

Agreement No:

Project Title:

Fiscal Year:

## **MASTER SERVICES AGREEMENT FOR CONSULTANT SERVICES**

**(San Joaquin Area Flood Control Agency / )**

This PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is entered into by and between the San Joaquin Area Flood Control Agency, a joint powers agency (“Agency”), and a (“Consultant”) (collectively, “parties”).

- 1. CONTEXT:** Agency has determined that it requires the professional services identified in Attachment 1 from Consultant as a Design Professional. A Design Professional is any individual satisfying one or more of the following: (1) licensed as an architect pursuant to Business and Professions Code 5500 et seq., (2) licensed as a landscape architect pursuant to Business and Professions Code 5615 et seq., (3) licensed as a professional land surveyor pursuant to Business and Professions Code 8700 et seq., or (4) registered as a professional engineer pursuant to Business and Professions Code 6700 et seq. Consultant represents that it is fully qualified to perform such professional services by virtue of its experience and the training, education and expertise of its principals and employees. Consultant further represents that it is willing to accept responsibility for performing such services in accordance with the terms and conditions set forth in this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions herein contained, Agency and Consultant agree as follows:

- 2. TERM.** The term of this Agreement shall be from the date of execution until , unless otherwise terminated by the Agency as allowed below, and may be renewed by the Agency subject to re-negotiation by the parties for additional periods.
- 3. CONSULTANT’S SERVICES.** Consultant has been selected for this Agreement which is intended to be a Master Services Agreement. Under this Agreement the Agency may issue to Consultant one or more task orders, each of which shall be considered a Scope of Services and incorporated herein by this reference once agreed to by the Consultant and the Agency. No work shall be permitted outside the scope of the issued approved Task Orders. Consultant shall not receive any compensation for the development of a scope. Attachment 1 provides a high-level and generalized Scope of Services which shall be deemed amended with the issuance of any Task Order agreed to by the Consultant. Agency shall have the right to request, in writing, changes in the Scope of Services. Any such changes mutually agreed upon by the Parties, and any corresponding increase or decrease in compensation, shall be incorporated by written amendment to this Agreement.

SECTION 1090 PROTECTIONS: [1] Consultant's duties and services under this Agreement shall not include preparing or assisting the Agency with any portion of the Agency's preparation of a request for proposals, request for qualifications, or any other solicitation regarding a subsequent or additional contract with the Agency for any services which Consultant would apply. [2] The Agency entering into this Agreement shall at all times retain responsibility for public contracting, including with respect to any subsequent phase of the work to be performed under this Agreement. [3] Consultant's participation in the planning, discussions, or drawing of project plans or specifications shall be limited to conceptual, preliminary, or initial plans or specifications. [4] Consultant shall cooperate with the Agency to ensure that all bidders for a subsequent contract on any subsequent phase have access to the same information, including all conceptual, preliminary, or initial plans or specifications prepared by Consultant pursuant to this agreement.

4. **COMPENSATION.** Compensation under this Agreement shall not exceed \$\_\_\_\_\_. Consultant's compensation rates are set forth in the fee schedule attached hereto as Attachment 2, incorporated herein by this reference, which shall be referred to as the Approved Fee Schedule. Agency agrees to compensate Consultant for the services provided under this Agreement and Consultant agrees to accept payment in accordance with the Approved Fee Schedule in full satisfaction for such services. No changes shall be made to the Approved Fee Schedule without a written amendment to this Agreement.
5. **GENERAL PROVISIONS.** The general provisions set forth in Attachment 3 are part of this Agreement, and incorporated herein. In the event of any inconsistency between the general provisions and any other terms or conditions of this Agreement, the other term or condition shall control insofar as it is inconsistent with the general provisions.
6. **AGREEMENT ADMINISTRATION.** The Agreement Administrator for this Agreement on behalf of the Agency will be the Executive Director or any of the Agency Designees. The Agreement Administrator shall be the principal point of contact. Agency reserves the right to change this designation upon written notice to Consultant.
7. **NOTICES.** Any notices or reports required by this Agreement shall be deemed received on: (i) the day of delivery if delivered by hand, facsimile or overnight courier service during Consultant's and Agency's regular business hours; or (ii) on the third business day following deposit in the United States mail if delivered by mail, postage prepaid, to the addresses listed below (or to such other addresses as the parties may, from time to time, designate in writing); or (iii) the day of delivery if emailed to the email address listed below and simultaneously deposited in the U.S. mail, postage prepaid, to the address(es) listed below (or to such other addresses as the parties may, from time to time, designate in writing).

