

SACRAMENTO COUNTY WATER AGENCY
AGREEMENT FOR
ON-CALL GENERAL ENGINEERING SERVICES

THIS AGREEMENT is made and entered into on _____, by and between the Sacramento County Water Agency, a statutorily created district operating under the authority of and pursuant to the provisions of the Sacramento County Water Agency Act (California Water Code-Appendix, Chapter 66, commencing at Section 66-1 et seq.), hereinafter referred to as "AGENCY" and **Consultant, entity type**, hereinafter referred to as "CONSULTANT."

RECITALS

WHEREAS, AGENCY Resolution No. WA-2308 authorizes the Director of the Department of Water Resources, County of Sacramento (hereinafter referred to as "Director") to contract for consulting services; and

WHEREAS, AGENCY has determined that it is necessary to retain CONSULTANT to provide professional services; and

WHEREAS, AGENCY issued a Request for Proposals and selected CONSULTANT from among the proposers on the basis of CONSULTANT'S experience, qualifications, and submitting the proposal best meeting the AGENCY'S needs; and

WHEREAS, CONSULTANT has proposed to provide the requested services for the compensation to be provided herein; and

WHEREAS, the services to be provided by CONSULTANT are authorized by Government Code Section 31000; and

WHEREAS, AGENCY and CONSULTANT desire to enter into this Agreement on the terms and conditions set forth herein.

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

1. SCOPE OF SERVICES

CONSULTANT shall provide services in the amount, type and manner described in Exhibit A, which is attached hereto and incorporated herein.

2. TERM

This Agreement shall be effective and commence as of the date first written above and shall end on DATE. AGENCY'S Director is authorized to amend this Agreement with CONSULTANT to extend the term.

3. NOTICE

Any notice, demand, request, consent, or approval that either party hereto may or is required to give the other pursuant to this Agreement shall be in writing and shall be either personally delivered or sent by mail, [or email], addressed as follows:

TO AGENCY:

TO CONSULTANT:

Attn:
SCWA
827 7th Street, Rm 301
Sacramento, CA 95814

Attn:

Either party may change the address [or email address] to which subsequent notice and/or other communications can be sent by giving written notice designating a change of address to the other party, which shall be effective upon receipt.

4. COMPLIANCE WITH LAWS

- A. CONSULTANT shall observe and comply with all applicable Federal, State, and County laws, regulations and ordinances.
- B. Economic Sanctions: Pursuant to California State Executive Order N-6-22 (Order) imposing economic sanctions against Russia and declaring support of Ukraine, AGENCY shall terminate any contract with any individual or entity that is in violation of the Order or that is subject to economic sanctions therein, and shall not enter a contract with any such individual or entity while the Order is in effect.
- C. [if over \$5M] CONSULTANT shall provide a written report to AGENCY within 60 days of the effective date of the contract or 60 days upon request regarding compliance with economic sanctions and steps taken in response to Russia's action in Ukraine, including but not limited to, desisting from making new investments in, or engaging in financial transactions with Russia or Russian entities, and directly providing support to Ukraine, while the Order is in effect. The AGENCY shall keep the report on file as evidence of compliance with the Order.

5. GOVERNING LAWS AND JURISDICTION

This Agreement shall be deemed to have been executed and to be performed within the State of California and shall be construed and governed by the internal

laws of the State of California. Any legal proceedings arising out of or relating to this Agreement shall be brought in Sacramento County, California.

6. LICENSES, PERMITS AND CONTRACTUAL GOOD STANDING

- A. CONSULTANT shall possess and maintain all necessary licenses, permits, certificates and credentials required by the laws of the United States, the State of California, County of Sacramento and all other appropriate governmental agencies, including any certification and credentials required by AGENCY. Failure to maintain the licenses, permits, certificates, and credentials shall be deemed a breach of this Agreement and constitutes grounds for the termination of this Agreement by AGENCY.
- B. CONSULTANT further certifies to AGENCY that it and its principals are not debarred, suspended, or otherwise excluded from or ineligible for, participation in federal, state or county government contracts. CONSULTANT certifies that it shall not contract with a subcontractor that is so debarred or suspended.

7. PREVAILING WAGES

CONSULTANT shall comply with the provisions of the California Labor Code, specifically, but not limited to, Chapter 1, commencing at Section 1720, of Part 7 of Division 2 (payment of prevailing wages). The prevailing rates for per diem wages shall be those rates determined by the Director of the California Department of Industrial Relations.

8. PERFORMANCE STANDARDS

CONSULTANT shall perform its services under this Agreement in accordance with the industry and/or professional standards applicable to CONSULTANT'S services.

9. OWNERSHIP OF WORK PRODUCT

All technical data, evaluations, plans, specifications, reports, documents, or other work products developed by CONSULTANT provided hereunder shall be the exclusive property of AGENCY and shall be delivered to AGENCY upon completion of the services authorized hereunder. CONSULTANT may retain copies thereof for its files and internal use. Publication of the information directly derived from work performed or data obtained in connection with services rendered under this Agreement must first be approved in writing by AGENCY. AGENCY recognizes that all technical data, evaluations, plans, specifications, reports, and other work products are instruments of CONSULTANT'S services and are not designed for use other than what is intended by this Agreement.

10. STATUS OF CONSULTANT OPTION 1

- A. It is understood and agreed that CONSULTANT (including CONSULTANT'S employees) is an independent contractor and that no relationship of employer-employee exists between the parties hereto. CONSULTANT'S assigned personnel shall not be entitled to any benefits payable to

employees of AGENCY. AGENCY is not required to make any deductions or withholdings from the compensation payable to CONSULTANT under the provisions of this Agreement; and as an independent contractor, CONSULTANT hereby indemnifies and holds AGENCY harmless from any and all claims that may be made against AGENCY based upon any contention by any third party that an employer-employee relationship exists by reason of this Agreement.

