

AGREEMENT NUMBER A-22_____

AGREEMENT FOR CONSULTING SERVICES FOR FLOOD EMERGENCY RESPONSE
GRANT – DELTA GROUND II PROJECT

THIS AGREEMENT, made and entered into _____, by and between the SAN JOAQUIN FLOOD CONTROL AND WATER CONSERVATION DISTRICT, a political district formed by the County of San Joaquin, a political subdivision of the State of California, hereinafter referred to as "DISTRICT", and _____, a _____ corporation, hereinafter referred to as "CONSULTANT".

WITNESSETH:

WHEREAS, DISTRICT desires to conduct Flood Emergency Response Grant – Delta Ground II Project, hereinafter referred to as "PROJECT"; and

WHEREAS, DISTRICT has requested engineering services from CONSULTANT for the PROJECT; and

WHEREAS, CONSULTANT employs experienced, qualified and duly licensed professional engineers; and

WHEREAS, DISTRICT desires to engage the services of CONSULTANT for the PROJECT.

NOW, THEREFORE, the parties hereto mutually agree as follows:

I - SCOPE OF WORK

CONSULTANT shall perform in accordance with Tasks as referenced and defined in Exhibit "A", which is attached hereto and incorporated herein by this reference, hereinafter referred to as "SCOPE OF WORK". CONSULTANT shall provide all labor, equipment, tools and facilities necessary for the completion of the SCOPE OF WORK.

CONSULTANT represents that all professional personnel required in performing the services under this AGREEMENT have been identified in the CONSULTANT'S Statement of Qualifications which is incorporated herein to the SCOPE OF WORK.

CONSULTANT represents that all work performed pursuant to this AGREEMENT either by CONSULTANT or at its direction shall be sufficient to meet the SCOPE OF WORK as specified in this AGREEMENT and shall be rendered in accordance with the accepted practices and standards of CONSULTANT'S profession. All work shall be performed according to the

requirements of DISTRICT, and other applicable federal, state, and local agencies.

II - SCHEDULE

A. The time schedule for all work shown in the SCOPE OF WORK shall be performed by CONSULTANT in accordance with the estimated schedule listed in Exhibit "B", which is attached hereto and incorporated herein by this reference, hereinafter referred to as "SCHEDULE". The time for performance by CONSULTANT will begin upon issuance of Notice to Proceed by DISTRICT.

B. The work shown in the SCOPE OF WORK shall be completed within the term specified within the SCHEDULE. CONSULTANT shall diligently pursue and coordinate the various tasks contained in the SCOPE OF WORK and proceed according to the SCHEDULE in an orderly and timely manner. The SCHEDULE may be modified by the written consent of DISTRICT, but only in the event that such modifications are necessary due to revisions in the SCOPE OF WORK caused by the DISTRICT or other reviewing agency, or for other reasons beyond the control of CONSULTANT or it is mutually agreed upon and a written request for modification by CONSULTANT is made at least eight (8) weeks prior to the end of the SCHEDULE. Completion of additional services will be done pursuant to Section IV - CHANGES IN SCOPE OF SERVICES.

C. Except as to any rights or obligations which survive discharge, this AGREEMENT shall be discharged, and the parties shall have no further obligation to each other, upon completion of the PROJECT as certified by CONSULTANT and accepted by DISTRICT. The following provisions in this AGREEMENT shall survive discharge: Section VI - DOCUMENTATION AND SERVICES BY CONSULTANT and Section XII - HOLD HARMLESS.

The time for performance by CONSULTANT will be completed upon issuance of Notice of Completion by DISTRICT.

III - COMPENSATION

A. CONSULTANT shall be compensated in accordance with the compensation schedule listed in Exhibit "C", which is attached hereto and incorporated herein by this reference, hereinafter referred to as "COST PROPOSAL". DISTRICT shall reimburse CONSULTANT up to _____, which sum includes all expenses of whatever nature including, but not limited to, the Tasks and deliverables identified in the SCOPE OF WORK, printing costs for all submittals and review materials and any subcontracted work. Actual costs shall not exceed the personnel wage rate sheets and other Task costs set forth in the COST PROPOSAL. CONSULTANT shall also comply with Title 49, Code of Federal Regulations, Part 18 (Uniform

Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments) in the procurement of services, supplies or equipment.

