

Addendum 1.
SAMPLE AGREEMENT FOR
CONSULTING SERVICES

THIS AGREEMENT made and entered by and between the City of Placerville, a political subdivision of the State of California (hereinafter referred to as "City") and _____, a company duly qualified to conduct business in the State of California, whose principal place of business is _____, (hereinafter referred to as "CONSULTANT");

WITNESSETH

WHEREAS, City has determined that it is necessary to obtain a consultant to provide consulting services for Professional Services for _____ ; and

WHEREAS, CONSULTANT has represented to City that it is specially trained, experienced, expert, and competent to perform the special services required hereunder and City has determined to rely upon such representations; and

WHEREAS, it is the intent of the parties hereto that such services be in conformity with all applicable federal, state and local laws.

NOW, THEREFORE, City and CONSULTANT mutually agree as follows:

ARTICLE I – SCOPE OF SERVICES

CONSULTANT agrees to provide consulting services to City as those services are described in CONSULTANT’S Scope of Work in Exhibit “A”, incorporated herein and made by reference a part hereof.

ARTICLE II – TERM/PERFORMANCE PERIOD

This AGREEMENT shall go into effect when fully executed. CONSULTANT shall not commence performance of work or services until this AGREEMENT has been fully executed and Notice to Proceed has been issued by City’s Contract Administrator. No payment will be made prior to approval of any work, or for any work performed prior to approval of this AGREEMENT.

The contract shall end on DATE _____, 202X, unless extended by an amendment if mutually agreed by both parties hereto, in writing not less than thirty (30) days prior to the expiration of this Agreement.

CONSULTANT is advised that any recommendation by City staff for contract award is not binding on City until the contract is fully executed and approved by City Council and staff.

ARTICLE III – COSTS AND PAYMENTS

- A. For services provided herein, the City agrees to pay CONSULTANT on a time-and-materials basis in accordance with the rates and charges identified in the Cost Proposal (Exhibit A), incorporated herein and made by reference a part hereof.

- B. Reimbursement for transportation and subsistence costs shall not exceed the rates specified in the approved Cost Proposal.
- C. CONSULTANT will be reimbursed within thirty (30) days upon receipt by City's Contract Administrator of itemized invoices in duplicate. Invoices shall be submitted no later than thirty (30) calendar days after the performance of work for which CONSULTANT is billing. Invoices shall detail the work performed on each milestone, on each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this AGREEMENT number and project title. The final invoice must be submitted within sixty (60) calendar days after completion of CONSULTANT's work unless a later date is approved by the City. Invoices shall be mailed to City Contract Administrator at the following address:
 - City of Placerville
 - Water Reclamation Facility
 - Attn: Michael Fritschi
 - 2300 Cool Water Creek Rd
 - Placerville, California 95667
- D. The total amount payable by City shall not exceed \$_____.
- E. Salary increases will be reimbursable if the new salary is within the salary range identified in the approved Cost Proposal and is approved by City's Contract Administrator. For personnel subject to prevailing wage rates as described in the California Labor Code, all salary increases, which are the direct result of changes in the prevailing wage rates are reimbursable.
- F. City is not required to make any deductions or withholdings from the compensation payable to CONSULTANT under the provisions of the AGREEMENT and is not required to issue W-2 Forms for income and employment tax purposes for any of CONSULTANT's assigned personnel. CONSULTANT, in the performance of its obligation hereunder, is only subject to the control or direction of the City as to the designation of tasks to be performed and the results to be accomplished.

ARTICLE IV – DEFAULT, TERMINATION AND CANCELLATION

- A. This AGREEMENT may be terminated by City, provided that City gives not less than thirty (30) calendar days' written notice (delivered by certified mail, return receipt requested) of intent to terminate. Upon termination, City shall be entitled to all work, including but not limited to, reports, investigations, appraisals, inventories, studies, analyses, drawings, and data estimates performed to that date, whether completed or not.
- B. City may temporarily suspend this AGREEMENT, at no additional cost to the City, provided that CONSULTANT is given written notice (delivered by certified mail, return receipt requested) of temporary suspension. If City gives such notice of temporary suspension, CONSULTANT shall immediately suspend its activities under this AGREEMENT. A temporary suspension may be issued concurrent with the notice of termination.
- C. Notwithstanding any provisions of this AGREEMENT, CONSULTANT shall not be relieved of liability to City for damages sustained by City by virtue of any breach of this AGREEMENT by CONSULTANT, and City may withhold any payments due to CONSULTANT until such time as the exact amount of damages, if any, due City from CONSULTANT is determined.
- D. In the event of termination, CONSULTANT shall be compensated as provided for in this AGREEMENT. Upon termination, City shall be entitled to all work, including but not limited to, reports, investigations, appraisals, inventories, studies, analyses, drawings, and data estimates performed to that date, whether completed or not.
- E. Default: upon the occurrence of any default of the provisions of this Agreement, a party shall give written notice of said default to the party in default (notice). If the party in default does not cure the default within ten (10) days of the date of notice (time to cure), then such party shall be in default. The time to cure may be extended at the discretion of the party giving notice.

1. Any extension of time to cure must be in writing, prepared by the party in default for signature by the party giving notice and must specify the reason(s) for the extension and the date on which the extension of time to cure expires.
 2. Notice given under this section shall specify the alleged default and the applicable Agreement provision and shall demand that the party in default perform the provisions of this Agreement within the applicable period of time. No such notice shall be deemed a termination of this Agreement unless the party giving notice so elects in this notice, or the party giving notice so elects in a subsequent written notice after the time to cure has expired.
- F. Bankruptcy: This Agreement, at the option of the City, shall be terminable in the case of bankruptcy, voluntary or involuntary, or insolvency of CONSULTANT.
- G. Ceasing Performance: City may terminate this Agreement in the event CONSULTANT ceases to operate as a business, or otherwise becomes unable to substantially perform any term or condition of this Agreement.
- H. Termination or Cancellation without Cause: City may terminate this Agreement in whole or in part thirty (30) calendar days upon written notice by City for any reason. If such prior termination is affected, City will pay for satisfactory services rendered prior to the effective dates as set forth in the Notice of Termination provided to CONSULTANT, and for such other services, which City may agree to in writing as necessary for contract resolution. In no event, however, shall City be obligated to pay more than the total amount of the contract. Upon receipt of a Notice of Termination, CONSULTANT shall promptly discontinue all services affected, as of the effective date of termination set forth in such Notice of Termination, unless the notice directs otherwise. In the event of termination for default, City reserves the right to take over and complete the work by contract or by any other means.