If to Agency:

If to Consultant:

Darren Suen  
Executive Director  
San Joaquin Area Flood Control Agency  
2800 W. March Lane Suite 200  
Stockton, CA 95219  
Telephone: 209-415-2820  
Email: Darren.Suen@sjafca.org

\*Bill and invoices shall be deemed received on the date of delivery if a complete invoice including billing summary, timesheet backup and subconsultant backup is emailed to [invoices@sjafca.org](mailto:invoices@sjafca.org). Noticing requirements in this section can be modified from time to time by mutual agreement of the parties in writing, without formally modifying this agreement.

**TO EFFECTUATE THIS AGREEMENT**, the parties have caused their duly authorized representatives to execute this Agreement on the dates set forth below.

“Agency”

“Consultant”

San Joaquin Area Flood Control Agency

By:

\_\_\_\_\_  
*Signature*

By:

\_\_\_\_\_  
*Signature*

Printed:

Title:

Date:

Printed:

Title:

Date:

**Approved as to form:**

By:

\_\_\_\_\_  
Scott L. Shapiro,  
Agency Counsel

Date:

**Attachment 1**  
**(Scope of Services)**

**Attachment 2**  
**(Consultant's Compensation Rates)**

**Attachment 3**  
**(GENERAL PROVISIONS)**

**1. PERFORMANCE BY THE CONTRACTOR**

- 1.1. **Coordination with Agency.** In performing services under this Agreement, Consultant shall coordinate all contact with Agency through its Agreement Administrator.
- 1.2. **Scope.** Consultant shall not be reimbursed for any expenses incurred for work performed outside the Scope of Services unless prior approval is given by the Agency through an executed amendment. If the Consultant is of the opinion that any work it has been directed to perform is beyond the scope of this Agreement and constitutes extra work, it shall promptly notify the Agency of the fact. The Agency shall determine whether or not such work is, in fact, beyond the scope of this Agreement and constitutes extra work. In the event that the Agency determines that such work does constitute extra work, it shall provide extra compensation to the Consultant on a fair and equitable basis based upon a Supplemental Agreement providing for such compensation for extra work. In the event Agency determines that such work does not constitute extra work, Consultant shall not be paid extra compensation. Any decision by the Board of Directors' or Executive Director shall be final.
- 1.3. **Budgetary Notification.** Consultant shall notify the Agreement Administrator, in writing, when fees and expenses incurred under this Agreement have reached eighty percent (80%) of the maximum amount or within 90 days from date of contract expiration, whichever comes first. Consultant shall concurrently inform the Agreement Administrator, in writing, of Consultant's estimate of total expenditures required to complete its current assignments.
- 1.4. **Professional Standards.** Consultant shall perform all work to the highest standards of Consultant's profession and in a manner in accordance with generally accepted professional practices and standards as well as the requirements of applicable federal, state and local laws. Consultant represents and warrants to Agency that (a) it has all licenses, permits, qualifications, insurance and approvals of whatever nature, including business license, which are required for Consultant to practice its profession, and (b) it shall, at its sole cost, keep in effect or obtain at all times during the term of this Agreement any licenses, permits, insurance and approvals which are legally required for Consultant to practice its profession.
- 1.5. **Conflicts.** Consultant represents that it has no known relationships with third parties, the Board of Directors, or employees of Agency which would (1) present a conflict of interest with the rendering of services under this Agreement under California Government Code Section 1090, the Political Reform Act (Government Code Section 81000 *et seq.*), or other applicable law, (2) prevent Consultant from performing the terms of this Agreement, or (3) present a significant opportunity for the disclosure of confidential information. During the term of this Agreement, Consultant shall not perform any work for another person or entity for whom Consultant was not working

when this Agreement became effective if such work would present a conflict interfering with performance under this Agreement. However, Agency may consent in writing to Consultant's performance of such work.