B. DISTRICT shall manage and administer Task expenditure limits and associated CONSULTANT and subconsultant expenditure limits in accordance with the COST PROPOSAL. If Tasks are completed by CONSULTANT and subconsultants and accepted by DISTRICT, and if CONSULTANT can verify cost savings that result in available residual unexpended funds, then these amounts shall be identified by CONSULTANT and reported to DISTRICT. If CONSULTANT forecasts any Task expenditure limit overruns and associated CONSULTANT cost limit overruns or subconsultant cost limit overruns, then these cost overruns shall be identified by CONSULTANT and reported to DISTRICT. Prior written DISTRICT approval must be secured before any cost overrun can be authorized. With prior written DISTRICT approval, if residual unexpended funds are available, then these funds, at DISTRICT'S discretion, may be applied to cost overruns as well as additional supplemental work DISTRICT may request from CONSULTANT. CONSULTANT shall provide a monthly written summary of progress, critical issues, schedule and budget performance, etc., and any cost savings or forecasted overruns are to be identified by CONSULTANT and reported to DISTRICT.

C. Compensation will be provided by DISTRICT to CONSULTANT only for work actually performed during the term of this AGREEMENT. Compensation will be based on the actual amount of work performed in accordance with the SCOPE OF WORK, personnel wage rate sheets and other costs set forth in the COST PROPOSAL. The DISTRICT reserves the right to eliminate or reduce the scope of any work listed in the COST PROPOSAL. No additional compensation will be provided for work eliminated from the original COST PROPOSAL or for work performed under a reduced COST PROPOSAL regardless of the reason for such elimination or reduction.

D. For the purpose of compensation, payments shall be made monthly by DISTRICT, based upon the actual hours of work performed by CONSULTANT. All actual direct costs must be specifically identified evidencing in proper detail the nature and propriety of the charges. Any direct costs not specifically identified in the COST PROPOSAL must be approved by DISTRICT before any expenses are incurred and before any request for reimbursement can be made by CONSULTANT. CONSULTANT shall submit payment requests in duplicate addressed to DISTRICT, which indicate the number of actual hours of work performed, the personnel wage rates, and the other costs related thereto. Monthly payment requests shall include progress updates comparing projected and actual progress, Tasks completed, percent of work completed, and current levels of budget expenditures as a percentage of funds originally

allocated for the specific Task in the COST PROPOSAL.

E. Compensation by DISTRICT to CONSULTANT shall be made within sixty (60) calendar days of receipt by DISTRICT of the complete payment request for a specific month and shall not exceed ninety –five (95) percent of the payment request. The final five (5) percent of the compensation shall be paid by DISTRICT to CONSULTANT within sixty (60) calendar days from the date of the completion of the following events:

1. The completion of the SCOPE OF WORK and the acceptance of CONSULTANT'S work by DISTRICT; and,
2. CONSULTANT'S submittal of a certified statement that all subcontractors, subconsultants, agents, and material suppliers who may have a claim for payment for work done or materials supplied under this AGREEMENT are paid in full less any retention currently held by DISTRICT.

F. Upon the written request of CONSULTANT, DISTRICT may, in its sole discretion, reduce the retention percentage to less than five (5) percent of payments for completed Tasks and deliverables identified in the SCOPE OF WORK. CONSULTANT'S request should provide a statement that no claims are anticipated on the additional money to be released.

IV - CHANGES IN SCOPE OF SERVICES

A. DISTRICT reserves the right to make such alterations as may be deemed necessary or advisable and to require such extra work as may be required for the proper completion of the work by the CONSULTANT in connection with PROJECT and with implementation of PROJECT. Alterations in the services to be provided by the CONSULTANT shall be performed by CONSULTANT, hereinafter referred to as "TASK ORDERS". TASK ORDERS shall be authorized and issued by DISTRICT'S Director of Public Works. The Board of Supervisors for the County of San Joaquin has given the Director of Public Works the approval to sign TASK ORDERS. TASK ORDERS will be issued as necessary and shall constitute a supplement to this AGREEMENT.

B. Each TASK ORDER shall list the scope of altered or additional services to be performed, state the time period within which the altered or additional work is to be completed, delineate any special conditions, state the compensation in accordance with the personnel wage rate sheets and other costs set forth in the COST PROPOSAL, include work effort and cost detail support data, and authorize CONSULTANT to proceed with the services detailed in the TASK ORDER. When compensation for an item of work is subject to adjustment under the provisions of this section, CONSULTANT shall promptly furnish the authorized DISTRICT official with adequate cost data for such item of work.

C. CONSULTANT shall perform altered or additional services as requested by DISTRICT, only after receipt of a TASK ORDER from DISTRICT executed and signed by DISTRICT'S Director of Public Works and CONSULTANT.

