

PROFESSIONAL SERVICES CONTINUING SERVICES SAMPLE AGREEMENT 134-0479-CN

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Appendix 1 - Federal Contract Provisions

SAMPLE AGREEMENT

**SECTION 1
INTENT OF AGREEMENT**

**AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES FOR
Airport Department**

THIS AGREEMENT, entered into on the ____ day of ____ 20____ between PINELLAS COUNTY, a political subdivision of the State of Florida, hereinafter referred to as the COUNTY, represented by its Board of County Commissioners, and____, with offices in _____, hereinafter referred to as the CONSULTANT.

WITNESSETH, That:

WHEREAS, the COUNTY Airport Department requires **PROFESSIONAL ENGINEERING SERVICES** associated with St. Pete – Clearwater International Airport Capital Improvement Program (CIP) of multi-disciplinary engineering projects relating to Environmental Assessment/Architectural/Engineering/Construction Management, and Land Development Professional Services, and other related services on an as needed basis, herein referred as PROJECT.

WHEREAS, the COUNTY desires the CONSULTANT provide PROFESSIONAL ENGINEERING SERVICES requisite to the management needs of the COUNTY Airport Department, and

WHEREAS, the CONSULTANT has expressed the willingness and ability to provide the aforementioned services on an as needed basis.

NOW THEREFORE, the COUNTY and the CONSULTANT, in consideration of the mutual covenants hereinafter set forth, agree as follows:

SECTION 2
GENERAL CONDITIONS AND PROFESSIONAL REQUIREMENTS

2.1 DESCRIPTION OF OVERALL REQUIRED SERVICES

(Insert appropriate description of services)

2.2 ASSIGNMENT OF WORK

Work to be performed by the CONSULTANT shall be on an assignment-by-assignment basis. Work assignments shall be made by the COUNTY's Director of _____ or Designee. Prior to any work assignments being made, based on mutual discussions between the COUNTY and the CONSULTANT, the CONSULTANT shall prepare a detailed scope of work for the assignment which shall include a not to exceed budget amount for the assignment. All work assignment authorizations by the COUNTY shall be in writing. The CONSULTANT shall perform no work under this Agreement without written authorization. The CONSULTANT hereby agrees to waive any claim for compensation for any work performed without written authorization.

2.3 CONSULTING RESPONSIBILITIES

- A. It is the intention of the COUNTY that the CONSULTANT is held accountable for its work, including checking and plans review, and that submittals are complete.
- B. The CONSULTANT shall be responsible for the accuracy of the work and shall promptly correct its errors and omissions without additional compensation. Acceptance of the work by the COUNTY will not relieve the CONSULTANT of the responsibility for subsequent correction of any errors and the clarification of any ambiguities.
- C. The CONSULTANT represents that it has secured or will secure all personnel necessary to complete this Agreement; none of whom shall be employees of or have any contractual relationship with the COUNTY. Primary liaison with the COUNTY will be through the CONSULTANT'S Project Manager. All of the services required herein will be performed by the CONSULTANT or under the CONSULTANT'S supervision, and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under law to perform such services.
- D. The CONSULTANT shall endorse all reports, calculations, contract plans, and survey data. Services shall be prepared under the direction of an _____ registered in the State of Florida and qualified in the required discipline. Products of services performed or checked shall be signed and sealed by the CONSULTANT'S Florida registered engineer.
- E. The CONSULTANT shall be responsible for the preparation of a PROJECT design schedule, which shows a breakdown of all tasks to be performed, and their relationship in achieving the completion of each phase of work. A bar chart schedule showing overall PROJECT time frames should also be prepared. These schedules must be submitted for COUNTY approval within ten (10) days of the initial PROJECT Notice to Proceed. These schedules will be used to verify CONSULTANT performance in relationship to Fees claimed and to allow the COUNTY's Project Manager to monitor the CONSULTANT'S efforts. The CONSULTANT shall be responsible for any updates to these schedules and for documenting in writing to the COUNTY any major deviations in the actual versus estimated PROJECT time frames.
- F. The CONSULTANT shall respond, in writing, to all review comments made by the COUNTY, within ten (10) days of their receipt, and shall incorporate appropriate design adjustments resulting from the review exchange into the project, in the next scheduled submittal.