- 1.6. **Appropriate Personnel.** Consultant has, or will secure at its own expense, all personnel required to perform the services identified in the Scope of Services. Consultant's project administrator shall be identified in the Scope of Services and shall have direct responsibility for management of Consultant's performance under this Agreement. No change shall be made in Consultant's project administrator without Agency's prior written consent. Any persons named in the proposal or Scope of Services constitutes a promise to the Agency that those persons will perform and coordinate their respective services under this Agreement. Should one or more of such personnel become unavailable, Consultant may substitute other personnel of at least equal competence upon written approval of Agency. If Agency and Consultant cannot agree as to the substitution of key personnel, Agency may terminate this Agreement for cause.
- 1.7. **Notification of Organizational Changes.** Consultant shall notify the Agreement Administrator, in writing, of any change in name, ownership, or control of Consultant's firm or of any changes for any subconsultant. Change of ownership or control of Consultant's firm may require an amendment to this Agreement.
- 1.8. **Inspections.** Agency or authorized representatives of the Agency shall have the right to inspect the work of Consultant whenever such representatives deem such inspection to be desirable or necessary. Inspections by the Agency do not in any way relieve or minimize the responsibility of Consultant to conduct any inspections Consultant has agreed to perform pursuant to this Agreement.
- 1.9. **Records.** Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to Agency under this Agreement for a minimum of three years, or for any longer period required by law, from the date of final payment to Consultant under this Agreement. All such documents shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of Agency. In addition, pursuant to California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds ten thousand dollars, all such documents and this Agreement shall be subject to the examination and audit of the State Auditor, at the request of Agency or as part of any audit of Agency, for a period of three years after final payment under this Agreement.
- 1.10. **Agency Cooperation in Performance.** Agency shall provide Consultant with all pertinent data, documents and other requested information as is reasonably available for the proper performance of Consultant's services under this Agreement.

- 1.11. **Conflict Between Plans.** Consultant shall provide assistance as necessary to resolve any questions on conflicts between plans and specifications prepared by Consultant pursuant to this Agreement that may arise during the period of advertising for bids and shall issue any necessary addenda to the plans and specifications as requested. In the event Consultant is of the opinion that Agency's requests for addenda and assistance is outside the scope of normal services, the parties shall proceed in accordance with the provision of Section 1.2 hereof.

## 2. SUBCONTRACTING AND ASSIGNMENT

- 2.1. **General Prohibition of Assignment.** Except as otherwise provided herein, Consultant shall not assign or transfer its interest in this Agreement or subcontract any services to be performed without amending this Agreement.
- 2.2. **Subconsultant's Fees.** All subconsultants shall be specifically listed and their billing rates identified in the Approved Fee Schedule contained in Attachment 2. Agency shall pay Consultant for work performed by its subconsultants, if any, only at Consultant's actual cost plus an approved mark-up as set forth in the Approved Fee Schedule. Consultant shall be solely liable and accountable for any and all payments, compensation, and federal and state taxes to all subconsultants performing services under this Agreement.

## 3. ADDITIONAL COMPENSATION PROVISIONS

- 3.1. **Invoices.** Consultant shall submit to Agency an invoice, on a monthly basis or as otherwise agreed to by the Agreement Administrator, for services performed pursuant to this Agreement. Each invoice shall identify the Maximum Amount, the services rendered during the billing period, the amount due for the invoice, and the total amount previously invoiced. All labor charges shall be itemized by employee name and classification or position with the firm, the corresponding hourly rate, the hours worked, a description of each labor charge, and the total amount due for labor charges.
- 3.2. **Taxes.** Agency shall not calculate, pay, or withhold applicable taxes or other payroll deductions from payments made to Consultant except as otherwise required by law.
- 3.3. **Disputes.** The parties agree to meet and confer at mutually agreeable times to resolve any disputed amounts contained in an invoice submitted by Consultant. Notwithstanding any other terms of this Agreement, no payments shall be made to Consultant until Agency is satisfied that the services are satisfactory. If Consultant fails to satisfy an indemnity obligation under this Agreement, Agency shall have the right to withhold payments under this Agreement to offset that amount.
- 3.4. **Expense Reimbursement.** Consultant shall not be reimbursed for any expenses unless (i) provided for in this Agreement explicitly, including through inclusion in the Scope of Services, or (ii) authorized in writing by Agency in advance of the Contractor



incurring the expense. Consultants may not request expense reimbursement for auto mileage exceeding the current Federal and State rates or for a mark-up exceeding 5% of actual cost. To the extent that this Agreement is funded in part by funds received by Agency from another agency, or to the extent that the services to be provided under this Agreement are in support of a project being advanced by the U.S. Army Corps of Engineers or other agency, Consultant is advised to ensure that all expenses incurred by the Consultant are incurred consistent with the rules and regulations of the other partner agency, as those rules and regulations shall explicitly apply to expenses incurred by Contractor. Upon request, SJAFCA shall provide the Consultant a copy of any agreement with external entities which may affect expense reimbursement by the Consultant under this Agreement.