ARTICLE V – COST PRINCIPLES AND ADMINISTRATIVE REQUIREMENTS

- A. The CONSULTANT agrees that 48 CFR Part 31, Contract Cost Principles and Procedures, shall be used to determine the allowability of individual terms of cost.
- B. The CONSULTANT also agrees to comply with Federal procedures in accordance with 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.
- C. Any costs for which payment has been made to the CONSULTANT that are determined by subsequent audit to be unallowable under 48 CFR Part 31 or 2 CFR Part 200 are subject to repayment by the CONSULTANT to CITY.
- D. When a CONSULTANT or Subconsultant is a Non-Profit Organization or an Institution of Higher Education, the Cost Principles for Title 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards shall apply.
- E. All subcontracts in excess of \$25,000 shall contain the above provisions.

ARTICLE VI – RETENTION OF RECORDS/AUDIT

For the purpose of determining compliance with Government Code 8546.7; CONSULTANT, subconsultants, and City shall maintain and make available for inspection all books, documents, papers, accounting records, Independent certified public accountant (CPA) Audited Indirect Cost Rate workpapers, and other evidence pertaining to the performance of the Agreement, including but not limited to, the costs of administering the Agreement. All parties, including the CONSULTANT's Independent CPA, shall make such workpapers and materials available at their respective offices at all reasonable times during the Agreement period and for three (3) years from the date of final payment under the Agreement, and records for real property and equipment acquired with federal funds must be retained for three (3) years after final disposition. The state, State Auditor, City, Federal Highway Administration (FHWA), or any duly authorized representative of the Federal Government having jurisdiction under

Federal laws or regulations (including the basis of Federal funding in whole or in part) shall have access to any books, records, and documents of CONSULTANT, Subconsultants, and the CONSULTANT's Independent CPA that are pertinent to the Agreement for audit, examinations, workpaper review, excerpts, and transactions, and copies thereof shall be furnished if requested. Subcontracts in excess of \$25,000 shall contain this provision.

ARTICLE VII – AUDIT REVIEW PROCEDURES

- A. Any dispute concerning a question of fact arising under an interim or post audit of this AGREEMENT that is not disposed of by agreement, shall be reviewed by City's Chief Financial Officer.
- B. Not later than 30 days after issuance of the final audit report, CONSULTANT may request a review by City's Chief Financial Officer of unresolved audit issues. The request for review will be submitted in writing.
- C. Neither the pendency of a dispute nor its consideration by City will excuse CONSULTANT from full and timely performance, in accordance with the terms of this AGREEMENT.
- D. CONSULTANT and subconsultant contracts, including cost proposals and Indirect Cost Rates (ICR), are subject to audits or reviews such as, but not limited to, a contract audit, an incurred cost audit, an ICR Audit, or a CPA ICR audit work paper review. If selected for audit or review, the contract, cost proposal and ICR and related work papers, if applicable, will be reviewed to verify compliance with 48 CFR, Part 31 and other related laws and regulations. In the instances of a CPA ICR audit work paper review, it is CONSULTANT's responsibility to ensure federal, state, or local government officials are allowed full access to the CPA's work papers including making copies as necessary. The contract, cost proposal, and ICR shall be adjusted by CONSULTANT and approved by City contract manager to conform to the audit or review recommendations. CONSULTANT agrees that individual terms of costs identified in the audit report shall be incorporated into the contract by this reference if directed by City at its sole discretion. Refusal by CONSULTANT to incorporate audit or review recommendations, or to ensure that the federal, state, or local governments have access to CPA work papers, will be considered a breach of contract terms and cause for termination of the contract and disallowance of prior reimbursed costs.

ARTICLE VIII – SUBCONTRACTING

CONSULTANT is engaged by City for its unique qualifications and skills as well as those of its personnel.

- A. Nothing contained in this AGREEMENT or otherwise, shall create any contractual relation between City and any subconsultant(s), and no sub-agreement shall relieve CONSULTANT of its responsibilities and obligations hereunder. CONSULTANT agrees to be as fully responsible to City for the acts and omissions of its subconsultant(s) and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by CONSULTANT. CONSULTANT's obligation to pay its subconsultant(s) is an independent obligation from City's obligation to make payments to the CONSULTANT.
- B. CONSULTANT shall perform the work contemplated with resources available within its own organization and no portion of the work pertinent to this AGREEMENT shall be subcontracted without written authorization by City's Contract Administrator, except that, which is expressly identified in the approved Cost Proposal.
- C. Any sub-agreement entered into as a result of this AGREEMENT shall contain all the provisions stipulated in this entire AGREEMENT to be applicable to subconsultants unless otherwise noted.
- D. CONSULTANT shall pay its subconsultants within fifteen (15) calendar days from receipt of each payment made to CONSULTANT by City.

- E. Any substitution of subconsultant(s) must be approved in writing by City's Contract Administrator prior to the start of work by the substitute subconsultant(s).
- F. Prompt Progress Payment

CONSULTANT or subconsultant shall pay to any subconsultant, not later than fifteen (15) days after receipt of each progress payment, unless otherwise agreed to in writing, the respective amounts allowed CONSULTANT on account of the work performed by the subconsultants, to the extent of each subconsultant's interest therein. In the event that there is a good faith dispute over all or any portion of the amount due on a progress payment from CONSULTANT or subconsultant to a subconsultant, CONSULTANT or subconsultant may withhold no more than 150 percent of the disputed amount. Any violation of this requirement shall constitute a cause for disciplinary action and shall subject the licensee to a penalty, payable to the subconsultant, of 2 percent of the amount due per month for every month that payment is not made.