- B. It is further understood and agreed by the parties hereto that CONSULTANT in the performance of its obligation hereunder is subject to the control or direction of AGENCY as to the designation of tasks to be performed, the results to be accomplished by the services hereunder agreed to be rendered and performed, and not the means, methods, or sequence used by CONSULTANT for accomplishing the results.
- C. If, in the performance of this Agreement, any third persons are employed by CONSULTANT, such person shall be entirely and exclusively under the direction, supervision, and control of CONSULTANT. All terms of employment, including hours, wages, working conditions, discipline, hiring, and discharging, or any other terms of employment or requirements of law, shall be determined by CONSULTANT, and the AGENCY shall have no right or authority over such persons or the terms of such employment.
- D. It is further understood and agreed that as an independent contractor and not an employee of AGENCY, neither the CONSULTANT nor CONSULTANT'S assigned personnel shall have any entitlement as a AGENCY employee, right to act on behalf of AGENCY in any capacity whatsoever as agent, nor to bind AGENCY to any obligation whatsoever. CONSULTANT shall not be covered by worker's compensation; nor shall CONSULTANT be entitled to compensated sick leave, vacation leave, retirement entitlement, participation in group health, dental, life and other insurance programs, or entitled to other fringe benefits payable by the AGENCY to employees of the AGENCY.
- E. It is further understood and agreed that CONSULTANT must issue W-2 and 941 Forms for income and employment tax purposes, for all of CONSULTANT'S assigned personnel under the terms and conditions of this Agreement.

OPTION 2

- A. It is understood and agreed that CONSULTANT (including CONSULTANT'S employees) is an independent contractor and that no relationship of employer-employee exists between the parties hereto. CONSULTANT'S assigned personnel shall not be entitled to any benefits payable to employees of AGENCY as an independent contractor, CONSULTANT hereby indemnifies and holds AGENCY harmless from any and all claims that may be

made against AGENCY based upon any contention by any third party that an employer-employee relationship exists by reason of this Agreement.

- B. It is further understood and agreed by the parties hereto that CONSULTANT in the performance of its obligation hereunder is subject to the control or direction of AGENCY as to the designation of tasks to be performed, the results to be accomplished by the services hereunder agreed to be rendered and performed, and not the means, methods, or sequence used by CONSULTANT for accomplishing the results.
- C. If, in the performance of this Agreement, any third persons are employed by CONSULTANT, such person shall be entirely and exclusively under the direction, supervision, and control of CONSULTANT. All terms of employment, including hours, wages, working conditions, discipline, hiring, and discharging, or any other terms of employment or requirements of law, shall be determined by CONSULTANT, and the AGENCY shall have no right or authority over such persons or the terms of such employment.
- D. It is further understood and agreed that as an independent contractor and not an employee of AGENCY, neither the CONSULTANT nor CONSULTANT'S assigned personnel shall have:
 - (1) Any entitlement as a AGENCY employee.
 - (2) Except as otherwise provided by this Agreement, the right to act on behalf of AGENCY in any capacity whatsoever as agent, nor to bind AGENCY to any obligation whatsoever.
 - (3) CONSULTANT shall not be covered by worker's compensation; nor shall CONSULTANT be entitled to compensated sick leave, vacation leave, retirement entitlement, participation in group health, dental, life and other insurance programs, or entitled to other fringe benefits payable by the AGENCY to employees of the AGENCY.
- E. Notwithstanding CONSULTANT'S status as an independent contractor, AGENCY shall withhold from payments made to CONSULTANT such sums as are required to be withheld from employees by the Federal Internal Revenue Code; the Federal Insurance Compensation Act; the State Personal Income Tax Law and the State Unemployment Insurance Code; provided, however, that said withholding is for the purpose of avoiding AGENCY'S liability under said laws and does not abrogate CONSULTANT'S status as an independent contractor as described in this Agreement. Further, CONSULTANT is not included in any group covered by AGENCY'S present agreement with the federal Social Security Administration.

OPTION 3 FOR OUT OF STATE CONSULTANTS (only if Option 1 is used)

- F. Notwithstanding subparagraphs (A) and (E), it is further understood and agreed that AGENCY shall withhold seven percent (7%) of all income paid to CONSULTANT under this agreement for payment and reporting to the California Franchise Tax Board because CONSULTANT does not qualify as (1) a corporation with its principal place of business in California, (2) a partnership with a permanent place of business in California, (3) a corporation qualified to do business in California by the Secretary of State, or (4) an individual with a permanent residence in the State of California.

11. REIMBURSEMENT OF EXPENSES [include this provision only if Option 2 in "Status of Contractor" section is used]

Expenses shall be itemized as a separate line item on the monthly invoice for payment. Original receipts are required to be submitted for reimbursement.

12. CONSULTANT IDENTIFICATION

CONSULTANT shall provide the AGENCY with the following information for the purpose of compliance with California Unemployment Insurance Code section 1088.8 and Sacramento County Code Chapter 2.160: CONSULTANT'S name, address, telephone number, social security number or federal tax identification number, and whether dependent health insurance coverage is available to CONSULTANT.

13. COMPLIANCE WITH CHILD, FAMILY AND SPOUSAL SUPPORT REPORTING OBLIGATIONS

A. CONSULTANT's failure to comply with state and federal child, family and spousal support reporting requirements regarding CONSULTANT's employees or failure to implement lawfully served wage and earnings assignment orders or notices of assignment relating to child, family and spousal support obligations shall constitute a default under this Agreement.

B. CONSULTANT's failure to cure such default within 90 days of notice by AGENCY shall be grounds for termination of this Agreement.

14. BENEFITS WAIVER

If CONSULTANT is unincorporated, CONSULTANT acknowledges and agrees that CONSULTANT is not entitled to receive the following benefits and/or compensation from AGENCY: medical, dental, vision and retirement benefits, life and disability insurance, sick leave, bereavement leave, jury duty leave, parental leave, or any other similar benefits or compensation otherwise provided to permanent civil service employees pursuant to the County Charter, the County Code, the Civil Service Rule, the Sacramento County Employees' Retirement System and/or any and all memoranda of understanding between AGENCY and its employee organizations. Should CONSULTANT or any employee or agent of CONSULTANT seek to obtain such benefits from AGENCY, CONSULTANT agrees to indemnify and

hold harmless AGENCY from any and all claims that may be made against AGENCY for such benefits.