4. **PREVAILING WAGES.** Consultant is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., (“Prevailing Wage Laws”), which require the payment of prevailing wage rates and the performance of other requirements on certain “public works” and “maintenance” projects. This Agreement is subject to Prevailing Wage Laws, for all work performed under this Agreement for which the payment of prevailing wage is required by those laws. Consultant shall defend, indemnify, and hold the Agency, its elected officials, officers, employees, and agents free and harmless from any claim or liability arising out of any failure or alleged failure of Consultant to comply with the Prevailing Wage Laws.

5. **OWNERSHIP OF WRITTEN PRODUCTS.** All reports, documents, or other written material, including without limitation copies thereof, digital originals, and digital copies (“written products” herein) developed by Consultant in the performance of this Agreement shall be and remain the property of Agency without restriction or limitation upon its use or dissemination by Agency except as provided by law. Consultant may take and retain copies of such written products as desired, but no such written products shall be the subject of a copyright application by Consultant.

## 6. RELATIONSHIP OF PARTIES

6.1. **General.** Consultant is, and shall at all times remain as to Agency, a wholly independent contractor. As an independent contractor, Consultant shall be responsible for all reports and obligations. Consultant shall have no power to incur any debt, obligation, or liability on behalf of Agency or otherwise to act on behalf of Agency as an agent. Consultant, its officers, employees and agents shall not have any power to bind or commit the Agency to any decision or course of action, and Consultant, its officers, employees and agents shall not represent to any person or party that it or they are acting as agents of the Agency or that it or they have the power to bind or commit the Agency.

## 7. INSURANCE

7.1. **Insurance Required.** Consultant shall maintain insurance as described in this Section 7 and shall require all of its subconsultants to do the same. Agency has no obligation and Consultant shall be responsible for all premiums and deductibles in all of

Consultant's insurance policies. For purposes of this Section 7, "Consultant" shall include Consultant, its officers, employees, agents, or subconsultants, or anyone directly or indirectly employed by either Consultant or its subconsultants, in the performance of this Agreement. "Agency" shall include Agency, its Board of Directors, agents, and employees.

7.2. **Documentation of Insurance.** Agency will not execute this Agreement until it has received a complete set of all required documentation of insurance coverage. However, failure to obtain the required documents prior to the work beginning shall not waive the Consultant's obligation to provide the required insurance and the required documentation. Consultant shall file with Agency:

- Certificate of Insurance with a Best's Rating of no less than A; provided that if Consultant can make a good faith showing that A ratings are not available for the service to be provided, then Agency may accept a rating no lower than B.
- Copy of the entire insurance policy and the Declarations page.
- Current endorsements showing coverage for all policies required by this Agreement.

7.3. **Coverage and Deductibles.** Insurance coverage shall be at least in the following minimum amounts:

Professional Liability Insurance:	\$2,000,000 per claim/occurrence \$5,000,000 aggregate
General Liability:	\$2,000,000 per person per occurrence \$4,000,000 aggregate \$2,000,000 Products Comp/Op Aggregate \$1,000,000 Personal & Advertising Injury \$ 50,000 Fire Damage (any one fire) \$ 5,000 Medical Expense (any 1 person)
Workers' Compensation:	\$1,000,000 EL Each Accident \$1,000,000 EL Disease - Policy Limit \$1,000,000 EL Disease - Each Employee
Automobile Liability	\$1,000,000 Any vehicle, combined single limit

Any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements or limits shall be available to the additional insured. Furthermore, the requirements for coverage and limits shall be the greater of (1) the minimum coverage and limits specified in this Agreement, or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured. Consultant must disclose all deductibles and self-insured retention amounts to the Agency. The Agency may require the Consultant to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within retention amounts. The amount of deductibles for insurance coverage required herein are subject to Agency's approval.