In any action for the collection of funds wrongfully withheld, the prevailing party shall be entitled to his or her attorney's fees and costs. The sanctions authorized under this requirement shall be separate from, and in addition to, all other remedies, either civil, administrative, or criminal.
Prompt Payment of Withheld Funds to Subconsultants

The City may hold retainage from CONSULTANT and shall make prompt and regular incremental acceptances of portions, as determined by the City, of the contract work, and pay retainage to CONSULTANT based on these acceptances. The City shall designate one of the methods below in the contract to ensure prompt and full payment of any retainage kept by CONSULTANT or subconsultant to a subconsultant.

No retainage will be held by the City from progress payments due to CONSULTANT. Any subconsultant within 15 days after the subconsultant's work is satisfactorily completed. Any delay or postponement of payment may take place only for good cause and with the City's prior written approval. Any violation of these provisions shall be subject the violating CONSULTANT or subconsultant to the penalties, sanctions, and remedies specified in Section 3321 of the California Civil Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to CONSULTANT or subconsultant in the event of a dispute involving late payment or nonpayment by CONSULTANT, deficient subconsultant performance and/or noncompliant by a subconsultant.

Any violation of these provisions shall subject the violating CONSULTANT or subconsultant to the penalties, sanctions and other remedies specified therein. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to CONSULTANT or subconsultant in the event of a dispute involving late payment or nonpayment by CONSULTANT, deficient subcontract performance, or noncompliance by a subconsultant.

ARTICLE IX – EQUIPMENT PURCHASE

- A. Prior authorization in writing, by City's Contract Administrator shall be required before CONSULTANT enters into any unbudgeted purchase order, or subcontract exceeding \$5,000 for supplies, equipment, or CONSULTANT services. CONSULTANT shall provide an evaluation of the necessity or desirability of incurring such costs.
- B. For purchase of any item, service or consulting work not covered in CONSULTANT's Cost Proposal and exceeding \$5,000 prior authorization by City's Contract Administrator; three competitive quotations must be submitted with the request, or the absence of bidding must be adequately justified.
- C. Any equipment purchased as a result of this contract is subject to the following:
 - a. CONSULTANT shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least two years and an acquisition cost of \$5,000

or more. If the purchased equipment needs replacement and is sold or traded in, City shall receive a proper refund or credit at the conclusion of the contract, or if the contract is terminated, CONSULTANT may either keep the equipment and credit City in an amount equal to its fair market value, or sell such equipment at the best price obtainable at a public or private sale, in accordance with established City procedures; and credit City in an amount equal to the sales price. If CONSULTANT elects to keep the equipment, fair market value shall be determined at CONSULTANT's expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to by City and CONSULTANT, if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by City.

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

ARTICLE X – STATE PREVAILING WAGE RATES

- A. No CONSULTANT or Subconsultant may be awarded an AGREEMENT containing public work elements unless registered with the Department of Industrial Relations (DIR) pursuant to Labor Code §1725.5. Registration with DIR must be maintained throughout the entire term of this AGREEMENT, including any subsequent amendments.
- B. The CONSULTANT shall comply with all of the applicable provisions of the California Labor Code requiring the payment of prevailing wages. The General Prevailing Wage Rate Determinations applicable to work under this AGREEMENT are available and on file with the Department of Transportation's Regional/District Labor Compliance Officer (<https://dot.ca.gov/programs/construction/labor-compliance>). These wage rates are made a specific part of this AGREEMENT by reference pursuant to Labor Code §1773.2 and will be applicable to work performed at a construction project site. Prevailing wages will be applicable to all inspection work performed at City construction sites, at City facilities and at off-site locations that are set up by the construction contractor or one of its subcontractors solely and specifically to serve City projects. Prevailing wage requirements do not apply to inspection work performed at the facilities of vendors and commercial materials suppliers that provide goods and services to the general public.
- C. General Prevailing Wage Rate Determinations applicable to this project may also be obtained from the Department of Industrial Relations Internet site at <http://www.dir.ca.gov>.
- D. Payroll Records
- a. Each CONSULTANT and Subconsultant shall keep accurate certified payroll records and supporting documents as mandated by Labor Code §1776 and as defined in 8 CCR §16000 showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by the CONSULTANT or Subconsultant in connection with the public work. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:
 - i. The information contained in the payroll record is true and correct.
 - ii. The employer has complied with the requirements of Labor Code §1771, §1811, and §1815 for any work performed by his or her employees on the public works project.
 - b. The payroll records enumerated under paragraph (1) above shall be certified as correct by the CONSULTANT under penalty of perjury. The payroll records and all supporting documents shall be made available for inspection and copying by City representatives at all reasonable hours at the principal office of the CONSULTANT. The CONSULTANT shall provide copies of certified payrolls or permit inspection of its records as follows:

- i. A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or the employee's authorized representative on request.
 - ii. A certified copy of all payroll records enumerated in paragraph (1) above, shall be made available for inspection or furnished upon request to a representative of City, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards of the Department of Industrial Relations. Certified payrolls submitted to CITY, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards shall not be altered or obliterated by the CONSULTANT.
 - iii. The public shall not be given access to certified payroll record by the CONSULTANT. The CONSULTANT is required to forward any requests for certified payrolls to the City's Contract Administrator by both email and regular mail on the business day following receipt of the request.
 - c. Each CONSULTANT shall submit a certified copy of the records enumerated in paragraph (1) above, to the entity that requested the records within ten (10) calendar days after receipt of a written request.
 - d. Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by City shall be marked or obliterated in such a manner as to prevent disclosure of each individual's name, address, and social security number. The name and address of the CONSULTANT or Subconsultant performing the work shall not be marked or obliterated.
 - e. The CONSULTANT shall inform City of the location of the records enumerated under paragraph (1) above, including the street address, city and county, and shall, within five (5) working days, provide a notice of a change of location and address.
 - f. The CONSULTANT or Subconsultant shall have ten (10) calendar days in which to comply subsequent to receipt of written notice requesting the records enumerated in paragraph (1) above. In the event the CONSULTANT or Subconsultant fails to comply within the ten (10) day period, he or she shall, as a penalty to City, forfeit one hundred dollars (\$100) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Such penalties shall be withheld by City from payments then due. CONSULTANT is not subject to a penalty assessment pursuant to this section due to the failure of a Subconsultant to comply with this section.
- E. When prevailing wage rates apply, the CONSULTANT is responsible for verifying compliance with certified payroll requirements. Invoice payment will not be made until the invoice is approved by the City Contract Administrator.
- F. Penalty
 - a. The CONSULTANT and any of its Subconsultants shall comply with Labor Code §1774 and §1775. Pursuant to Labor Code §1775, the CONSULTANT and any Subconsultant shall forfeit to the City a penalty of not more than two hundred dollars (\$200) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the Director of DIR for the work or craft in which the worker is employed for any public work done under the AGREEMENT by the CONSULTANT or by its Subconsultant in violation of the requirements of the Labor Code and in particular, Labor Code §§1770 to 1780, inclusive.
 - b. The amount of this forfeiture shall be determined by the Labor Commissioner and shall be based on consideration of mistake, inadvertence, or neglect of the CONSULTANT or

Subconsultant in failing to pay the correct rate of prevailing wages, or the previous record of the CONSULTANT or Subconsultant in meeting their respective prevailing wage obligations, or the willful failure by the CONSULTANT or Subconsultant to pay the correct rates of prevailing wages. A mistake, inadvertence, or neglect in failing to pay the correct rates of prevailing wages is not excusable if the CONSULTANT or Subconsultant had knowledge of the obligations under the Labor Code. The CONSULTANT is responsible for paying the appropriate rate, including any escalations that take place during the term of the AGREEMENT.

- c. In addition to the penalty and pursuant to Labor Code §1775, the difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the CONSULTANT or Subconsultant.
- d. If a worker employed by a Subconsultant on a public works project is not paid the general prevailing per diem wages by the Subconsultant, the prime CONSULTANT of the project is not liable for the penalties described above unless the prime CONSULTANT had knowledge of that failure of the Subconsultant to pay the specified prevailing rate of wages to those workers or unless the prime CONSULTANT fails to comply with all of the following requirements:
 - i. The AGREEMENT executed between the CONSULTANT and the Subconsultant for the performance of work on public works projects shall include a copy of the requirements in Labor Code §§ 1771, 1775, 1776, 1777.5, 1813, and 1815.
 - ii. The CONSULTANT shall monitor the payment of the specified general prevailing rate of per diem wages by the Subconsultant to the employees by periodic review of the certified payroll records of the Subconsultant.
 - iii. Upon becoming aware of the Subconsultant's failure to pay the specified prevailing rate of wages to the Subconsultant's workers, the CONSULTANT shall diligently take corrective action to halt or rectify the failure, including but not limited to, retaining sufficient funds due the Subconsultant for work performed on the public works project.
 - iv. Prior to making final payment to the Subconsultant for work performed on the public works project, the CONSULTANT shall obtain an affidavit signed under penalty of perjury from the Subconsultant that the Subconsultant had paid the specified general prevailing rate of per diem wages to the Subconsultant's employees on the public works project and any amounts due pursuant to Labor Code §1813.
- e. Pursuant to Labor Code §1775, City shall notify the CONSULTANT on a public works project within fifteen (15) calendar days of receipt of a complaint that a Subconsultant has failed to pay workers the general prevailing rate of per diem wages.
- f. If City determines that employees of a Subconsultant were not paid the general prevailing rate of per diem wages and if City did not retain sufficient money under the AGREEMENT to pay those employees the balance of wages owed under the general prevailing rate of per diem wages, the CONSULTANT shall withhold an amount of moneys due the Subconsultant sufficient to pay those employees the general prevailing rate of per diem wages if requested by City.

G. Hours of Labor

Eight (8) hours labor constitutes a legal day's work. The CONSULTANT shall forfeit, as a penalty to the City, twenty-five dollars (\$25) for each worker employed in the execution of the AGREEMENT by the CONSULTANT or any of its Subconsultants for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar

day and forty (40) hours in any one calendar week in violation of the provisions of the Labor Code, and in particular §§1810 to 1815 thereof, inclusive, except that work performed by employees in excess of eight (8) hours per day, and forty (40) hours during any one week, shall be permitted upon compensation for all hours worked in excess of eight (8) hours per day and forty (40) hours in any week, at not less than one and one-half (1.5) times the basic rate of pay, as provided in §1815.

H. Employment of Apprentices

- a. Where either the prime AGREEMENT or the sub-agreement exceeds thirty thousand dollars (\$30,000), the CONSULTANT and any subconsultants under him or her shall comply with all applicable requirements of Labor Code §§ 1777.5, 1777.6 and 1777.7 in the employment of apprentices.
- b. CONSULTANTS and subconsultants are required to comply with all Labor Code requirements regarding the employment of apprentices, including mandatory ratios of journey level to apprentice workers. Prior to commencement of work, CONSULTANT and subconsultants are advised to contact the DIR Division of Apprenticeship Standards website at <https://www.dir.ca.gov/das/>, for additional information regarding the employment of apprentices and for the specific journey-to- apprentice ratios for the AGREEMENT work. The CONSULTANT is responsible for all subconsultants' compliance with these requirements. Penalties are specified in Labor Code §1777.7.

ARTICLE XI – CONFLICT OF INTEREST

No official or employee of City who exercises any functions or responsibilities in review or approval of services to be provided by CONSULTANT under this AGREEMENT shall participate in or attempt to influence any decision relating to this AGREEMENT which affects personal interest or interest of any corporation, partnership or association in which he/she is directly or indirectly interested; nor shall any such official or employee of City have any interest, direct or indirect, in this AGREEMENT or the proceeds thereof.