15. RETIREMENT BENEFITS/STATUS

CONSULTANT acknowledges and agrees that AGENCY has not made any representations regarding entitlement, eligibility for and/or right to receive ongoing Sacramento County Employee Retirement System (SCERS) retirement benefits during the term of this Agreement. By entering into this Agreement, CONSULTANT assumes sole and exclusive responsibility for any consequences, impacts or action relating to such retirement benefits that is or will be occasioned as a result of the services provided by CONSULTANT under this Agreement. CONSULTANT waives any rights to proceed against AGENCY should SCERS modify or terminate retirement benefits based on CONSULTANT'S provision of services under this Agreement.

16. CONFLICT OF INTEREST

CONSULTANT and CONSULTANT'S officers and employees shall not have a financial interest, or acquire any financial interest, direct or indirect, in any business, property or source of income which could be financially affected by or otherwise conflict in any manner or degree with the performance of services required under this Agreement.

17. LOBBYING AND UNION ORGANIZATION ACTIVITIES

- A. CONSULTANT shall comply with all certification and disclosure requirements prescribed by Section 319, Public Law 101-121 (31 U.S.C. § 1352) and any implementing regulations.
- B. If services under this Agreement are funded with state funds granted to AGENCY, CONSULTANT shall not utilize any such funds to assist, promote or deter union organization by employees performing work under this Agreement and shall comply with the provisions of Government Code Sections 16645 through 16649.

18. NONDISCRIMINATION IN EMPLOYMENT, SERVICES, BENEFITS AND FACILITIES

- A. CONSULTANT agrees and assures AGENCY that CONSULTANT and any subconsultants shall comply with all applicable federal, state, and local Anti-discrimination laws, regulations, and ordinances and to not unlawfully discriminate, harass, or allow harassment against any employee, applicant for employment, employee or agent of AGENCY, or recipient of services contemplated to be provided or provided under this Agreement, because of race, ancestry, marital status, color, religious creed, political belief, national origin, ethnic group identification, sex, sexual orientation, gender identity, gender expression, age (over 40), medical condition (including HIV and AIDS), or physical or mental disability. CONSULTANT shall ensure that the evaluation and treatment of its employees and applicants for employment,

the treatment of AGENCY employees and agents, and recipients of services are free from such discrimination and harassment.

- B. CONSULTANT represents that it is in compliance with and agrees that it will continue to comply with the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.), the Fair Employment and Housing Act (Government Code § 12900 et seq.), and regulations and guidelines issued pursuant thereto.
- C. CONSULTANT agrees to compile data, maintain records and submit reports to permit effective enforcement of all applicable anti-discrimination laws and this provision.
- D. CONSULTANT shall include this nondiscrimination provision in all subcontracts related to this Agreement.

19. INDEMNIFICATION

- A. To the fullest extent permitted by law, for work or services provided under this Agreement, CONSULTANT shall indemnify, defend, and hold harmless AGENCY, its Board of Supervisors, officers, directors, officials, employees, authorized volunteers, and agents (collectively "Indemnified Parties"), from and against any and all claims, demands, actions, losses, liabilities, damages, and costs incidental thereto (collectively "Claims"), including cost of defense, settlement, arbitration, expert fees, and reasonable attorneys' fees, arising out of or resulting from CONSULTANT's performance of this Agreement regardless of whether caused in part by a party indemnified hereunder, except for loss caused by the sole negligence of an Indemnified Party.
- B. The right to defense and indemnity under this section arises upon occurrence of an event giving rise to a claim and tendered in writing to CONSULTANT. CONSULTANT shall defend Indemnified Parties with counsel reasonably acceptable to AGENCY.
- C. Notwithstanding the foregoing, the parties expressly agree that CONSULTANT's defense obligation under this indemnity obligation shall require CONSULTANT to defend the Indemnified Parties until any of the following occur: (1) the judgment has become final by a Court of Competent Jurisdiction, (2) other mutually agreeable dispute resolution or settlement process establishing the proportionate percentage of fault of the parties under law.
- D. To the extent permitted by law, this indemnity obligation shall not be limited by the types and amounts of insurance or self-insurance maintained by CONSULTANT, CONSULTANT's sub-consultants or subcontractors, or any party used by CONSULTANT in performance of this Agreement.

- E. The provisions of this indemnity obligation shall survive the expiration or termination of the Agreement.

20. INSURANCE

Without limiting CONSULTANT'S indemnification, CONSULTANT shall maintain in force at all times during the term of this Agreement and any extensions or modifications thereto, insurance as specified in Exhibit B. It is the responsibility of CONSULTANT to notify its insurance advisor or insurance carrier(s) regarding coverage, limits, forms and other insurance requirements specified in Exhibit B. It is understood and agreed that AGENCY shall not pay any sum to CONSULTANT under this Agreement unless and until AGENCY is satisfied that all insurance required by this Agreement is in force at the time services hereunder are rendered. Failure to maintain insurance as required in this agreement may be grounds for material breach of contract.

21. INFORMATION TECHNOLOGY ASSURANCES

CONSULTANT shall take all reasonable precautions to ensure that any hardware, software, and/or embedded chip devices used by CONSULTANT in the performance of services under this Agreement, other than those owned or provided by AGENCY, shall be free from viruses. Nothing in this provision shall be construed to limit any rights or remedies otherwise available to AGENCY under this Agreement.

22. WEB ACCESSIBILITY [add if web sites and/or web applications in scope]

CONSULTANT shall ensure that all web content and mobile applications provided by CONSULTANT pursuant to this Agreement shall comply with the County of Sacramento's Web Accessibility Policy.