- 7.4. **Worker's Compensation Insurance.** Consultant is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to carry Workers' Compensation (or to undertake equivalent self-insurance), and Consultant will comply with such provisions before commencing the performance of the work of this Agreement. If such insurance is underwritten by any insurance company other than the State Compensation Fund, such insurance company shall be a company authorized to do business in the State of California. If any class of employees engaged in work under this contract at the site of the Project is not protected under any Worker's Compensation law, Consultant shall provide for itself and shall cause each subconsultant to provide adequate insurance for the protection of employees not otherwise protected. Consultant shall indemnify and hold harmless Agency for any damage resulting from failure of either Consultant or any subconsultant to take out or maintain such insurance.
- 7.5. **Professional Liability Insurance or Errors & Omissions Coverage.** The amount of the deductible or self-insured retention shall not exceed \$50,000 without written permission from the Agency. If the insurance coverage is on a Claims-Made Basis, the retroactive date shall be no later than the commencement of the work. Such Coverage shall be maintained for three years after acceptance of the work under this Agreement. By one of the following: (1) renewal of the existing policy; (2) procurement of an extended reporting period; or (3) procurement of replacement insurance with a retroactive date no later than the commencement of the work under this Agreement.
- 7.6. **Additional Insured Endorsements.** The Agency must be endorsed as additional insured for each policy required under this Section 7, other than Professional Errors and Omissions and Worker's Compensation, for liability arising out of ongoing and completed operations by or on behalf of the Consultant.
- 7.7. **Failure to Maintain Coverage.** In the event any policy is canceled, rescinded, lapses, terminates, or changes prior to the completion of the project and the Consultant does not furnish a new certificate of insurance prior to cancellation, Agency has the right, but not the duty, to obtain the required insurance and deduct the premium from any amounts due the Consultant under this Agreement. Failure of the Consultant to maintain the insurance required by this Agreement, or to comply with any of the requirements of this Section, shall constitute a material breach of this Agreement.
- 7.8. **Notices.** Consultant shall provide immediate written notice if (1) any of the required insurance policies is terminated; (2) the limits of any of the required policies are reduced; (3) or the deductible or self-insured retention is increased. Consultant shall provide no less than 30 days' notice of any cancellation or material change to policies required by this Agreement. Consultant shall provide proof that cancelled or expired policies of insurance have been renewed or replaced with other policies providing at least the same coverage. Such proof will be furnished at least two weeks prior to the expiration of the coverages. The name and address for Additional Insured Endorsements, Certificates of Insurance and Notices of Cancellation is: **San Joaquin**

**Area Flood Control Agency**, Atten: Executive Director, Darren Suen, 2800 W. March Lane, Suite 200, Stockton, CA 95219.

- 7.9. **Consultant's Insurance Primary.** The insurance provided by Consultant, including all endorsements, shall be primary to any coverage available to Agency and any insurance or self-insurance maintained by Agency shall be in excess of Consultant's insurance.
- 7.10. **Waiver of Subrogation.** Consultant hereby waives all rights of subrogation against the Agency. Consultant shall additionally waive such rights either by endorsement to each policy or provide proof of such waiver in the policy itself.
- 7.11. **Report of Claims to Agency.** Consultant shall report to the Agency, in addition to the Consultant's insurer, any and all insurance claims submitted to Consultant's insurer in connection with the services under this Agreement.

## **8. INDEMNITY AND DEFENSE**

- 8.1. **Definition.** For purposes of this Section 8, "Consultant" shall include Consultant, its officers, employees, agents, or subconsultants, or anyone directly or indirectly employed by either Consultant or its subconsultants, in the performance of this Agreement. "Agency" shall include Agency, its Board of Directors, agents, and employees
- 8.2. **Duty to Indemnify and Hold Harmless.** Consultant shall indemnify and hold harmless the Agency from any and all claims, demands, causes of action, costs, expenses, liability, injuries (personal, bodily, and property) and damages (collectively "Claims") sought against Agency to the extent they arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant. Consultant agrees to include this duty to indemnify and hold harmless in any agreement executed with a subconsultant.
- 8.3. **Duty to Defend.** Consultant shall also defend the Agency against such Claims if the Agency (1) provides advance and prompt written notice to the Consultant regarding the Claims for which Agency is seeking a defense, and (2) meets and confers in good faith with Consultant and/or Consultant's insurance company representative in advance of any election by it to conduct its own defense. The defense required by this clause shall extend to Claims which arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant. In no event shall the cost to defend charged to the Consultant exceed the Consultant's proportionate percentage of fault as provided in Civil Code section 2782.8. However, notwithstanding the previous sentence, in the event one or more defendants in matter in which Consultant has fault is unable to pay its share of defense costs due to bankruptcy or dissolution of the business, Consultant shall meet and confer with other parties regarding unpaid defense costs. Consultant agrees to include this duty to defend in any agreement executed with a subconsultant; however, Subconsultant's obligation to defend any indemnified parties from claims