- A. During the term of this AGREEMENT, CONSULTANT shall disclose any financial, business, or other relationship with City that may have an impact upon the outcome of this AGREEMENT, or any ensuing City construction project. CONSULTANT shall also list current clients who may have a financial interest in the outcome of this AGREEMENT, or any ensuing City construction project, which will follow.
- B. CONSULTANT certifies that it has disclosed to City any actual, apparent, or potential conflicts of interest that may exist relative to the services to be provided pursuant to this AGREEMENT. CONSULTANT agrees to advise City of any actual, apparent, or potential conflicts of interest that may develop subsequent to the date of execution of this AGREEMENT. CONSULTANT further agrees to complete any statements or economic interest if required by either City ordinance or State law.
- C. CONSULTANT hereby certifies that it does not now have, nor shall it acquire any financial or business interest that would conflict with the performance of services under this AGREEMENT.
- D. CONSULTANT hereby certifies that neither CONSULTANT, nor any firm affiliated with CONSULTANT will bid on any construction contract, or on any AGREEMENT to provide construction inspection for any construction project resulting from this contract. An affiliated firm is one, which is subject to the control of the same persons through joint-ownership, or otherwise.

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

ARTICLE XII – REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION

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

ARTICLE XIII – PROHIBITION OF EXPENDING LOCAL AGENCY STATE OR FEDERAL FUNDS FOR LOBBYING

- A. CONSULTANT certifies to the best of his or her knowledge and belief that:
1. No state, federal or local agency appropriated funds have been paid, or will be paid by-or-on behalf of CONSULTANT to any person for influencing or attempting to influence an officer or employee of any state or federal agency; a Member of the State Legislature or United States Congress; an officer or employee of the Legislature or Congress; or any employee of a Member of the Legislature or Congress, in connection with the awarding of any state or federal contract; the making of any state or federal grant; the making of any state or federal loan; the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any state or federal contract, grant, loan, or cooperative agreement.
 2. If any funds other than federal appropriated funds have been paid, or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency; a Member of Congress; an officer or employee of Congress, or an employee of a Member of Congress; in connection with this federal contract, grant, loan, or cooperative agreement; CONSULTANT shall complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying”, in accordance with its instructions.
- B. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
- C. CONSULTANT also agrees by signing this document that he or she shall require that the language of this certification be included in all lower-tier subcontracts, which exceed \$100,000 and that all such sub recipients shall certify and disclose accordingly.

ARTICLE XIV – CHANGES TO AGREEMENT

- A. No alteration or variation of the terms of this AGREEMENT shall be valid, unless made in writing and signed by the parties authorized to bind the parties; and no oral understanding or agreement not incorporated herein, shall be binding on any of the parties hereto.
- B. CONSULTANT shall only commence work covered by an amendment after the amendment is executed and notification to proceed has been provided by City’s Contract Administrator.
- C. There shall be no change in the CONSULTANT’s Project Manager or members of the project team, as listed in the approved Cost Proposal, which is part of this contract without prior written approval by the City’s Contract Administrator.

ARTICLE XV – CONSULTANT TO CITY

It is understood that the services provided under this Agreement shall be prepared in and with cooperation from City and its staff. It is further agreed that in all matters pertaining to this Agreement, CONSULTANT shall act as CONSULTANT only to the City and shall not act as CONSULTANT to any other individual or entity affected by this Agreement nor provide information in any manner to any party outside of this Agreement that would conflict with CONSULTANT's responsibilities to the City during term hereof.

ARTICLE XVI – INDEPENDENT CONSULTANT

CONSULTANT in the performance of this AGREEMENT shall act in an independent capacity. 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 City.

CONSULTANT exclusively assumes responsibility for acts of its employees, associates and subconsultants, if any are authorized herein, as they relate to services to be provided under this Agreement during the course and scope of their employment.

CONSULTANT shall be responsible for performing the work under this Agreement in a safe, professional, skillful and workmanlike manner and shall be liable for its own negligence and negligent acts of its employees. City shall have no right of control over the manner in which work is to be done and shall, therefore, not be charged with responsibility of preventing risk to CONSULTANT or its employees.

ARTICLE XVII – NOTICE TO PARTIES

All notices to be given by the parties hereto shall be in writing and served by depositing same in the United States Post Office, postage prepaid and return receipt requested. Notices to City shall be in duplicate and addressed as follows:

City of Placerville
Water Reclamation Facility
2300 Cool Water Creek Rd
Placerville, California 95667
ATTN: Michael Fritschi, P.E. - Plant Superintendent

Or to such other location as the City directs.

Notices to CONSULTANT shall be addressed as follows:

Or to such other location as the CONSULTANT directs.

ARTICLE XVIII – INDEMNITY

CONSULTANT agrees to the fullest extent permitted by law, to indemnify, protect, defend, and hold harmless City, its officers, officials, agents, employees and volunteers from and against any and all claims, damages, demands, liability, costs, losses and expenses, including without limitation, court costs and reasonable attorneys' and expert witness fees, arising out of any failure to comply with applicable law, any injury to or death of any person(s), damage to property, loss of use of property, economic loss or otherwise arising out of the performance of the work described herein, to the extent caused by a negligent act or negligent failure to act, errors, omissions, recklessness or willful misconduct incident to the

performance of this AGREEMENT on the part of CONSULTANT, except such loss or damage which was caused by the sole negligence, or willful misconduct of City, as determined by a Court of competent jurisdiction. The duty to defend does not apply to professional liability claims. The provisions of this section shall survive termination or suspension of this AGREEMENT.

Any third-party person(s) employed by CONSULTANT shall be entirely and exclusively under the direction, supervision, and control of CONSULTANT. CONSULTANT hereby indemnifies and holds City harmless from any and all claims that may be made against City based upon any contention by any third party that an employer-employee relationship exists by reason of this AGREEMENT.

ARTICLE XIX – INSURANCE

Consultant shall not commence any work before obtaining, and shall maintain in force at all times during the duration and performance of this AGREEMENT, the policies of insurance specified in this Section. Such insurance must have the approval of the City as to limit, form, and amount, and shall be placed with insurers with a current A.M. Best's rating of no less than A VII (an NR rating is acceptable for Worker's Compensation insurance written with the State Compensation Insurance Fund of California).