23. ADVANCED CLEAN FLEET REGULATION [use if consultant is using/providing a fleet of vehicles as part of services provided]

CONSULTANT and any and all subcontractors shall at all times have valid Certificates of Reported Compliance as described in California Code of Regulations, title 13, ("13 CCR") section 2449(n) for fleets of vehicles subject to 13 CCR section 2449 which may be used in performance of this Agreement. No such vehicle is permitted onsite unless and until CONSULTANT provides AGENCY with a valid Certificate of Reported Compliance therefor. Vehicles with a gross vehicle weight greater than 8,500 lbs. and light-duty package delivery vehicles operated in California may be subject to the California Air Resources Board Advanced Clean Fleets regulations and Advanced Clean Fleets Regulation & Advisories. Such vehicles may therefore be subject to requirements to reduce emissions of air pollutants. For more information, see CARB Advanced Clean Fleets.

24. COMPENSATION AND PAYMENT OF INVOICES LIMITATIONS

- A. Compensation under this Agreement shall be limited to the Maximum Total Payment Amount set forth in Exhibit C, or Exhibit C as modified by AGENCY in accordance with express provisions in this Agreement.

- B. CONSULTANT shall submit an invoice in accordance with the procedures prescribed by AGENCY on a monthly basis for services performed during the previous month. Invoices shall be submitted to AGENCY no later than the fifteenth (15th) day following the invoice period, and AGENCY shall pay CONSULTANT within thirty (30) days after receipt of an appropriate and correct invoice.
- C. AGENCY operates on a July through June fiscal year. Invoices for services provided in any fiscal year must be submitted no later than July 31, one month after the end of the fiscal year. Invoices submitted after July 31 for the prior fiscal year shall not be honored by AGENCY unless CONSULTANT has obtained prior written AGENCY approval to the contrary.
- D. CONSULTANT shall maintain for four (4) years following termination of this agreement full and complete documentation of all services and expenditures associated with performing the services covered under this Agreement. Expense documentation shall include: time sheets or payroll records for each employee; receipts for supplies; applicable subcontract expenditures; applicable overhead and indirect expenditures.
- E. In the event CONSULTANT fails to comply with any provisions of this Agreement, AGENCY may withhold payment until such non-compliance has been corrected.

25. LEGAL TRAINING INFORMATION keep/delete as appropriate

If under this Agreement CONSULTANT is to provide training of County personnel on legal issues, then CONSULTANT shall submit all training and program material for prior review and written approval by County Counsel. Only those materials approved by County Counsel shall be utilized to provide such training.

26. SUBCONTRACTS, ASSIGNMENT

- A. CONSULTANT shall obtain prior written approval from AGENCY before subcontracting any of the services delivered under this Agreement. CONSULTANT remains legally responsible for the performance of all contract terms including work performed by third parties under subcontracts. Any subcontracting will be subject to all applicable provisions of this Agreement. CONSULTANT shall be held responsible by AGENCY for the performance of any subconsultant whether approved by AGENCY or not.
- B. This Agreement is not assignable by CONSULTANT in whole or in part, without the prior written consent of AGENCY.
- C. The Director has authority to approve assignment of this Agreement under paragraphs (A) and (B), above.

27. AMENDMENT AND WAIVER

Except as provided herein, no alteration, amendment, variation, or waiver of the terms of this Agreement shall be valid unless made in writing and signed by both parties. Waiver by either party of any default, breach or condition precedent shall not be construed as a waiver of any other default, breach or condition precedent, or any other right hereunder. No interpretation of any provision of this Agreement shall be binding upon AGENCY unless agreed in writing by Director and counsel for AGENCY.

28. SUCCESSORS

This Agreement shall bind the successors of AGENCY and CONSULTANT in the same manner as if they were expressly named.

29. TIME

Time is of the essence of this Agreement.

30. INTERPRETATION

This Agreement shall be deemed to have been prepared equally by both of the parties, and the Agreement and its individual provisions shall not be construed or interpreted more favorably for one party on the basis that the other party prepared it.

31. DIRECTOR

As used in this Agreement, "Director" shall mean the County of Sacramento, Director of the Department of Water Resources, acting as AGENCY Engineer, or their designee.
OR:

As used in this Agreement, "Director" shall mean the Director of the Department of Water Resources acting as AGENCY Engineer, or their designee. Director shall administer this Agreement on behalf of the AGENCY, and has authority to make administrative amendments to this Agreement on behalf of the AGENCY including, but not limited to, scope of services, pricing, performance standards, milestones, schedules and timelines, management practices and similar matters so long as such administrative amendments do not affect the Total Maximum Payment Amount set forth in Exhibit C. Unless otherwise provided herein or required by applicable law, Director shall be vested with all the rights, powers, and duties of AGENCY herein. With respect to matters herein subject to the approval, satisfaction, or discretion of AGENCY or Director, the decision of the Director in such matters shall be final.

32. DISPUTES

In the event of any dispute arising out of or relating to this Agreement, the parties shall attempt, in good faith, to promptly resolve the dispute mutually between themselves. Pending resolution of any such dispute, CONSULTANT shall continue without delay to carry out all its responsibilities under this Agreement unless the

Agreement is otherwise terminated in accordance with the Termination provisions herein. AGENCY shall not be required to make payments for any services that are the subject of this dispute resolution process until such dispute has been mutually resolved by the parties. If the dispute cannot be resolved within 15 calendar days of initiating such negotiations or such other time period as may be mutually agreed to by the parties in writing, either party may pursue its available legal and equitable remedies, pursuant to the laws of the State of California. Nothing in this Agreement or provision shall constitute a waiver of any of the government claim filing requirements set forth in Title 1, Division 3.6, of the California Government Code or as otherwise set forth in local, state and federal law.

