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The CONTRACTOR shall take such action with respect to any subcontract or procurement as the COUNTY or the FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event a CONTRACTOR becomes involved in, or is threatened with, litigation with a sub-contractor or supplier as a result of such direction, the CONTRACTOR may request the COUNTY to enter into such litigation to protect the interests of the COUNTY and, in addition, the CONTRACTOR may request the United States to enter into such litigation to protect the interests of the United States.

10. INSPECTION OF WORK

The CONTRACTOR and any sub-contractor shall permit the COUNTY, the state, and the FHWA if federal participating funds are used in this agreement to review and inspect the project activities and files at all reasonable times during the performance period of this contract including review and inspection on a daily basis.

11. PROHIBITION OF EXPENDING LOCAL AGENCY, STATE OR FEDERAL FUNDS FOR LOBBYING

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

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

2. If any funds other than federal appropriated funds have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any federal agency; a member of Congress; an officer or employee of Congress, or an employee of a member of Congress; in connection with this federal contract, grant, loan, or cooperative agreement; the CONTRACTOR shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.
B. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, US. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

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

12. REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION

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

13. REIMBURSEMENT OF TRAVEL & SUBSISTENCE

COUNTY agrees to pay pre-approved travel and subsistence expenses per the COUNTY's Travel Policy.

14. RETENTION OF RECORDS/AUDIT

A. For the purpose of determining compliance with Public Contract Code 10115, et seq. and Title 21, California Code of Regulations, Chapter 21, Section 2500 et seq., when applicable and other matters connected with the performance of this agreement pursuant to Government Code 8546.7; the CONTRACTOR, subcontractors, and the COUNTY shall maintain all books, documents, papers, accounting records, and other evidence pertaining to the performance of this agreement, including but not limited to, the costs of administering this agreement. All parties shall make such materials available at their respective offices at all reasonable times during the agreement period and for three years from the date of final payment under this agreement. The state, the State Auditor, COUNTY, FHWA, or any duly authorized representative of the federal government shall have access to any books, records, and documents of the CONTRACTOR that are pertinent to this agreement for audit, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested.

B. Subcontracts in excess of $25,000 shall contain this provision.
15. STATE PREVAILING WAGE RATES

A. The CONTRACTOR shall comply with the State of California’s General Prevailing Wage Rate requirements in accordance with California Labor Code, Section 177, and all federal, state, and local laws and ordinances applicable to the work.

B. Any subcontract entered into as a result of this agreement if for more than $25,000 for public works construction or more than $15,000 for the alteration, demolition, repair, or maintenance of public works, shall contain all of the provisions of this Article.

16. AUDIT REVIEW PROCEDURES

A. Any dispute concerning a question of fact arising under an interim or post audit of this agreement that is not disposed of by agreement, shall be reviewed by the COUNTY’s project manager.

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

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

D. CONTRACTOR and sub-contractor agreements, including cost proposals and Indirect Cost Rates (hereinafter “ICR”), are subject to audits or reviews such as, but not limited to, a contract audit, an incurred cost audit, an ICR Audit, or a CPA ICR audit work paper review. If selected for audit or review, the agreement, cost proposal and ICR and related work papers, if applicable, will be reviewed to verify compliance with 48 CFR, Part 31 and other related laws and regulations. In the instances of a CPA ICR audit work paper review it is CONTRACTOR’s responsibility to ensure federal, state, or local government officials are allowed full access to the CPA’s work papers including making copies as necessary. The agreement, cost proposal, and ICR shall be adjusted by CONTRACTOR and approved by the COUNTY project manager to conform to the audit or review recommendations. CONTRACTOR agrees that individual terms of costs identified in the audit report shall be incorporated into the agreement by this reference if directed by the COUNTY at its sole discretion. Refusal by CONTRACTOR to incorporate audit or review recommendations, or to ensure that the federal, state or local governments have access to CPA work papers, will be considered a breach of agreement terms and cause for termination of the agreement and disallowance of prior reimbursed costs.

17. STATEMENT OF COMPLIANCE

A. The CONTRACTOR’s signature affixed herein, and dated, shall constitute a certification under penalty of perjury under the laws of the State of California that the CONTRACTOR has, unless exempt, complied with the nondiscrimination program requirements of Government Code Section 12990 and Title 2, California Administrative Code, Section 8103.
B. During the performance of this agreement, the CONTRACTOR and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave. The CONTRACTOR and sub-contractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. The CONTRACTOR and sub-contractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated under the (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this agreement by reference and made a part hereof as if set forth in full. The CONTRACTOR and its sub-contractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

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

D. The CONTRACTOR, with regard to the work performed by it during this agreement, shall act in accordance with Title VI. Specifically, the CONTRACTOR shall not discriminate on the basis of race, color, national origin, religion, sex, age, or disability in the selection and retention of sub-contractors, including procurement of materials and leases of equipment. The Contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the U.S. DOT's Regulations, including employment practices, when this agreement covers a program whose goal is employment.

18. SUBCONTRACTING

A. The CONTRACTOR shall perform the services with resources available within its own organization; and no portion of the work pertinent to this agreement shall be subcontracted without written authorization by the COUNTY, except that which is expressly identified in the approved Cost Proposal.

B. Any subcontract in excess of $25,000 entered into as a result of this agreement, shall contain all the provisions stipulated in this agreement to be applicable to subcontractors.

C. Any substitution of sub-contractors must be approved in writing by the COUNTY.
19. SAFETY

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

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

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

IN WITNESS WHEREOF, the parties hereto have caused this Addendum to be executed by and through their respective authorized officers:
# COST PROPOSAL

**Project:** Mariposa BPMP PS&E Preparation Lesser Environmental (Phase I)

**Consultant:** Willdan Engineering

## DIRECT LABOR

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<tr>
<th>Classification</th>
<th>Name</th>
<th>Billing Range</th>
<th>Hours</th>
<th>Rate</th>
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<td>Bridge Lead</td>
<td>Gary Gordon</td>
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Subtotal Direct Labor Costs: $29,010.00

Anticipated Salary Increase: $1,450.50

Total Direct Labor Cost: $30,460.50

## FRINGE BENEFITS

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<td>43.92%</td>
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Total Fringe Benefits: $13,378.25

## INDIRECT COSTS

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Total Indirect Costs: $29,092.82

## FEE (PROFIT)

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Total Fee (Profit): $7,293.16

## OTHER COSTS

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<td>Travel</td>
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<td>Equipment and Supplies (Itemize)</td>
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<tr>
<td>Other Direct Costs</td>
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Total Other Costs: $4,500.00

## WILLDAN (PARS)

Total WILLDAN SUBTOTAL: $161,799.65

## SUBCONTRACTOR COSTS

Total Subcontractor Costs: $42,153.25

## TOTAL COST

Total Cost: $203,952.91