V - DOCUMENTATION AND SERVICES BY DISTRICT TO CONSULTANT

CONSULTANT shall collect and DISTRICT shall furnish access to all information, data, and maps as currently exist in files necessary for carrying out the services as set forth in this AGREEMENT, to CONSULTANT, without charge, and DISTRICT shall cooperate in every way possible in the carrying out of the work without undue delay. CONSULTANT agrees that DISTRICT'S responsibility to provide access to information is limited to data of record in DISTRICT files and in the format as recorded. CONSULTANT shall check and investigate existing information and conditions and notify the DISTRICT of any deficiencies that the CONSULTANT discovers.

VI - DOCUMENTATION AND SERVICES BY CONSULTANT TO DISTRICT

CONSULTANT shall furnish all reports and drawings/plans in hard copy and electronic format as determined by DISTRICT, and reproducibles of all reports and drawings submitted for under this AGREEMENT, to DISTRICT upon completion of this AGREEMENT or earlier termination. All documents and electronic files including, but not limited to, passwords, source codes, etc., submitted by CONSULTANT to DISTRICT shall become the property of DISTRICT upon completion of this AGREEMENT or earlier termination.

No material prepared in connection with this AGREEMENT shall be subject to copyright in the United States or any other country. All drawings, specifications, documents and other memoranda relating to work and services hereunder, shall remain or become the property of the DISTRICT whether executed by or for the CONSULTANT for DISTRICT, or otherwise by or for the CONSULTANT, or by or for a subcontractor operating under the CONSULTANT'S supervision, or direction, and all such documents and copies thereof shall be returned or transmitted to DISTRICT forthwith upon DISTRICT written demand, termination or completion of the work under this AGREEMENT.

DISTRICT agrees that if DISTRICT substantially and materially alters any of the instruments of service, including supporting studies, materials, plans, and other documents delivered to DISTRICT by CONSULTANT upon completion of the AGREEMENT, any use by DISTRICT of such instruments of service for this or any other project shall be at the DISTRICT'S sole risk and responsibility.

CONSULTANT and subcontractors shall maintain all books, documents, papers,

accounting records, and other evidence pertaining to performance under this AGREEMENT, but not limited to, the costs of administering this AGREEMENT. Such materials shall be available at their respective offices at all reasonable times during this AGREEMENT period and for three years from the date of final payment under this AGREEMENT.

VII. WORK PRODUCT

DISTRICT and CONSULTANT acknowledge and agree that "Work Product", and all components of it, provided or developed by CONSULTANT hereunder or in connection herewith shall constitute "works made for hire" within the meaning of Title 17 United States Code Section 101 et seq. (the "Copyright Act"), and all right, title, and interest in and to the Custom Products shall vest in the DISTRICT immediately upon development. To the extent any such Custom Products may not be the sole and exclusive property of the DISTRICT and/or may not be a "work made for hire" as defined in the Copyright Act upon development, then CONSULTANT agrees to and hereby does sell, transfer, grant and assign to the DISTRICT all copyrights, patents, trade secrets, inventions, and other proprietary rights, title, and interest in and to such Custom Products upon development. On all written material, whether in print, electronic, or any media form, constituting "Work Product", CONSULTANT shall place or cause to be placed the following legend preferably in the lower right corner: © 201_ DISTRICT of San Joaquin. All rights reserved.

VIII - PERSONNEL

A. CONSULTANT agrees that it employs, or will employ, at its expense, all personnel required in performing the services under this AGREEMENT. Such personnel shall not be employees of, or have any contractual relationship with DISTRICT. The CONSULTANT further agrees that should any personnel be replaced or added after the execution of this AGREEMENT, the CONSULTANT shall notify the DISTRICT within five (5) business days and said personnel shall be subject to the DISTRICT'S written approval prior to initiating any work under this AGREEMENT.

B. DISTRICT acknowledges that CONSULTANT may subcontract certain portions of the SCOPE OF WORK to subcontractors as specified in the COST PROPOSAL. DISTRICT hereby approves the use of these firms as subcontractors. Should any subcontractors be replaced or added after DISTRICT'S approval, DISTRICT shall be notified within five (5) days and said subcontractors shall be subject to DISTRICT'S Department of Public Works Director or assigned designee's written approval prior to initiating any work under this AGREEMENT.

CONSULTANT shall be fully responsible for the complete and full performance of all services of

subcontractors and shall compensate all such subcontractors for their work. CONSULTANT shall certify in writing to DISTRICT the payment, in full, of all sums due to subcontractors, subconsultants, agents, and material suppliers who may have a claim for payment for work done or materials supplied under this AGREEMENT.

All of the services required by this AGREEMENT shall be performed by CONSULTANT or under its direct supervision and all personnel engaged in the performance of such activities shall be fully qualified and shall be authorized or permitted under federal, state and/or local law to perform such services.

C. No discrimination shall be made by CONSULTANT in the employment of persons to work under this contract because of race, color, national origin, ancestry, sex, or religion of such person.

IX - CONFLICT OF INTEREST

The CONSULTANT affirms that the CONSULTANT presently has no interest that has not been previously disclosed to the DISTRICT; and, shall not acquire any interest, direct or indirect, which could conflict in any manner or degree with the performance of services required to be performed under this AGREEMENT; and, in the event of change in either private interests or services under this AGREEMENT, the CONSULTANT will immediately raise with the DISTRICT any question regarding possible conflict of interest which may arise as a result of such change. The CONSULTANT further agrees that in the performance of this AGREEMENT, no person having any such interest shall be employed. A potential conflict of interest includes, but is not limited to, work related to contracts with County departments, (other cities), (other parties), local land developers and current clients who may have a financial interest in the outcome of the PROJECT. At the DISTRICT'S discretion, a potential conflict of interest may be waived or factored into a modified SCOPE OF WORK, as the case may be.

X - TERMINATION

DISTRICT reserves the right to terminate AGREEMENT at any time prior to completion by CONSULTANT of the Tasks and work outlined in the SCOPE OF WORK and any supplemental TASK ORDERS, upon receipt of written notice of termination to CONSULTANT. Upon termination, CONSULTANT shall immediately turn over to DISTRICT all documents, records, papers, plans, drawings, and copies of electronic files, whether finished or not, generated by or supplied to CONSULTANT in connection with its performance of services pursuant to AGREEMENT. Costs to assemble, package and transmit information submitted to DISTRICT shall be entirely the responsibility of CONSULTANT and subcontractors and shall not

be chargeable in any way to DISTRICT. Said documents, records, papers, plans, drawings, and copies of electronic files shall become the property of DISTRICT. DISTRICT agrees that if DISTRICT substantially and materially alters any of the instruments of service, including documents, records, papers, plans, drawings, and copies of electronic files delivered to DISTRICT by CONSULTANT upon termination of AGREEMENT, any use by DISTRICT of such instruments of service for this or any other project shall be at DISTRICT'S sole risk and responsibility.

At the time CONSULTANT submits project documents and materials to DISTRICT, CONSULTANT shall also submit to DISTRICT a request for final compensation for CONSULTANT and subcontractors for services rendered pursuant to AGREEMENT prior to the date of the written notice of termination. DISTRICT shall review and approve all submittals, and negotiated compensation will not exceed original fiscal COST PROPOSAL budget limits.

Furthermore, DISTRICT may adjust final compensation upon termination to CONSULTANT and subcontractors to reflect remaining services necessary to complete the original SCOPE OF WORK. DISTRICT shall assume no liability for costs, expenses, or lost profits resulting from contracts entered into by CONSULTANT with third parties in reliance upon AGREEMENT. Such payment upon termination shall be accepted by CONSULTANT as complete compensation of CONSULTANT for all services, and CONSULTANT waives all payment claims against DISTRICT arising directly or indirectly under AGREEMENT.

XI - ASSIGNMENT

Both parties shall give their personal attention to the faithful performance of this AGREEMENT and shall not assign, transfer, convey, or otherwise dispose of this AGREEMENT or any right, title or interest in or to the same or any part thereof without the prior written consent of the other party and then only subject to such terms and conditions as the other party may require. A consent to one assignment shall not be deemed to be a consent to any subsequent assignments. Any assignments without such approval shall be void and, at the option of the other party, shall terminate this AGREEMENT and any license, right or privilege granted herein. This AGREEMENT and interest herein shall not be assignable by operation of law without the prior written consent of the other party.

XII - HOLD HARMLESS

A. CONSULTANT shall, at its expense, defend, indemnify and hold harmless the County of San Joaquin and its employees, officers, directors, contractors and agents from and against any losses, liabilities, damages, penalties, costs, fees including without limitation

reasonable attorneys' fees, and expenses from any claim or action, including without limitation for bodily injury or death, to the extent caused by or arising from the negligence or willful misconduct of Consultant, its employees, officers, agents or subconsultants.

B. The duty of CONSULTANT to indemnify and save harmless as set forth herein, shall include both the duty to indemnify and at CONSULTANT'S own cost and expense the duty to defend as set forth in Section 2778 of the California Civil Code and as limited in section 2782.8 of the California Civil Code. This duty to defend arises when such claim is made and shall be independent of any finding of negligence. CONSULTANT shall provide legal counsel reasonably acceptable to the DISTRICT.