33. TERMINATION

- A. AGENCY may terminate this Agreement without cause upon thirty (30) days' written notice to the other party. Notice shall be deemed served on the date of mailing. If notice of termination for cause is given by AGENCY to CONSULTANT and it is later determined that CONSULTANT was not in default or the default was excusable, then the notice of termination shall be deemed to have been given without cause pursuant to this paragraph (A).
- B. AGENCY may terminate this Agreement for cause immediately upon giving written notice to CONSULTANT should CONSULTANT materially fail to perform any of the covenants contained in this Agreement in the time and/or manner specified. In the event of such termination, AGENCY may proceed with the work in any manner deemed proper by AGENCY. If notice of termination for cause is given by AGENCY to CONSULTANT and it is later determined that CONSULTANT was not in default or the default was excusable, then the notice of termination shall be deemed to have been given without cause pursuant to paragraph (A) above.
- C. AGENCY may terminate or amend this Agreement immediately upon giving written notice to CONSULTANT that funds are not available because: 1) Sufficient funds are not appropriated in AGENCY'S Adopted or Adjusted Budget; 2) the AGENCY is advised that funds are not available from external sources for this Agreement or any portion thereof, including if distribution of such funds to the AGENCY is suspended or delayed; 3) if funds for the services and/or programs provided pursuant to this Agreement are not appropriated by the State; 4) funds that were previously available for this Agreement are reduced, eliminated and/or re-allocated by AGENCY as a result of budget or revenue reductions during the fiscal year.
- D. If this Agreement is terminated under Paragraph A or C above, CONSULTANT shall only be paid for any service completed and provided prior to notice of termination. In the event of termination under paragraph A or C above, CONSULTANT shall be paid an amount which bears the same ratio to the total compensation authorized by the Agreement as the services actually performed bear to the total services of CONSULTANT covered by this

Agreement, less payments of compensation previously made. In no event, however, shall AGENCY pay CONSULTANT an amount which exceeds a pro rata portion of the Agreement total based on the portion of the Agreement term that has elapsed on the effective date of the termination.

- E. CONSULTANT shall not incur any expenses under this Agreement after notice of termination and shall cancel any outstanding expense obligations to a third party that CONSULTANT can legally cancel.
- F. The Director has authority to terminate this Agreement under paragraphs (A), (B) and (C), above.

34. REPORTS

- A. CONSULTANT shall, without additional compensation therefore, make fiscal, program evaluation, progress, and such other reports as may be reasonably required by Director concerning CONSULTANT'S activities as they affect the contract duties and purposes herein. AGENCY shall explain procedures for reporting the required information.
- B. CONSULTANT agrees that, pursuant to Government Code section 7522.56, CONSULTANT shall make best efforts to determine if any of its employees or new hires providing direct services to the AGENCY are members of the Sacramento County Employees' Retirement System (SCERS). CONSULTANT further agrees that it shall make a report bi-annually (due no later than January 31st and July 31st) to the AGENCY with a list of its employees that are members of SCERS along with the total number of hours worked during the previous 6 months. This report shall be forwarded to where Notice is sent pursuant to Section 3 of this Agreement.

35. AUDITS AND RECORDS

Upon AGENCY'S request, AGENCY or its designee shall have the right at reasonable times and intervals to audit, at CONSULTANT'S premises, CONSULTANT'S financial and program records as AGENCY deems necessary to determine CONSULTANT'S compliance with legal and contractual requirements and the correctness of claims submitted by CONSULTANT. CONSULTANT shall maintain such records for a period of four (4) years following termination of the Agreement, and shall make them available for copying upon AGENCY'S request at AGENCY'S expense. AGENCY shall have the right to withhold any payment under this Agreement until CONSULTANT has provided access to CONSULTANT'S financial and program records related to this Agreement.

36. PRIOR AGREEMENTS

This Agreement constitutes the entire contract between AGENCY and CONSULTANT regarding the subject matter of this Agreement. Any prior agreements, whether oral or written, between AGENCY and CONSULTANT regarding the subject matter

of this Agreement are hereby terminated effective immediately upon full execution of this Agreement.

37. SEVERABILITY

If any term or condition of this Agreement or the application thereof to any person(s) or circumstance is held invalid or unenforceable, such invalidity or unenforceability shall not affect other terms, conditions, or applications which can be given effect without the invalid term, condition, or application; to this end the terms and conditions of this Agreement are declared severable.

38. FORCE MAJEURE

Neither CONSULTANT nor AGENCY shall be liable or responsible for delays or failures in performance resulting from events beyond the reasonable control of such party and without fault or negligence of such party. Such events shall include but not be limited to acts of God, strikes, lockouts, riots, acts of war, epidemics, pandemics, acts of government, fire, power failures, nuclear accidents, earthquakes, unusually severe weather, acts of terrorism, or other disasters, whether or not similar to the foregoing, and acts or omissions or failure to cooperate of the other party or third parties (except as otherwise specifically provided herein).

39. SURVIVAL OF TERMS

All services performed and deliverables provided pursuant to this Agreement are subject to all of the terms, conditions, price discounts and rates set forth herein, notwithstanding the expiration of the initial term of this Agreement or any extension thereof. Further, the terms, conditions and warranties contained in this Agreement that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Agreement shall so survive.

40. AUTHORITY TO EXECUTE

Each person executing this Agreement represents and warrants that he or she is duly authorized and has legal authority to execute and deliver this Agreement for or on behalf of the parties to this Agreement. Each party represents and warrants to the other that the execution and delivery of the Agreement and the performance of such party's obligations hereunder have been duly authorized.

41. DUPLICATE COUNTERPARTS

This Agreement may be executed in several counterparts, all of which together shall be deemed one and the same agreement. The Agreement shall be deemed executed when it has been signed by both parties.

Electronic and scanned signatures shall be deemed original signatures for all purposes, including proof of terms herein, and shall be binding on each party.

42. ADDITIONAL PROVISIONS

The additional provisions contained in Exhibits A, B, and C [add exhibits as

necessary] attached hereto are part of this Agreement and are incorporated herein by reference.

(SIGNATURE PAGE FOLLOWS)

DRAFT

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first written above.

SACRAMENTO COUNTY WATER CONSULTANT, entity type

AGENCY, a statutorily created district operating under the authority of and pursuant to the provisions of the Sacramento County Water Agency Act (California Water Code-Appendix, Chapter 66, commencing at Section 66-1 et seq.)