covered by professional liability shall mean subconsultant's legal obligation is to reimburse the indemnified parties for their reasonable defense costs to the extent caused by subconsultant's negligence.

8.4. **Consultant Cooperation in Defense of Claims.** If any claim or action is brought against Agency relating to Consultant's performance in connection with this Agreement, Consultant shall render any reasonable assistance that Agency may require in the defense of that claim or action. Agency agrees to pay Consultant for such assistance (at its standard rates), unless there is an allegation that the claim or action arises out of or results from Consultant's performance of, or failure to perform, services under this Agreement.

8.5. **Non-Impact of Insurance on Duties Indemnify and Defend.** Consultant's duties to indemnify and defend Agency under this Agreement shall not be limited by the insurance requirements in Section 7. Agency does not waive any indemnity rights by accepting any insurance policy or certificate required pursuant to this Agreement.

9. **SURVIVING COVENANTS.** The parties agree that the covenants contained in the provisions on Records, Insurance including Claims-Based Policies, Duty of Indemnification, Duty of Defense, Consultant Cooperation in Defense of Claims, Confidentiality shall survive the expiration or termination of this Agreement, subject to the provisions and limitations of this Agreement and all otherwise applicable statutes of limitations and repose.

## 10. TERMINATION

10.1. **Agency Termination.** The Agency may, in its sole and unfettered discretion and without cause, terminate this Agreement at any time prior to completion by Consultant of the services required. Notice of Termination of this Agreement shall be given consistent with this Agreement and shall be immediately effective. In such circumstances, the Consultant shall be compensated only for all work satisfactorily performed prior to time of receipt of termination notice, and shall be compensated for materials ordered by the Consultant or services of others ordered by the Consultant prior to receipt of Notice of Termination whether or not such materials or final instruments of services have actually been delivered, provided that the Consultant or its employees are not able to cancel such orders for materials or services of others.

10.2. **Consultant Termination.** Consultant may terminate this Agreement upon thirty days written notice to the Agency only for good cause. Consultant's written notice of termination shall contain a full explanation of the facts and circumstances constituting good cause. In the event of termination, all notes, sketches, computations, drawings and specifications, or other data, whether complete or not, produced through the time of the Agency's last payment shall be relinquished to the Agency. The Agency may, at its own expense, make copies or extract information from any such notes, sketches, computations, drawings, and specifications, or other data whether complete or not.

- 10.3. **Consultant Failure to Perform.** Should the Consultant fail to perform any of its obligations hereunder, within the time and in the manner provided, with a reasonable opportunity to cure, or otherwise violate any of the terms of this Agreement, the Agency may terminate this Agreement by giving written notice of such termination, stating the reasons for such termination in such event. Consultant shall be compensated as above, provided, however, there shall be deducted from such amount the amount of damage if any, sustained by Agency by virtue of the Consultant's breach of this Agreement.
- 10.4. **Remedies.** Agency retains any and all available legal and equitable remedies for Consultant's breach of this Agreement.

## 11. INTERPRETATION OF AGREEMENT

- 11.1. **Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State of California.
- 11.2. **Integration.** In the event of any material discrepancy between the express provisions of this Agreement and the provisions of any document incorporated herein by reference, the provisions of this Agreement shall prevail. This instrument contains the entire Agreement between Agency and Consultant with respect to the transactions contemplated herein. No other prior oral or written agreements are binding upon the parties.
- 11.3. **Headings.** The headings and captions in this Agreement are descriptive only and for convenience in reference to this Agreement.
- 11.4. **Pronouns.** Plural pronouns shall be substituted for the singular form and vice versa, in any place or places herein in which the context requires such substitution.
- 11.5. **Severability.** If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, then such term or provision shall be amended to, and solely to the extent necessary to, cure such invalidity or unenforceability, and shall be enforceable in its amended form. In such event, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.
- 11.6. **No Presumption Against Drafter.** Each party had an opportunity to consult with an attorney in reviewing and drafting this agreement. Any uncertainty or ambiguity shall not be construed for or against any party based on attribution of drafting.