XIII - INSURANCE

CONSULTANT shall not commence any work until CONSULTANT obtains, at CONSULTANT'S own expense, all required insurance that shall be primary, shall name the DISTRICT as additional insured, except for professional liability insurance and workman's compensation insurance, and shall expressly indicate that such insurance is related to CONSULTANT'S activities under this AGREEMENT. CONSULTANT shall furnish certification of insurance within ten (10) calendar days of execution of this AGREEMENT by DISTRICT and prior to issuance by DISTRICT of the Notice to Proceed. Such insurance must be from an insurer admitted to the State of California and have the approval of DISTRICT as to limit, form and amount. The types of insurance CONSULTANT is required to obtain for the full term of this AGREEMENT will be Commercial General Liability Insurance, Professional Liability Insurance and Worker's Compensation Insurance. As evidence of specified insurance coverage, DISTRICT may, in lieu of actual policies, accept certificates issued by the insurance carrier showing such policies are in force for the specified period during which services will be provided by CONSULTANT. Each policy, or certificate, will bear an endorsement or statement waiving right of cancellation or reduction in coverage without thirty (30) calendar days notice in writing to be delivered by registered mail to DISTRICT.

A. Commercial General Liability Insurance - CONSULTANT shall obtain and keep in force and effect during the term of this AGREEMENT, at the CONSULTANT'S own expense, General Liability Insurance on an occurrence based policy, including contractual liability with a combined single limit in the minimum amount of One Million Dollars (\$1,000,000), and automobile liability insurance with a combined single limit in the minimum amount of One Million Dollars (\$1,000,000).

Such insurance shall name the County of San Joaquin, its officers, agents, its employees, representatives as additional insureds.

B. Professional Liability Insurance - CONSULTANT shall obtain, at CONSULTANT'S own expense, and provide evidence of Professional Liability Insurance on an occurrence based policy with an aggregate limit in the minimum amount of One Million Dollars (\$1,000,000.00).

C. Workers' Compensation Insurance - CONSULTANT shall take out and maintain, during the life of the AGREEMENT, Workers' Compensation Insurance for all employees of CONSULTANT employed at the site of the project and, in case any work is sublet, the CONSULTANT shall require subconsultants to similarly provide Workers' Compensation Insurance for all of the latter's employees. If any class of employees engaged in hazardous work under this AGREEMENT at the site of the project is not protected under the Workers' Compensation Statute, the CONSULTANT shall provide and shall cause any subconsultant to provide insurance for the protection of employees engaged in hazardous work.

CONSULTANT, by executing this AGREEMENT, certifies that CONSULTANT is aware of the provisions of Section 3700 et. seq. of the Labor Code of the State of California requiring every employer to be insured against the liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that code, and certifies that CONSULTANT will comply with such provisions before commencing the performance of the work of this AGREEMENT.

XIV - WAIVER

In the event that either DISTRICT or CONSULTANT shall at any time or times waive any breach of this AGREEMENT by the other, such waiver shall not constitute a waiver of any other or succeeding breach of this AGREEMENT whether of the same or any other covenant, condition or obligation.

XV - COSTS AND ATTORNEY'S FEES

The prevailing party of any action brought to enforce or construe the terms of this AGREEMENT may recover from the other party its reasonable costs and attorney's fees expended in connection with such an action

XVI - AGREEMENT CONTAINS ALL UNDERSTANDING

This AGREEMENT represents the entire integrated AGREEMENT between DISTRICT and CONSULTANT, and supersedes all prior negotiations, representations or agreements, either written or oral. This document may be amended only by written instrument signed by both DISTRICT and CONSULTANT. This AGREEMENT shall be governed by the laws of the State of California.

IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT to be executed on the day and year first above written.

SAN JOAQUIN COUNTY FLOOD CONTROL, a
AND WATER CONSERVATION DISTRICT,
a political district formed by San Joaquin County,
a subdivision of the State of California.

a _____ corporation

By: _____
CHARLES WINN,
Chairman
"DISTRICT"

By: _____
NAME
TITLE
"CONSULTANT"

ATTEST: RACHÉL DeBORD,
Clerk of the Board of Supervisors
of the County of San Joaquin, State of California

By: _____

RECOMMENDED FOR APPROVAL

By: _____
FRITZ BUCHMAN, C.E., T.E., CFM
Director of Public Works

APPROVED AS TO FORM

By: _____
MATTHEW P. DACEY
Deputy County Counsel