By: _____
Matt Satow, Agency Engineer
Sacramento County Water Agency
Director, Department of Water Resources
County of Sacramento

By: _____
Name: _____
Title: _____

"AGENCY"

"CONSULTANT"

Date: _____

Date: _____

Signed by the Director under the
authority delegated by Resolution
Number _____

Agreement approved by
Board of Directors: _____

Agenda Date: _____ TBD

Item Number: _____

Contract and Consultant Tax Status Reviewed and Approved by County Counsel

By: _____ Date: _____
William C. Burke
Deputy County Counsel

Prepared by: _____
NAME, Senior Contract Services Officer,
Contract & Purchasing Services Division, Department of General Services

EXHIBIT A to Agreement

SCOPE OF SERVICES

1. CONSULTANT'S PROPOSAL

A. The scope of services to be provided by this Agreement consists of those services set forth in CONSULTANT'S Proposal dated _____ attached hereto as Attachment 1 and incorporated herein by this reference. In the event of any conflict, inconsistency or ambiguity between this Agreement and the Proposal, this Agreement shall govern. CONSULTANT agrees to perform all services stated in this Agreement for the compensation described herein.

OR

A. The scope of services to be provided by this Agreement are those services identified in AGENCY'S Request for Proposal (RFP) dated _____, and CONSULTANT'S Proposal dated _____. Both the RFP and the Proposal are hereby incorporated into this Agreement as Attachments 1 and 2, respectively, and made a part of this Agreement. In the event of any inconsistencies or ambiguities, the Proposal shall govern over the RFP, and this Agreement shall govern over all. CONSULTANT agrees to perform all services stated in this Agreement for the compensation described herein.

AND

B. The AGENCY'S Director or designee, may negotiate with CONSULTANT and approve reasonable modifications in tasks, work products, schedules, milestones, and staff assignments so long as such modifications are within the general scope of services provided under this Agreement, do not exceed the Maximum Total Payment Amount, and are determined to be in the best interest of AGENCY.

2. SCHEDULE

CONSULTANT shall complete the services in an expeditious manner and transmit all applicable materials to the AGENCY as stated in the _____ or as mutually adjusted with AGENCY'S Project Manager.

OR

CONSULTANT shall perform the services in an expeditious manner in accordance with a mutually acceptable schedule developed between AGENCY and CONSULTANT.

3. RESPONSIBILITIES OF AGENCY AND CONSULTANT FOR SCOPE

- A. AGENCY, or its authorized representatives, shall review all documents submitted by CONSULTANT and render decisions pertaining thereto as promptly as is reasonable under the circumstances at the time in order to avoid unreasonable delay of the progress of CONSULTANT. AGENCY shall furnish information and services as required by this Agreement and shall render approvals and decisions as expeditiously as is reasonably necessary under the circumstances at the time for the orderly progress of the CONSULTANT'S services and of the project.
- B. CONSULTANT shall be solely responsible for the quality and accuracy of its work and the work of its subconsultants performed in connection with this Agreement. Any review, approval, or concurrence therewith by the AGENCY shall not be deemed to constitute acceptance or waiver by the AGENCY of any error or omission as to such work. CONSULTANT shall coordinate the activities of any subconsultants and is responsible to ensure that all plans, drawings, and specifications are coordinated and interface with the other applicable plans, drawings, and specifications to produce a unified, workable, and acceptable whole functional product.
- C. CONSULTANT shall be solely and completely responsible for implementing the applicable COVID-19 guidelines from the California Division of Industrial Safety and the applicable COVID-19 guidance from the Centers for Disease Control and Prevention (CDC) including staff education, staff training, routine cleaning of staff and public space, on-site washing facilities, and to the extent applicable Personal Protective Equipment (PPE) donning and maintenance. CONSULTANT shall submit a plan for compliance with these standards to the AGENCY. This safety plan and/or narrative description shall describe the education, training, routine cleaning, on-site washing facilities and the PPE to be used or provided by the CONSULTANT. Compliance with these standards is not a reimbursable expense pursuant to this Agreement.

4. AUTHORITY OF CONSULTANT PERFORMING SCOPE OF WORK

CONSULTANT is retained to provide and perform the scope of services covered by this Agreement. CONSULTANT, including CONSULTANT'S assigned personnel, shall have no authority to represent AGENCY or

AGENCY staff at any meetings of public or private agencies unless an appropriate AGENCY official provides prior written authorization for such representation which outlines the purpose, scope and duration of such representation. CONSULTANT shall possess no authority or right to act on behalf of AGENCY in any capacity whatsoever as agent, nor to bind AGENCY to any obligations whatsoever. AGENCY is responsible for making all policy and governmental decisions related to the work covered by this Agreement.

5. PUBLICATION OF DOCUMENTS AND DATA

CONSULTANT shall not publish, or disclose to any third party, documents, data, or any confidential information relative to the work of the AGENCY without the prior written consent of AGENCY, however, submission or distribution to meet official regulatory requirements, or for other purposes authorized by this Agreement, shall not be construed as publication in derogation of the rights of either the AGENCY or CONSULTANT.

6. PROJECT PERSONNEL (Optional depending on project)

In the performance of the services hereunder, CONSULTANT shall provide the personnel as set forth in the Proposal. Any change in such personnel or reassignment in their project responsibilities must be agreed to in writing by the Director or his authorized representative before any such change may be made. Key contacts for this project shall be as follows: [or those individuals named in Section 3 Notice of this Agreement.]

AGENCY: NAME:
 PHONE:
 E-MAIL:

CONSULTANT: NAME:
 PHONE:
 E-MAIL:

EXHIBIT B to Agreement

**SACRAMENTO COUNTY WATER AGENCY
INSURANCE REQUIREMENTS**

1. INSURANCE

Without limiting CONSULTANT's indemnification, CONSULTANT shall procure and maintain for the duration of the Agreement, insurance against claims for injury to persons or damage to property which may arise from or is in connection with the performance of the work hereunder and the results of that work by the CONSULTANT, its employees, agents, representatives, subcontractors, or any other party for which CONSULTANT is legally liable.