## 12. OTHER PROVISIONS

- 12.1. **Confidentiality.** All data, documents, discussion, or other information developed or received by Consultant for performance of this Agreement are deemed confidential and Consultant shall not disclose it without prior written consent by Agency, which will not be unreasonably withheld.
- 12.2. **Amendment.** Amendments shall be effective and binding only if made in writing and executed by Agency and Consultant.
- 12.3. **Conflicts of Interest.** Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. Consultant further agrees to file, or shall cause its employees or subconsultant to file, a Statement of Economic Interest with the Agency's Filing Officer if required under state law in the performance of the services. Consultant shall comply with any applicable disclosure provisions of Government Code section 84308 prior to and concurrent with Consultant's execution and performance of this Agreement.
- 12.4. **Non-assignment.** Consultant shall not delegate, transfer, subcontract or assign its duties or rights hereunder, either in whole or in part, without Agency's prior written consent.
- 12.5. **Binding on Successors.** This Agreement shall be binding on the successors and assigns of the parties.
- 12.6. **No Third-Party Beneficiaries.** Except as expressly stated herein, there is no intended third-party beneficiary of any right or obligation assumed by the parties.
- 12.7. **Time of the Essence.** Time is of the essence for each and every provision of this Agreement.
- 12.8. **Non-Discrimination.** Consultant shall not discriminate against any employee or applicant for employment because of race, sex (including pregnancy, childbirth, or related medical condition), creed, national origin, color, disability as defined by law, disabled veteran status, Vietnam veteran status, religion, age (40 and above), medical condition (cancer-related), marital status, ancestry, or sexual orientation. Employment actions to which this provision applies shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; or in terms, conditions or privileges of employment, and selection for training. Consultant agrees to post in conspicuous places, available to employees and applicants for employment, the provisions of this nondiscrimination clause.
- 12.9. **Waiver.** No provision, covenant, or condition of this Agreement shall be deemed to have been waived by Agency or Consultant unless in writing signed by one authorized to bind the party asserted to have consented to the waiver. The waiver by Agency or

Consultant of any breach of any provision, covenant, or condition of this Agreement shall not be deemed to be a waiver of any subsequent breach of the same or any other provision, covenant, or condition.

- 12.10. **Excused Failure to Perform.** Consultant shall not be liable for any failure to perform if Consultant presents acceptable evidence, in Agency's sole judgment, that such failure was due to causes beyond the control and without the fault or negligence of Consultant.
- 12.11. **Remedies Non-Exclusive.** Each right, power and remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise shall be cumulative and shall be in addition to every other right, power, or remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise. The exercise, the commencement of the exercise, or the forbearance from the exercise by any party of any one or more of such rights, powers or remedies shall not preclude the simultaneous or later exercise by such party of any or all of such other rights, powers or remedies.
- 12.12. **Attorneys' Fees.** If legal action shall be necessary to enforce any term, covenant or condition contained in this Agreement, the prevailing party shall be entitled to an award of reasonable attorneys' fees and costs expended in the action.
- 12.13. **Venue.** The venue for any litigation shall be the Superior Court of California for the County of San Joaquin and Consultant hereby consents to jurisdiction in that court for purposes of resolving any dispute or enforcing any obligation arising under this Agreement.
- 12.14. **Counterparts; Electronic Signatures.** This Agreement may be signed in one or more counterparts, each of which shall be deemed an original, but all of which together shall be deemed one and the same instrument. The parties acknowledge and agree that this Agreement may be executed by electronic signature, which shall be considered as an original signature for all purposes and shall have the same force and effect as an original signature. Without limitation, "electronic signature" shall include faxed or emailed versions of an original signature, electronically scanned and transmitted versions (e.g., via pdf) of an original signature, or a digital signature.