- A. Prior to execution of this AGREEMENT and prior to commencement of any work, the CONSULTANT shall furnish the City with certificates of insurance and copies of endorsements providing evidence of coverage for all policies required by the AGREEMENT. The CONSULTANT and its contractors and subcontractors shall, at their expense, maintain in effect at all times during the performance of work under the AGREEMENT not less than the following coverage and limits of insurance, which shall be maintained with insurers and under forms of policy satisfactory to the City. The maintenance by CONSULTANT and its contractors and subcontractors of the following coverage and limits of insurance is a material element of this AGREEMENT. The failure of CONSULTANT or of any of its contractors or subcontractors to maintain or renew coverage or to provide evidence of renewal may be treated by the City as a material breach of this AGREEMENT. Approval of the insurance by the City shall not relieve or decrease any liability of CONSULTANT.

1. **Commercial General Liability Insurance.**

- a. CONSULTANT shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than two million dollars (\$2,000,000) per occurrence for bodily injury, personal injury, and property damage, including without limitation, blanket contractual liability. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit. CONSULTANT'S general liability policies shall be primary and shall not seek contribution from the City's coverage, and be endorsed using Insurance Services Office form CG 20 10 (or equivalent) to provide that City and its officers, officials, employees, and agents shall be additional insureds under such policies. For construction projects, an endorsement providing completed operations coverage for the additional insured, ISO form CG 20 37 (or equivalent), is also required.
- b. Any failure to comply with reporting provisions of the policies by CONSULTANT shall not affect coverage provided the City.
- c. Coverage shall state that CONSULTANT 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.
- d. Coverage shall contain a waiver of subrogation in favor of the City.

2. *Business Automobile Liability.* CONSULTANT shall provide auto liability coverage for owned, non-owned, and hired autos using ISO Business Auto Coverage form CA 00 01 (or equivalent) with a limit of no less than five million dollars (\$5,000,000) per accident.

3. *Workers' Compensation and Employers' Liability.* CONSULTANT shall maintain Workers' Compensation Insurance and Employer's Liability Insurance with limits of at least one million dollars (\$1,000,000). CONSULTANT shall submit to City, along with the certificate of insurance, a waiver of subrogation endorsement in favor of City, its officers, agents, employees, and volunteers.
 4. *Professional Liability.* CONSULTANT shall maintain professional liability insurance that insures against professional errors and omissions that may be made in performing the Services to be rendered in connection with this AGREEMENT, in the minimum amount of one million dollars (\$1,000,000) per claim and in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the effective date of this AGREEMENT, and CONSULTANT agrees to maintain continuous coverage through a period no less than three years after completion of the services required by this AGREEMENT.
 5. All Coverages.
 - a. Each insurance policy required by this AGREEMENT shall be endorsed to state that coverage shall not be suspended, voided, cancelled, or reduced in limits except after thirty (30) days' prior written notice has been given to the City, except that ten (10) days' prior written notice shall apply in the event of cancellation for nonpayment of premium.
 - b. All self-insurance, self-insured retentions, and deductibles must be declared and approved by the City.
 - c. Evidence of Insurance - Prior to commencement of work, the CONSULTANT shall furnish the City with certificates, additional insured endorsements, and waivers of subrogation evidencing compliance with the insurance requirements above. The CONSULTANT must agree to provide complete, certified copies of all required insurance policies if requested by the City.
 - d. Acceptability of Insurers - Insurance shall be placed with insurers admitted in the State of California and with an A.M. Best rating of A- VII or higher.
 - e. Subcontractors and Consultants - A category of risk and the applicable insurance requirements will be determined on a "per subcontractor" or "per Consultant" basis, considering the particular work to be done by the subcontractor or CONSULTANT and the interrelationship of that work to other work being conducted by the CONSULTANT.
 6. No other provision of this AGREEMENT or any attachment thereto shall reduce the insurance obligations imposed under this Section.
- B. In addition to any other remedy the City may have, if CONSULTANT fails to maintain the insurance coverage as required in this Section, the City may obtain such insurance coverage as is not being maintained, in form and amount substantially the same as is required herein, and the City may deduct the cost of such insurance from any amounts due or which may become due CONSULTANT under this AGREEMENT.
 - C. No policy required by this AGREEMENT shall be suspended, cancelled, terminated by either party, or reduced in coverage or in limits unless CONSULTANT has provided thirty (30) days prior written notice by certified mail, return receipt requested, to the City.
 - D. Any deductibles or self-insured retentions in excess of \$10,000 must be declared to, and approved by, the City.
 - E. The requirement as to types, limits, and the City's approval of insurance coverage to be maintained by CONSULTANT are not intended to, and shall not in any manner, limit or qualify the liabilities and obligations assumed by CONSULTANT under the AGREEMENT.

ARTICLE XX – CALIFORNIA RESIDENCY

All independent consultants providing services to the City must file a State of California Form 590, certifying their California residency or, in the case of a corporation, certify that they have a permanent place of business in California. The CONSULTANT will be required to submit a Form 590 prior to execution of a contract or City shall withhold seven (7%) percent of each payment made to the CONSULTANT during term of the contract. This requirement applies to any agreement/contract exceeding \$1,500.00.

ARTICLE XXI – TAXPAYER IDENTIFICATION NUMBER

All independent Consultants or Corporations providing services to the City must file a Department of the Treasury Internal Revenue Service Form W-9, certifying their Taxpayer Identification Number.

ARTICLE XXII – CITY BUSINESS LICENSE

To conduct business within the City of Placerville CONSULTANT must be in possession of a valid City Business License.

ARTICLE XXIII – ADMINISTRATOR

The City Officer or employee with responsibility for administering this contract is the City Engineer, or successor.

ARTICLE XXIX – AUTHORIZED SIGNATURES

The parties to this AGREEMENT represent that the undersigned individuals executing this AGREEMENT on their respective behalf are fully authorized to do so by law or other appropriate instrument and to bind upon said parties to the obligations set forth herein.