2.4 GOVERNING SPECIFICATIONS, REGULATIONS AND PERTINENT DOCUMENTS

The PROJECT shall be designed by the CONSULTANT in accordance with applicable industry standards. The CONSULTANT shall be responsible for utilizing and maintaining current knowledge of any laws, ordinances, codes, rules, regulations, standards, guidelines, special conditions, specifications, or other mandates relevant to the PROJECT or the services to be performed.

2.5 KEY PERSONNEL

The individual(s) who are to be assigned to work under this Agreement are necessary for the successful performance of this Agreement. The CONSULTANT agrees that whenever, for any reason, one more of the aforementioned individuals are unavailable for performance under this Agreement, the CONSULTANT shall replace such individual(s) with an individual(s) of substantially equal abilities and qualifications.

The CONSULTANT shall submit to the COUNTY a resume giving the full name, title, qualifications, and experience, for all successors and/or new persons prior to assignment of such personnel to perform work under this Agreement. Should the COUNTY decide the successor personnel does not meet the qualifications of the replaced personnel, or in the case of new personnel, the COUNTY determines they are not qualified to perform the work assigned, the COUNTY will advise the CONSULTANT accordingly. The CONSULTANT shall then submit name(s) and qualifications of an individual(s) to the COUNTY until a determination is made by the COUNTY that the replacement meets equivalent or required qualifications.

SECTION 3 SERVICES TO BE FURNISHED BY THE CONSULTANT

3.1 SERVICES

- 3.1.1 The CONSULTANT shall furnish all services, equipment and manpower necessary for the WORK Assignment in accordance with the intent of the AGREEMENT.
- 3.1.2 If required, design activities shall be supported by design calculations properly identified as to subject and topic. Design references and any assumptions shall be noted. Calculations, if required, shall be in conformance with standard engineering practices. Design notes and computations shall be bound in suitable booklet form, and booklet shall be properly indexed as to content. All documents shall receive Quality Control Checks and Reviews.
- 3.1.3 If require, the CONSULTANT shall provide a file of the proposed design in AutoCAD latest version supported by Pinellas County, complete with all objects depicted according to software requirements.
- 3.1.4 The CONSULTANT shall provide the following, if requested:
 - A. Support to COUNTY staff in development of a scope of services.
 - B. Reviews of plan submittals, engineering calculations, schedules and other technical documents.
 - C. Quality control and constructability reviews of plans
 - D. Project Implementation Services for design such as: Infrastructure studies and investigations, project scope preparation, project design, conduct/assist in Public Information Meetings, Utility Coordination, Land Surveying Services, Geotechnical Services, Access Connection and Environmental Permitting Services, Cost Estimating, Railroad Coordination, Construction Engineering and Inspection.
 - E. Project Management support and preparation of independent cost estimates.

- F. Status meetings at a minimum of one each month.
 - G. Any other miscellaneous engineering services requirement by the COUNTY as directed by COUNTY's designated Director or Designee who is a COUNTY Employee.
- 3.1.5 Design Phase (Services to be defined with each specific WORK assignment)
 - 3.1.6 Bidding Phase (Services to be defined with each specific WORK assignment)
 - 3.1.7 Other Engineering Services. (Services to be defined with each specific WORK assignment)
 - a. Survey Work – Assist the COUNTY in conducting surveys of construction projects proposed for landfill operation and permitting. All surveys shall be certified by a Professional Land Surveyor (PLS).
 - b. Copy and Reproduction Support – Assist the COUNTY in production support of major documents such as permit applications, feasibility studies, design modifications and closure plans.
 - c. Miscellaneous Figures, As-built Drawings, Maps – Prepare figures, design drawings, maps, specifications, as-builts, etc., for the COUNTY when requested. All design support shall be performed on Auto-Cadd, latest version.

3.2 GENERAL SERVICES/SUPPORT TO COUNTY AS NEEDED

The CONSULTANT shall also provide miscellaneous services not otherwise described, but required by the COUNTY during the course of this Agreement. Examples could include presentations to local government, citizen groups and regulatory agencies, or any other tasks associated with the COUNTY's operations.