The Agency Risk Manager may approve self-insurance programs in lieu of required policies of insurance if, in the opinion of the Risk Manager, the interests of AGENCY and the public are adequately protected.

2. MINIMUM SCOPE OF INSURANCE

Coverage shall be at least as broad as:

- A. **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & 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 05 09 or 25 04 05 09) or the general aggregate limit shall be twice the required occurrence limit.
- B. **Automobile Liability:** ISO Form Number CA 00 01 covering any auto (Code 1), or if CONSULTANT has no owned autos, covering hired, (Code 8) and non-owned autos (Code 9), with limit no less than \$1,000,000 per accident for bodily injury and property damage.

Personal Lines automobile insurance shall apply if vehicles are individually owned with limits of no less than \$250,000 per person, \$500,000 each accident, \$100,000 property damage.

- C. **Workers' Compensation:** Insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.

Professional Liability (Errors and Omissions): Insurance appropriate to the CONSULTANT's profession, with limit no less than \$2,000,000 per occurrence or claim and \$4,000,000 aggregate covering CONSULTANT's wrongful acts, errors and omissions. Any aggregate limit for professional liability must be separate and in addition to any CGL aggregate limit.

[Include Professional Liability (Errors and Omissions) requirement if Contractor is professionally licensed or is hired for their professional advice or expertise (e.g. consultants, architects, engineers, healthcare professionals, attorneys, financial professionals, accountants, technology professionals, etc.)

Abuse or molestation, if Consultant works with Minors; Cyber Liability, if Consultant is collecting, storing, or transmitting Personal Identifiable Information (PHI) or Protected Health Information (PHI); Technology Professional Liability Errors & Omissions if Consultant provides a technology service (data storage, website designers, etc. or product (software providers)

ENVIRONMENTAL IMPAIRMENT LIABILITY (POLLUTION LIABILITY): Insurance which includes coverage for the clean-up and remediation of the CONSULTANT'S facility to which this Agreement applies. Environmental Impairment Liability (Pollution Liability): \$1,000,000 per claim or occurrence and aggregate. keep/delete as appropriate

Building Trades CONSULTANTS and CONSULTANTS engaged in other projects of construction shall have their general liability Aggregate Limit of Insurance endorsed to apply separately to each job site or project, as provided for by Insurance Services Office form CG-2503 Amendment-Aggregate Limits of Insurance (Per Project). keep/delete as appropriate

COURSE OF CONSTRUCTION (COC) WAIVER OF SUBROGATION: Any Course of Construction (COC) policies maintained by CONSULTANT in performance of the Agreement shall contain the following provisions:

- a. AGENCY shall be named as loss payee.
- b. The insurer shall waive all rights of subrogation against AGENCY.

INLAND MARINE WAIVER OF SUBROGATION: Any Inland Marine insurance policies maintained by CONSULTANT in performance of the Agreement shall be endorsed to state that the insurer shall waive all rights of subrogation against AGENCY.

If the CONSULTANT maintains broader coverage and/or higher limits than the minimums shown above, the AGENCY requires and shall be entitled to the broader coverage and/or the higher limits maintained by the CONSULTANT.

3. INSURANCE PROVISIONS

The insurance policies are to contain, or be endorsed to contain, as applicable, the following provisions:

- A. **Additional Insured Status:** The AGENCY, its Board of Directors, and all AGENCY officers, officials, employees, volunteers, and agents ("Additional Insureds") are to be covered as additional insureds on the general and auto liability policies with respect to liability arising out of work or operations performed by or on behalf of the CONSULTANT including materials, parts, equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement on the CONSULTANT'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, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 if a later edition is used).
- B. **Primary Coverage:** For any claims related to this Agreement, the CONSULTANT's insurance coverage shall be primary and non-contributory and at least as broad as ISO CG 20 01 04 13 as respects the Additional Insureds. Any insurance or self-insurance maintained by the Additional Insureds shall be excess of the CONSULTANT's insurance and shall not contribute with it. This also applies to any CONSULTANT Excess or Umbrella liability policies.
- C. **Umbrella or Excess Policy:** The CONSULTANT may use Umbrella or Excess Policies to provide the liability limits as required in this agreement. This form of insurance will be acceptable if the Primary and Umbrella or Excess Policies provide all the insurance coverages herein required, including, but not limited to, primary and non-contributory, additional insured, Self-Insured Retentions (SIRs), indemnity, and defense requirements. The Umbrella or Excess policies shall be provided on a true "following form" or broader coverage basis, with coverage at least as broad as provided on the underlying Commercial General Liability insurance. No insurance policies maintained by the Additional Insureds, whether primary or excess, and which also apply to a loss covered hereunder, shall be called upon to contribute to a loss until the CONSULTANT's primary and excess liability policies are exhausted.

- D. **Notice of Cancellation:** Each insurance policy required above shall provide that coverage shall not be canceled without notice to the AGENCY.
- E. **Waiver of Subrogation:** CONSULTANT hereby grants to AGENCY a waiver of any right to subrogation which any insurer of CONSULTANT may acquire against the AGENCY by virtue of the payment of any loss under such insurance. CONSULTANT 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 AGENCY has received a waiver of subrogation endorsement from the insurer.
- F. **Self-Insured Retentions:** Self-insured retentions ("SIR"s) must be declared to and approved by the AGENCY in writing. The AGENCY may require the CONSULTANT to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the SIR may be satisfied by either the named insured or AGENCY. Any and all deductibles and SIRs shall be the sole responsibility of CONSULTANT or subcontractor who procured such insurance and shall not apply to the Additional Insureds. The AGENCY may deduct from any amounts otherwise due CONSULTANT to fund the SIR/deductible. Policies shall not contain any SIR provision that limits the satisfaction of the SIR to the CONSULTANT. The policy must also provide that defense costs, including the allocated loss adjustment expenses, will satisfy the SIR or deductible. The AGENCY reserves the right to obtain a copy of any policies and endorsements for verification.
- G. **Acceptability of Insurers:** Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best's rating of no less than A-VII. Lower rated, or approved but not admitted insurers, or any other requirement changes (such as limits) are subject to the prior approval of the Agency Risk Manager.
- H. **Claims Made Policies:** If any of the required policies provide claims-made coverage (1) the Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work, (2) insurance must be maintained, and evidence of insurance must be provided for at least three (3) years after completion of the contract of work, and (3) if coverage is canceled or non-renewed and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the CONSULTANT must purchase

"extended reporting" coverage for a minimum of three (3) years after completion of work.

- I. **Verification of Coverage:** CONSULTANT shall furnish the AGENCY with original certificates and amendatory endorsements, or copies of the applicable policy language affecting coverage required by this Exhibit. All certificates and endorsements and copies of the Declarations and Endorsements pages are to be received and approved by the AGENCY before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the CONSULTANT's obligation to provide them. The AGENCY reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time. Any failure, actual or alleged, on the part of the AGENCY to monitor or enforce compliance with any of the insurance requirements is not deemed a waiver of any rights on the part of the AGENCY.
- J. **Severability of Interest:** The CONSULTANT's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- K. **Subcontractors:** If CONSULTANT uses subcontractors or others to perform work under this Agreement, such subcontractors or other persons shall be Named Insured or Additional Insured to the CONSULTANT's required insurance coverage or required by the CONSULTANT to comply with equivalent insurance and conditions of this section.
- L. **Maintenance Of Insurance Coverage:** CONSULTANT shall provide AGENCY with evidence of each policy's renewal ten (10) days in advance of its anniversary date. CONSULTANT is required by this Agreement to immediately notify AGENCY if they receive a communication from their insurance carrier or agent that any required insurance is to be canceled, non-renewed, reduced in scope or limits or otherwise materially changed. CONSULTANT shall provide evidence that such insurance has been replaced, or its cancellation notice is withdrawn, without any interruption in coverage, scope or limits. No cancellation provisions in the insurance policy shall be construed in derogation of the continuing duty of CONSULTANT to furnish insurance during the term of this Agreement.

Failure to maintain required insurance in force shall be considered a material breach of the Agreement.

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

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EXHIBIT C to Agreement**COMPENSATION****1. MAXIMUM PAYMENT TO CONSULTANT**

The Maximum Total Payment Amount under this Agreement is:
\$ 00,000.

Compensation Summary	
Total	

2. COMPENSATION COMPONENTS

A. Add appropriate options to address payment method: T&E, lump sum, cost plus fixed fee, etc.

Add provisions to address any additional compensation components: rate changes, contingency, timing, etc.

B. [Include if services may include travel] Travel Expenses. Any travel costs incurred by CONSULTANT in the performance of work under this Agreement is included within the contract price and must be approved in advance and in writing by the Director or designee. CONSULTANT shall not submit travel expenses for reimbursement by AGENCY that exceed the amounts stated in Attachment X, which is attached hereto and incorporated herein. AGENCY's reimbursements for travel costs shall not exceed the standard rates established in Internal Revenue Service [Publication 463](#) and U.S. General Services Administration per diem rates. AGENCY is under no obligation to reimburse extraordinary expenses submitted by CONSULTANT under this Agreement. Extraordinary expenses include, but are not limited to: first-class air travel, hotel costs that exceed general rates for the area, travel expenses that exceed a reasonable amount of time needed to perform the work, pet boarding or childcare related expenses incurred during travel, and travel insurance.

C. Total compensation, including fees expenses and profit for services rendered by CONSULTANT shall not exceed the Maximum Total Payment Amount under this Agreement list above.

3. ITEMIZED TASKS AND SUBTASKS

If CONSULTANT'S Proposal contains a schedule of tasks or subtasks with identified levels of effort such as estimated hours and/or estimated costs, or identifiable work products, milestones, or other events, then compensation for these individual tasks or activities shall not exceed the identified estimate or other limiting factors without the written approval of AGENCY'S Project Manager. CONSULTANT shall promptly notify AGENCY'S Project Manager in writing of any tasks, subtasks, work products, or milestones that need to be reevaluated and indicate the reason and/or justification for such reevaluation. AGENCY'S Project Manager is authorized to negotiate adjustments of individual tasks so long as the work is within the general scope of the project and the total compensation does not exceed the Maximum Total Payment Amount under this Agreement listed above.

4. WORK NOT IN SCOPE OF SERVICES

CONSULTANT shall immediately notify the AGENCY'S Project Manager in writing of any work that the AGENCY requests to be performed that CONSULTANT believes is outside of the original scope of work covered by this Agreement. If it is determined that said request is outside of the scope of work, such work shall not be performed unless and until the Director approves such request in writing and authorizes the use of any contingency funds for such work, or an amendment providing for an adjustment in CONSULTANT'S compensation is approved and executed by both parties.

5. NOTIFICATION OF 75% EXPENDITURE OF COMPENSATION

CONSULTANT shall notify AGENCY'S Project Manager in writing upon expenditure of seventy-five percent (75%) of the authorized Agreement amount. Such notice shall identify the percentage of funds expended, the percentage of work completed, an explanation of any variation between these two (2) percentages, and an assessment of the cost of the remaining work to be performed.

6. SUBMISSION OF INVOICES

CONSULTANT shall address and submit all invoices associated with this Agreement electronically to the following address: WRAP@saccounty.gov.

CONSULTANT shall include the following information on all invoices:

1. Contract Number: _____

2. Project Name: _____
3. Date of Invoice Submission
4. Time Period Invoice Covers
5. Services Provided and Respective Compensation Requested
6. Any other information deemed necessary by CONSULTANT and/or AGENCY.

7. PAYMENTS

In accordance with the Compensation and Payment of Invoices Limitations provision of this Agreement, AGENCY shall address and submit payments to CONSULTANT at address in the Notice provision of this Agreement. OR at the following address:

CONSULTANT may change the address to which subsequent payments shall be sent by giving written notice designating a change of address to AGENCY, which shall be effective upon receipt.