ARTICLE XXV – PARTIAL INVALIDITY

If any provision of this AGREEMENT is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will continue in full force and effect without being impaired or invalidated in any way.

ARTICLE XXVI – DISPUTES

Prior to either party commencing any legal action under this AGREEMENT, the parties agree to try in good faith, to settle any dispute amicably between them. If a dispute has not been settled after forty-five (45) days of good-faith negotiations and as may be otherwise provided herein, then either party may commence legal action against the other.

- A. Not later than 30 days after completion of all deliverables necessary to complete the plans, specifications and estimate, CONSULTANT may request review by the City Manager of unresolved claims or disputes, other than audit. The request for review will be submitted in writing.

ARTICLE XXVIII – STATEMENT OF COMPLIANCE

- A. CONSULTANT's signature affixed herein, and dated, shall constitute a certification under penalty of perjury under the laws of the State of California that CONSULTANT has, unless exempt, complied with, the nondiscrimination program requirements of Government Code Section 12990 and Title 2, California Administrative Code, Section 8103.
- B. During the performance of this AGREEMENT, CONSULTANT and its subconsultants shall not deny the AGREEMENT's benefits to any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual

orientation, or military and veteran status, nor shall they unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. CONSULTANT and subconsultants shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.

- C. CONSULTANT and subconsultants shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated there under (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Contract by reference and made a part hereof as if set forth in full.
- D. CONSULTANT shall permit access by representatives of the Department of Fair Employment and Housing and the CITY upon reasonable notice at any time during the normal business hours, but in no case less than twenty-four (24) hours' notice, to such of its books, records, accounts, and all other sources of information and its facilities as said Department or CITY shall require to ascertain compliance with this clause.
- E. CONSULTANT and its subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other AGREEMENT.
- F. CONSULTANT shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this AGREEMENT.
- G. The CONSULTANT, with regard to the work performed under this AGREEMENT, shall act in accordance with Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d et seq.). Title VI provides that the recipients of federal assistance will implement and maintain a policy of nondiscrimination in which no person in the United States shall, on the basis of race, color, national origin, religion, sex, age, disability, be excluded from participation in, denied the benefits of or subject to discrimination under any program or activity by the recipients of federal assistance or their assignees and successors in interest.
- H. The CONSULTANT shall comply with regulations relative to non-discrimination in federally assisted programs of the U.S. Department of Transportation (49 CFR Part 21 - Effectuation of Title VI of the Civil Rights Act of 1964). Specifically, the CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR §21.5, including employment practices and the selection and retention of Subconsultants.
- I. CONSULTANT, subrecipient or subconsultant will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR 26 on the basis of race, color, sex, or national origin. In administering the CITY components of the DBE Program Plan, CONSULTANT, subrecipient or subconsultant will not, directly, or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE Program Plan with respect to individuals of a particular race, color, sex, or national origin.

ARTICLE XXIX – DEBARMENT AND SUSPENSION CERTIFICATION

- A. CONSULTANT's signature affixed herein, shall constitute a certification under penalty of perjury under the laws of the State of California, that CONSULTANT or any person associated therewith in the capacity of owner, partner, director, officer, or manager:

- a. Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;
 - b. Has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years;
 - c. Does not have a proposed debarment pending; and
 - d. Has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years.
- B. Any exceptions to this certification must be disclosed to City. Exceptions will not necessarily result in denial of recommendation for award but will be considered in determining responsibility. Disclosures must indicate the party to whom the exceptions apply, the initiating agency, and the dates of agency action.
- C. Exceptions to the Federal Government Excluded Parties (<https://sam.gov/content/home>) maintained by the U.S. General Services Administration are to be determined by the Federal Highway Administration.

ARTICLE XXX – FUNDING REQUIREMENTS

- A. It is mutually understood between the parties that this contract may have been written before ascertaining the availability of funds or appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays that would occur if the contract were executed after that determination was made.
- B. This AGREEMENT is valid and enforceable only, if sufficient funds are made available to the City for the purpose of this AGREEMENT. In addition, this AGREEMENT is subject to any additional restrictions, limitations, conditions, or any statute enacted by the Congress, State Legislature, or the City’s governing board that may affect the provisions, terms, or funding of this AGREEMENT in any manner.
- C. It is mutually agreed that if sufficient funds are not appropriated, this AGREEMENT may be amended to reflect any reduction in funds.
- D. City has the option to terminate the AGREEMENT pursuant to Article IV, or by mutual agreement to amend the AGREEMENT to reflect any reduction of funds.

ARTICLE XXXI – INSPECTION OF WORK

CONSULTANT and any subconsultant shall permit the City, the state, and the FHWA if federal participating funds are used in this AGREEMENT; to review and inspect the project activities and files at all reasonable times during the performance period of this AGREEMENT.

ARTICLE XXXII – OWNERSHIP OF DATA

- A. It is mutually agreed that all materials prepared by CONSULTANT under this AGREEMENT shall become the property of City, and CONSULTANT shall have no property right there in whatsoever. Immediately upon termination, City shall be entitled to, and CONSULTANT shall deliver to City, reports, investigations, appraisals, inventories, studies, analyses, drawings and data estimates performed to that date, whether completed or not, and other such materials as may have been prepared or accumulated to date by CONSULTANT in performing this AGREEMENT which is not CONSULTANT’s privileged information, as defined by law, or CONSULTANT’s personnel information, along with all other property belonging exclusively to City which is in CONSULTANT’s possession. Publication of the information derived from work performed or data obtained in connection with services rendered under this AGREEMENT must be approved in writing by City.

- B. Additionally, it is agreed that the Parties intend this to be an AGREEMENT for services and each considers the products and results of the services to be rendered by CONSULTANT hereunder to be work made for hire. CONSULTANT acknowledges and agrees that the work (and all rights therein, including, without limitation, copyright) belongs to and shall be the sole and exclusive property of City without restriction or limitation upon its use or dissemination by City.
- C. Nothing herein shall constitute or be construed to be any representation by CONSULTANT that the work product is suitable in any way for any other project except the one detailed in this Contract. Any reuse by City for another project or project location shall be at City's sole risk.
- D. Any subcontract in excess of \$25,000 entered into as a result of this contract, shall contain all of the provisions of this Article.