**SECTION 4
PERFORMANCE SCHEDULES**

The CONSULTANT shall plan and execute the performance of all services provided for under this Agreement in such a manner as to insure their proper and timely completion in accordance with the following:

- A. The Work Assignments to be performed by the CONSULTANT shall commence upon receipt, from the COUNTY, of a written Notice to Proceed from the COUNTY's Director of _____ or Designee who is a COUNTY employee.
- B. The CONSULTANT'S Performance Schedule for any authorized Work Assignments shall be established upon the COUNTY's acceptance and approval of a detailed schedule to be submitted, by the CONSULTANT, prior to each assignment.

**SECTION 5
INFORMATION AND SERVICES TO BE FURNISHED BY THE COUNTY**

5.1 The COUNTY shall provide the following for the CONSULTANT'S use and guidance:

- A. Copies of existing maps, existing aerial photographs, as-built construction plans and data pertinent to work assignments, which the COUNTY may have in its possession.
- B. Sample copies of the COUNTY standard contract documents and specifications, if required.

SECTION 6
PAYMENT SCHEDULE/INVOICING REQUIREMENTS

6.1 The COUNTY shall make payments to the CONSULTANT for work performed in accordance with the Local Government Prompt Payment Act, F.S. section 218.70 et. seq.

6.2 Should an invoiced amount for fees earned appear to exceed the work effort believed to be completed, or not to exceed amount approved, the COUNTY may, prior to processing of the invoice for payment, require the CONSULTANT to submit satisfactory evidence to support the invoice. All invoices requesting payment for reimbursable or expense items (as defined in Section 7) must have copies of actual billings, invoices, or receipts attached which support the amount invoiced.

6.3 The CONSULTANT shall provide a progress report with each invoice in a format to be provided by the COUNTY. The progress report shall include a written narrative describing the work performed that period, and the work planned to be completed the following period. All progress reports shall be mailed to the attention of the designated Project Manager.

6.4 SUPPLIER shall submit invoices for payment due as provided herein with such documentation as required by Pinellas County and all payments shall be made in accordance with the requirements of Section 218.70 et. seq, Florida Statutes, "The Local Government Prompt Payment Act." Invoices shall be submitted to the address below unless instructed otherwise on the purchase order, or if no purchase order, by the ordering department:

Finance Division Accounts Payable
Pinellas County Board of County Commissioners
P. O. Box 2438
Clearwater, FL 33757

Each invoice shall include, at a minimum, the Supplier's name, contact information and the standard purchase order number. The County may dispute any payments invoiced by SUPPLIER in accordance with the County's Dispute Resolution Process for Invoiced Payments, established in accordance with Section 218.76, Florida Statutes, and any such disputes shall be resolved in accordance with the County's Dispute Resolution Process

SECTION 7
COMPENSATION TO THE CONSULTANT

7.1 The COUNTY shall compensate the CONSULTANT for authorized Work Assignments using the following methods of compensation. The method of compensation shall be determined by the COUNTY based on the Work Assignment to be performed.

- A. For Work Assignments where the scope can be reasonably defined, and have a specific time frame, compensation shall be a lump sum fee negotiated and agreed upon prior to the assignment's authorization. This fee shall be the total and complete amount payable to the CONSULTANT for performance of the Work Assignment and shall include the cost of all labor, overhead, profit, and expenses of any nature.
- B. For indeterminate Work Assignments, compensation shall be on a hourly rate basis, Compensation shall be for the actual work performed in accordance with the schedule of rate value attached to this AGREEMENT and incorporated herein as Exhibit A.

7.2 The upset limit for all compensation to be paid under the maximum ____ (____) year term of this Agreement is an amount not to exceed ____dollars (\$____). Total payments to the CONSULTANT may not exceed this amount without Board of County Commissioners or County Administrator's approval to raise this upset limit. This AGREEMENT contains ____ (____) additional ____ (____) term extension option, based upon performance, beyond the primary AGREEMENT period.

7.3 In the event that this Agreement is terminated under the provisions of this contract the total and complete compensation due the CONSULTANT shall be as established by the COUNTY based on the COUNTY'S determination of the percentage of work effort completed to date of termination.

SECTION 8 TASK ORDERS

8.1 The COUNTY and the CONSULTANT shall mutually agree on scope of services based on individual task orders as needed throughout the AGREEMENT term; thus Task Orders require approval to form by the **Pinellas County Attorney's office** and authorization by an approved purchase order.

8.2 The CONSULTANT shall perform no services contemplated to merit compensation beyond that provided for in detailed task orders unless such services and compensation therefore, shall be provided for by appropriate written authorization via a change order to the task order. Such change orders will be issued by the Board of County Commissioners' Purchasing Department.

SECTION 9 ASSIGNMENT/SUBCONTRACTING/CORPORATE ACQUISITIONS AND/OR MERGERS

9.1 The CONSULTANT shall perform this contract. No assignment or subcontracting shall be allowed without prior written consent of the COUNTY. If a proposer intends to subcontract a portion of this work, the proposer must disclose that intent to the COUNTY. In the event of a corporate acquisition and/or merger, the CONSULTANT shall provide written notice to the COUNTY within thirty (30) business days of CONSULTANT's notice of such action or upon the occurrence of said action, whichever occurs first. The right to terminate this contract, which shall not be unreasonably exercised by the COUNTY, shall include, but not be limited to, instances in which a corporate acquisition and/or merger represent a conflict of interest or are contrary to any local, state, or federal laws.

9.2 The COUNTY reserves the right to review the qualifications of any and all subconsulting, and to reject any subconsultant in a proper and timely manner, deemed not qualified to perform the services for which it shall have been engaged.

SECTION 10 SATISFACTORY PERFORMANCE

All services to be provided by the CONSULTANT under the provisions of this Agreement, including services to be provided by subconsultants, shall be performed to the reasonable satisfaction of the COUNTY'S designated departmental Director or designed.

SECTION 11 RESOLUTION OF DISAGREEMENTS

11.1 The COUNTY shall reasonably decide all questions and disputes, of any nature whatsoever, that may arise in the execution and fulfillment of the services provided for under this Agreement.

11.2 The decision of the COUNTY upon all claims, questions, disputes and conflicts shall be final and conclusive, and shall be binding upon all parties to this Agreement, subject to judicial review.

SECTION 12 CONSULTANTS ACCOUNTING RECORDS

12.1 Records of expenses pertaining to all services performed shall be kept in accordance with generally accepted accounting principles and procedures.

12.2 The CONSULTANT'S records shall be open to inspection and subject to examination, audit, and/or reproduction during normal working hours by the COUNTY'S agent or authorized representative to the extent necessary to adequately permit evaluation and verification of any invoices, payments or claims

submitted by the CONSULTANT or any of his payees pursuant to the execution of the Agreement. These records shall include, but not be limited to, accounting records, written policies and procedures, subconsultant files (including proposals of successful and unsuccessful bidders), original estimates, estimating worksheets, correspondence, change order files (including documentation covering negotiated settlements), and any other supporting evidence necessary to substantiate charges related to this Agreement. They shall also include, but not be limited to, those records necessary to evaluate and verify direct and indirect costs (including overhead allocations) as they may apply to costs associated with this Agreement. The COUNTY shall not audit payroll and expense records on task assignments paid by lump sum fee.

12.3 The COUNTY reserves the privilege of auditing a vendor's records as such records relate to purchases between the COUNTY and said vendor. Such audit privilege is provided for within the text of the Pinellas County Code 2-176(j). Records should be maintained for three years from the date of final payment.

12.4 The COUNTY'S agent or authorized representative shall have access to the CONSULTANT'S facilities and all necessary records in order to conduct audits in compliance with this Section. The COUNTY'S agent or authorized representative shall give the CONSULTANT reasonable advance notice of intended inspections, examinations, and/or audits.

SECTION 13 OWNERSHIP OF PROJECT DOCUMENTS

Upon completion or termination of this Agreement,

13.1 Drawings, specifications, designs, models, photographs, reports, surveys, calculations, and other data provided in connection with this Agreement are and shall remain the property of the COUNTY whether the project for which they are made is executed or not. Such finished or unfinished documents, data, calculations, studies, surveys, specifications, drawings, maps, models, photographs and reports prepared by the Consultant shall be delivered by the Consultant to the COUNTY at the conclusion of the project or the termination of the Consultant's services.

13.2 The CONSULTANT at its own expense may retain copies for its files and internal use.

SECTION 14 INSURANCE COVERAGE

The Contractor must maintain insurance in at least the amounts required in the Request for Proposal throughout the term of this contract. The contractor must provide a Certificate of Insurance in accordance with Insurance Requirements of the Request for Proposal, evidencing such coverage prior to issuance of a purchase order or commencement of any work under this Contract.

SECTION 15 EQUAL EMPLOYMENT OPPORTUNITY CLAUSE FOR CONTRACTS NOT SUBJECT TO EXECUTIVE ORDER 11246

In carrying out the contract, the CONSULTANT shall not discriminate against employees or applicants for employment because of race, color, religion, sex or national origin.

SECTION 16 INDEPENDENT CONTRACTOR STATUS AND COMPLIANCE WITH THE IMMIGRATION REFORM AND CONTROL ACT OF 1986

Consultant acknowledges that it is functioning as an independent contractor in performing under the terms of this contract, and it is not acting as an employee of Pinellas County. The consultant acknowledges that it is responsible for complying with the provisions of the Immigration Reform and Control Act of 1986, located at 8 U.S.C. Section 1324, et seq., and regulations relating thereto. Failure to

comply with the above provisions of the contract shall be considered a material breach and shall be grounds for immediate termination of the contract.

SECTION 17 PROHIBITION AGAINST CONTINGENT FEE

The CONSULTANT warrants that he has not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT to solicit or secure this contract and that he has not paid or agreed to pay any person, company, corporation, individual, or firm other than a bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, gift or any other consideration, contingent upon or resulting from the award or making of this contract.

SECTION 18 TRUTH IN NEGOTIATIONS

The CONSULTANT certifies to truth-in-negotiation and that wage rates and other factual unit costs supporting the compensation are accurate, complete and current at the time of contracting. Further, the original contract amount and any additions thereto shall be adjusted to exclude any significant sums where the COUNTY determines the contract price was increased due to inaccurate, incomplete or non-current wage rates and other factual unit costs. Such adjustments must be made within one (1) year following the end of the contract.

SECTION 19 SUCCESSORS AND ASSIGNS

The CONSULTANT shall not assign, sublet, or transfer his interest in this AGREEMENT without the written consent of the COUNTY.

SECTION 20 INDEMNIFICATION

If the CONSULTANT is an individual or entity licensed by the state of Florida who holds a current certificate of registration under Chapter 481, Florida Statutes, to practice architecture or landscape architecture, under Chapter 472, Florida Statutes, to practice land surveying and mapping, or under Chapter 471, Florida Statutes, to practice engineering, and who enters into a written agreement with the COUNTY relating to the planning, design, construction, administration, study, evaluation, consulting, or other professional and technical support services furnished in connection with any actual or proposed construction, improvement, alteration, repair, maintenance, operation, management, relocation, demolition, excavation, or other facility, land, air, water, or utility development or improvement, the CONSULTANT will indemnify and hold harmless the COUNTY, and its officers and employees, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the CONSULTANT and other persons employed or utilized by the CONSULTANT in the performance of the Agreement.

SECTION 21 INTEREST ON JUDGMENTS

In the event of any disputes between the parties to this Agreement, including without limitations thereto, their assignees and/or assigns, arising out of or relating in any way to this Agreement, which results in litigation and a subsequent judgment, award or decree against either party, it is agreed that any entitlement to post judgment interest, to either party and/or their attorneys, shall be fixed by the proper court at the rate of five percent (5%), per annum, simple interest. Under no circumstances shall either party be entitled to pre-judgment interest. The parties expressly acknowledge and, to the extent allowed by law, hereby opt out of any provision of federal or state statute not in agreement with this paragraph.

SECTION 22 TERMINATION OF AGREEMENT

22.1 Pinellas County reserves the right to terminate this contract without cause by giving thirty (30) days prior notice to the CONSULTANT in writing of the intention to terminate or with cause if at any time the CONSULTANT fails to fulfill or abide by any of the terms or conditions specified.

22.2 Failure of the CONSULTANT to comply with any of the provisions of this Agreement shall be considered a material breach of Agreement and shall be cause for immediate termination of the Agreement at the discretion of Pinellas County.

22.3 In the event sufficient budgeted funds are not available for a new fiscal period, the COUNTY shall notify the Bidder of such occurrence and Agreement shall terminate on the last day of current fiscal period without penalty or expense to the COUNTY.

22.4 In addition to all other legal remedies available to Pinellas County, Pinellas County reserves the right to terminate and obtain from another source, any items which have not been delivered within the period of time stated in the proposal, or if no such time is stated, within a reasonable period of time from the date of order as determined by Pinellas County.

SECTION 23 AGREEMENT TERM

23.1 This Agreement will become effective on the date of execution first written above and shall remain in effect for Five (5) years from date of award, unless terminated at an earlier date under other provisions of this Agreement, or unless extended for a longer term by amendment. The negotiated rates shall remain fixed for the full five (5) years term however, the COUNTY reserves the right to re-negotiate rates based on current market conditions. The hourly rates provided are fully loaded and include all labor, overhead, expenses and profit of any nature including travel within the Tampa Bay metropolitan Statistical area. Travel outside of the Tampa Bay Metropolitan Statistical Area will be reimbursed in accordance with Section 112.061 F.S.

~~23.2 This AGREEMENT may exercise a term extension subject to written notice of agreement from the County Administrator and CONSULTANT, for () additional () year term extension, beyond the primary AGREEMENT period. This term extension shall be exercised only if all terms and conditions remain the same. Rates will be subject to negotiation based on current market conditions. N/A~~

SECTION 24 CONFLICT OF INTEREST

24.1 By accepting award of this Contract, the CONSULTANT, which shall include its directors, officers and employees, represents that it presently has no interest in and shall acquire no interest in any business or activity which would conflict in any manner with the performance of services required hereunder, including as described in the CONSULTANT'S own professional ethical requirements. An interest in a business or activity which shall be deemed a conflict includes but is not limited to direct financial interest in any of the material and equipment manufacturers suppliers, distributors, or CONSULTANTS who will be eligible to supply material and equipment for the PROJECT for which the CONSULTANT is furnishing its services required hereunder.

24.2 If, in the sole discretion of the County Administrator or designee, a conflict of interest is deemed to exist or arise during the term of the contract, the County Administrator or designee may cancel this contract, effective upon the date so stated in the Written Notice of Cancellation, without penalty to the COUNTY.

**SECTION 25
EXTENT OF AGREEMENT**

This Agreement represents, together with the RFP, Addenda, the proposer's response, any Exhibits, the entire written Agreement between the COUNTY and the CONSULTANT and may be amended only by written instrument signed by both the COUNTY and the CONSULTANT.

**SECTION 26
PUBLIC ENTITY CRIMES**

The CONSULTANT is directed to the Florida Public Entity Crime Act, §287.133, Florida Statutes, and the COUNTY's requirement that the successful proposer comply with it in all respects prior to and during the term of this contract.

**SECTION 27
PUBLIC RECORDS**

Contractor acknowledges that information and data it manages as part of the services may be public records in accordance with Chapter 119, Florida Statutes and Pinellas County public records policies. Contractor agrees that prior to providing services it will implement policies and procedures to maintain, produce, secure, and retain public records in accordance with applicable laws, regulations, and County policies, including but not limited to the Section 119.0701, Florida Statutes. Notwithstanding any other provision of this Agreement relating to compensation, the Contractor agrees to charge the County, and/or any third parties requesting public records only such fees allowed by Section 119.07, Florida Statutes, and County policy for locating and producing public records during the term of this Agreement.

SAMPLE

**SECTION 28
GOVERNING LAW AND AGREEMENT EXECUTION**

This Agreement shall be governed by the laws of the State of Florida.

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

Firm Name

PINELLAS COUNTY, by and through its Board of
County Commissioners

By: _____
Print Name: _____
Title: _____ Date: _____

By: _____
Chairman Date: _____

ATTEST:

ATTEST:
Ken Burke, Clerk of the Circuit Court

By: _____
Print Name: _____
Title: _____ Date: _____

By: _____
Deputy Clerk Date: _____

(CORPORATE SEAL)

APPROVAL AS TO FORM:

By: _____
Office of the County Attorney