ARTICLE XXXIII – CLAIMS FILED BY CITY'S CONSTRUCTION CONTRACTOR

- A. If claims are filed by City's construction contractor relating to work performed by CONSULTANT's personnel, and additional information or assistance from CONSULTANT's personnel is required in order to evaluate or defend against such claims; CONSULTANT agrees to make its personnel available for consultation with City's construction contract administration and legal staff and for testimony, if necessary, at depositions and at trial or arbitration proceedings.
- B. CONSULTANT's personnel that City considers essential to assist in defending against construction contractor claims will be made available on reasonable notice from City. Consultation or testimony will be reimbursed at the same rates, including travel costs that are being paid for CONSULTANT's personnel services under this AGREEMENT.
- C. Services of CONSULTANT's personnel in connection with City's construction contractor claims will be performed pursuant to a written contract amendment, if necessary, extending the termination date of this AGREEMENT in order to resolve the construction claims.

ARTICLE XXXIV – CONFIDENTIALITY OF DATA

- A. All financial, statistical, personal, technical, or other data and information relative to City's operations, which are designated confidential by City and made available to CONSULTANT in order to carry out this contract, shall be protected by CONSULTANT from unauthorized use and disclosure.
- B. Permission to disclose information on one occasion, or public hearing held by City relating to the contract, shall not authorize CONSULTANT to further disclose such information, or disseminate the same on any other occasion.
- C. CONSULTANT shall not comment publicly to the press or any other media regarding the contract or City's actions on the same, except to City's staff, CONSULTANT's own personnel involved in the performance of this contract, at public hearings or in response to questions from a Legislative committee.
- D. CONSULTANT shall not issue any news release or public relations item of any nature, whatsoever, regarding work performed or to be performed under this contract without prior review of the contents thereof by City, and receipt of City's written permission.
- E. All information related to the construction estimate is confidential and shall not be disclosed by CONSULTANT to any entity, other than City, Caltrans, and/or FHWA. All of the materials prepared or assembled by CONSULTANT pursuant to performance of this Contract are confidential and CONSULTANT agrees that they shall not be made available to any individual or organization without the prior written approval of City or except by court order. If CONSULTANT or any of its officers, employees, or subcontractors does voluntarily provide information in violation of this Contract, City has the right to reimbursement and indemnity from CONSULTANT for any damages caused by CONSULTANT releasing the information,

including, but not limited to, City's attorney's fees and disbursements, including without limitation experts' fees and disbursements.

- F. Any subcontract entered into as a result of this contract shall contain all of the provisions of this Article.

ARTICLE XXXV – CONTINGENT FEE

CONSULTANT warrants, by execution of this contract that no person or selling agency has been employed, or retained, to solicit or secure this contract upon an agreement or understanding, for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees, or bona fide established commercial or selling agencies maintained by CONSULTANT for the purpose of securing business. For breach or violation of this warranty, City has the right to annul this contract without liability; pay only for the value of the work actually performed, or in its discretion to deduct from the contract price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

ARTICLE XXXVI – SAFETY

- A. CONSULTANT shall comply with OSHA regulations applicable to CONSULTANT regarding necessary safety equipment or procedures. CONSULTANT shall comply with safety instructions issued by City Safety Officer and other City representatives. CONSULTANT personnel shall wear hard hats and safety vests at all times while working on the construction project site.
- B. Pursuant to the authority contained in Section 591 of the Vehicle Code, City has determined that such areas are within the limits of the project and are open to public traffic. CONSULTANT shall comply with all of the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code. CONSULTANT shall take all reasonably necessary precautions for safe operation of its vehicles and the protection of the traveling public from injury and damage from such vehicles.
- C. Any subcontract entered into as a result of this contract, shall contain all of the provisions of this Article.
- D. CONSULTANT must have a Division of Occupational Safety and Health (CAL-OSHA) permit(s), as outlined in California Labor Code Sections 6500 and 6705, prior to the initiation of any practices, work, method, operation, or process related to the construction or excavation of trenches which are five feet or deeper.

ARTICLE XXXVII NATIONAL LABOR RELATIONS BOARD CERTIFICATION

In accordance with Public Contract Code §10296, CONSULTANT hereby states under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against CONSULTANT within the immediately preceding two-year period, because of CONSULTANT's failure to comply with an order of a federal court that orders CONSULTANT to comply with an order of the National Labor Relations Board.

ARTICLE XXXVIII PROMPT PAYMENT FROM THE CITY TO CONSULTANT

The City shall make any progress payment within 30 days after receipt of an undisputed and properly submitted payment request from CONSULTANT on a professional service contract. If the City fails to pay promptly, the City shall pay interest to the contractor, which accrues at the rate of 10 percent per annum on the principal amount of a money judgment remaining unsatisfied. Upon receipt of a payment request, the City shall act in accordance with both of the following:

1. Each payment request shall be reviewed by the City as soon as practicable after receipt for the purpose of determining that the payment request is a proper payment request.
2. Any payment request determined not to be a proper payment request suitable for payment shall be returned to CONSULTANT as soon as practicable, but not later than seven (7) days, after receipt.

A request returned pursuant to this paragraph shall be accompanied by a document setting forth in writing the reasons why the payment request is not proper.

IN WITNESS WHEREOF, the two parties to this AGREEMENT, who are the before named CONSULTANT and the before named City, hereby agree that this AGREEMENT constitutes the entire AGREEMENT which is made and concluded in duplicate between the two parties. Both of these parties for and in consideration of the payments to be made, conditions mentioned, and work to be performed; each agree to diligently perform in accordance with the terms and conditions of this AGREEMENT as evidenced by the signatures below.

-- C I T Y O F P L A C E R V I L L E ----- C O N S U L T A N T --

Date: _____

Date: _____

Interim City Manager

Authorized Representative

Print Name

Attachments:
Exhibit A:

