

## **ATTACHMENT 2**

### **CONTRACTUAL SERVICES AGREEMENT**

THIS AGREEMENT is made at Stockton, California, as of \_\_\_\_\_, **20**\_\_\_\_, by and between the SAN JOAQUIN AREA FLOOD CONTROL AGENCY (“Agency”), and \_\_\_\_\_. (“Consultant”), who agree as follows:

1. **SERVICES**. Subject to the terms and conditions set forth in this Agreement, Consultant shall provide or cause to be provided to Agency the services described in Exhibit A. Consultant shall provide said services at the time, place and in the manner specified in Exhibit A.

2. **PAYMENT**. Agency shall pay Consultant for services rendered pursuant to this Agreement at the time and in the manner set forth in Exhibit B. The payments specified in Exhibit B shall be the only payments to be made to Consultant for services rendered pursuant to this Agreement. Consultant shall submit all billings for said services to Agency in the manner specified in Exhibit B; or, if no manner be specified in Exhibit B, then according to the usual and customary procedures and practices which Consultant uses for billing clients similar to Agency.

3. **FACILITIES AND EQUIPMENT**. Except as set forth in Exhibit C, Consultant shall, at its sole cost and expense, furnish all facilities and equipment or data which may be required for furnishing services pursuant to this Agreement. Agency shall furnish to Consultant only the facilities, equipment or data listed in Exhibit C according to

the terms and conditions set forth in Exhibit C.

4. **GENERAL PROVISIONS**. The general provisions set forth in Exhibit D are part of this Agreement. In the event of any inconsistency between said 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.

5. **EXHIBITS**. All exhibits referred to herein are attached hereto and are by this reference incorporated herein.

6. **CONTRACT ADMINISTRATION**. This Agreement shall be administered by the Deputy Executive Director ("Administrator"). All correspondence shall be directed to or through the Administrator or his or her designee.

7. **NOTICES**. Any written notice to Consultant shall be sent to:

Consultant's Name  
Address  
\_\_\_\_\_  
\_\_\_\_\_

Any written notice to Agency shall be sent to:

Chris Elias, Executive Director  
San Joaquin Area Flood Control Agency  
22 East Weber Avenue, Room 301  
Stockton, CA 95202

Executed as of the day first above stated:

{CONSULTANT'S NAME}

By:

\_\_\_\_\_  
Name  
Title

SAN JOAQUIN AREA FLOOD  
CONTROL AGENCY

By:

\_\_\_\_\_  
Chris Elias  
Executive Director

Approved as to Form:

By: \_\_\_\_\_  
Scott L. Shapiro  
General Counsel

# EXHIBIT A

## SCOPE OF SERVICES

At the request of SJAFCA, {CONSULTANT'S NAME}, Inc. shall:

- [Services should be detailed here]
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All services will be provided in accordance with a Fee Schedule (see Exhibit B-1) and updated on {Month} 1<sup>st</sup> of each year.

## TERM

The term of this Agreement shall be for \_\_\_\_\_ year(s) from the date of execution, unless otherwise terminated by the Agency, and may be renewed by the Agency subject to re-negotiation by the parties for additional periods.

## EXHIBIT B

### PAYMENT SCHEDULE

Agency shall pay Consultant an amount not to exceed the total sum of (Spell out dollar amount (\$XXX,XXX.XX)) for services to be performed and reimbursable costs incurred pursuant to this Agreement. Consultant shall submit invoices, not more often than once a month during the term of this Agreement, based on the cost for services performed and reimbursable costs incurred prior to the invoice date. Invoices shall contain the following information.

1. Serial identifications of progress bills, i.e., Progress Bill No. 1.
2. The beginning and ending dates of the billing period.
3. A Task Summary containing the original contract amount, the amount of prior billings, the total due this period, the balance available and the percentage of completion.
4. For each work item in each task, a copy of the applicable time sheets shall be submitted showing the name of the person doing the work, the hours spent by each person, a brief description of the work, and each reimbursable expense.

Agency shall make monthly payments, based on such invoices, for services satisfactorily performed, and for authorized reimbursable costs incurred.

The total sum stated above shall be the total which Agency shall pay for the services to be rendered by Consultant pursuant to this Agreement. Agency shall not pay

any additional sum for any expense or cost whatsoever incurred by Consultant in rendering services pursuant to this Agreement.

Agency shall make no payment for any extra, further or additional service pursuant to this Agreement unless such extra service and the price therefore is agreed to in writing executed by the Executive Director or other designated official of Agency authorized to obligate Agency thereto prior to the time such extra service is rendered and in no event shall the sum of such change order together with the previous change orders exceed \$100,000 without Board approval. The dollar amounts of change orders approved by specific Board action, plus the dollar amounts of any change orders which predate such specific Board action, shall not be counted in computing the authority limits of the Executive Director or other designated official to approve change orders hereunder.

Fees for work performed by Consultant on an hourly basis shall not exceed the amounts shown on the fee schedule of hourly billing included as Exhibit B-1.

Reimbursable expenses are also specified on Exhibit B-2. Expenses not listed are not chargeable to Agency.

The services to be provided under this Agreement may be terminated without cause at any point in time in the sole and exclusive discretion of Agency. In this event, Agency shall compensate the Consultant for all outstanding costs incurred for work satisfactorily completed as of the date of written notice thereof. Consultant shall maintain adequate logs and time sheets in order to verify costs incurred to date.

The Consultant is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of a fully executed contract from the Executive Director of the Agency.

## EXHIBIT B-1

20\_\_ STANDARD RATE SCHEDULE \*

Cut & Paste the Consultant's Fee Schedule here.



## EXHIBIT B-2

### REIMBURSABLE EXPENSES

- At cost plus 10% for outside printing, plotting, copying, travel, sub-consultants, and outside services and charges
- At 5% of labor for in-house expenses including telephone, computer, and incidental copying and printing
- Auto mileage per current Federal Rates

## EXHIBIT C

While CONSULTANT is performing services locally, Agency shall furnish physical facilities such as desks, filing cabinets, and conference space, as may be reasonably necessary for Consultant's use while consulting with Agency employees and reviewing records and the information in possession of Agency. The location, quantity, and time of furnishing said physical facilities shall be in the sole discretion of Agency. In no event shall Agency be obligated to furnish any facility which may involve incurring any direct expense, including, but not limiting the generality of this exclusion, long-distance telephone or other communication charges, vehicles, and reproduction facilities.

# EXHIBIT D

## GENERAL PROVISIONS

1. INDEPENDENT CONTRACTOR. At all times during the term of this Agreement, Consultant shall be an independent contractor and shall not be an employee of Agency. Agency shall have the right to control Consultant only insofar as the results of Consultant's services rendered pursuant to this Agreement; however, Agency shall not have the right to control the means by which Consultant accomplishes services rendered pursuant to this Agreement.
2. LICENSES; PERMITS; ETC. Consultant represents and warrants to Agency that it has all licenses, permits, qualifications and approvals of whatsoever nature which are legally required for Consultant to practice its profession. Consultant represents and warrants to Agency that Consultant shall, at its sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals which are legally required for Consultant to practice its profession. In addition to the foregoing, Consultant shall obtain and maintain during the term hereof a valid City of Stockton Business License.
3. TIME. Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary for satisfactory performance of Consultant's obligations pursuant to this Agreement.
4. INSURANCE REQUIREMENTS. Consultant shall not commence or continue to perform any services unless it, at its own expense, has in full force and effect all required insurance set forth below. In the event that Consultant employs subcontractors or subconsultants, Contractor shall require and confirm that each meets the minimum insurance requirements specified below and shall not permit any of them to perform services until they have complied with the same insurance requirements. All of the insurance shall be provided on policy forms satisfactory to the Agency. Additionally, all insurance and bond premiums incurred by Consultant shall be the sole responsibility of Consultant and are included in Consultant's bid price.

The types of insurance Consultant shall obtain and maintain for the full period of the Agreement are:

- Worker's Compensation and Employer's Liability Insurance (if not exempt)
- Commercial General Liability Insurance
- Commercial Automobile Liability Insurance

- Professional Liability Insurance

All insurance policies shall be issued by an insurance company admitted (except for the Professional Liability which shall be authorized to business in California) and licensed to transact the business of insurance in the State of California, with an assigned policyholders' Rating of A and Financial Size Category Class VII in accordance with the latest edition of Best Key Rating Guide, unless otherwise approved by Agency.

Prior to exercising any right or commencing any services, Consultant shall furnish Agency with endorsements and certificates to the required policies of insurance, excepting workers' compensation and professional liability, in such forms reasonably acceptable to Agency confirming that Agency is named as an additional insured for all liability risks on such policies. The additional insured endorsements shall cover but not be limited to liability arising out of any and all activities performed by or on behalf of Consultant.

Any deductible or self-insured retention must be declared to and approved by Agency and shall be the sole responsibility of the Consultant.

If any of the required coverages expire during the term of this Agreement, the Consultant shall deliver the renewal certificate(s) including the required policy additional insured endorsement(s) to Agency at least ten (10) days prior to the expiration date. In the event of cancellation for non-payment of premium, Agency may pay premiums due by Consultant and deduct the paid payment from amounts then or subsequently owing to the Consultant under this Agreement.

Insurance limits called for herein shall be considered to be minimum and Agency shall have the absolute discretion to require higher limits should the nature of the Work and risks involved call for higher limits. A requirement of higher limits may necessitate an adjustment in Consultant's compensation pursuant to a change order. Consultant shall give Agency prompt notice of a claim made or a suit instituted arising out of Consultant's services under this Agreement.

Under the Workers' Compensation, Commercial General, and Auto Liability, consultant hereby grants to Agency, on behalf of any insurer providing insurance to Agency with respect to the services of Consultant under this Agreement, a waiver of any right of subrogation which any such insurer of Consultant may acquire against Agency by virtue of the payment of any loss under such insurance. Consultant shall provide all applicable endorsements reflecting waiver of the right to subrogation.

All of the below insurance policies are to contain, or be endorsed to contain, the following provisions:

- For any claim related to this Agreement, the Consultant's insurance shall be primary insurance with respect to Agency. Any insurance, self-

insurance or other coverage maintained by Agency shall not contribute to it.

- Any failure of Consultant to comply with the reporting or other provisions of the policies including breaches and warranties shall not affect coverage provided to Agency.
- The Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

**4.1. Worker's Compensation and Employer's Liability Insurance.** If Consultant is not exempt due to having no employees, Consultant shall, before commencement of the services, provide a certificate of insurance and an endorsement evidencing that it has obtained for the period of the Agreement, full worker's compensation insurance coverage as required by law for not less than the statutory limits and employer's liability insurance in the sum of not less than \$1,000,000 per accident for bodily injury and disease for all persons whom they employ or may employ in carrying out the Work. By Consultant's signature on the Agreement, Consultant certifies that Consultant is aware of the provisions of Section 3700 of the California Labor Code, which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and the Consultant shall comply with such provisions before commencing the performance of the Work under this Agreement.

**4.2. Commercial General Liability Insurance.** Consultant agrees to carry commercial general liability insurance which shall be on an occurrence basis and which shall include coverage for third party liability risks including, without limitation, bodily injury including coverage for injury, sickness or disease, emotional distress, and death, personal injury/advertising injury, property damage from injury to or destruction of property of others, contractual liability coverage, premises/operations and products/completed operations, underground excavation and removal of lateral support, explosion and collapse hazard, and independent contractors. Coverage shall have limits of liability of not less than the following:

Bodily Injury/Property Damage \$ 1,000,000 each occurrence \$2,000,000 aggregate

Personal Injury/Advertising Injury \$ 1,000,000 each occurrence \$2,000,000 aggregate

Coverage shall include excess liability or umbrella insurance providing protection for at least the hazards insured under the primary liability policies with the following limits:

General Aggregate: \$5,000,000.

Each Occurrence: \$5,000,000.

Coverage shall be at least as broad as Insurance Services Office form number GL 0002 (Ed. 1/73) covering comprehensive General Liability and Insurance Services Office form number GL 0404 covering Broad Form Comprehensive General Liability; or Insurance Services Office Commercial General Liability coverage ("occurrence" form CG 0001.)

**4.3. Commercial Automobile Liability Insurance.** Consultant shall maintain a commercial automobile liability insurance policy which shall cover at least symbol 1 (any auto) for all vehicles, automobiles, trucks, and equipment, including coverage for owned, hired, and non-owned automobiles and shall provide for contractual liability and owned and non-owned mobile equipment to the extent it may be excluded from the commercial general liability policy. Coverage shall have limits of liability of not less than the following:

Combined Single Limit      \$ 1,000,000

Coverage shall include excess liability or umbrella insurance providing protection for at least the hazards insured under the primary liability policies with the following limits:

General Aggregate:            \$5,000,000.

Each Occurrence:            \$5,000,000.

Coverage shall be at least as broad as Insurance Services Office form number CA 0001 (Ed. 1/78) covering Automobile Liability, code 1 "any auto" and endorsement CA 0025.

**4.4. Professional Liability Insurance.** Consultant shall maintain professional liability insurance which shall cover all of its services under this Agreement and protect against any liability caused by negligent acts, errors or omissions on the part of the Consultant in the course of performance of the services specified in this Agreement. Coverage shall have limits of liability of not less than the following:

General Aggregate:            \$2,000,000.

Each Occurrence:            \$2,000,000.

Consultant's professional liability insurance shall remain in effect for the benefit of Agency for a period of not less than three years after completion of the services under this Agreement.

5. **CONSULTANT NO AGENT.** Except as Agency may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of Agency in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind Agency to any obligation whatsoever. Further, Consultant shall not have authority to bind Agency for the payment of any costs or expenses without express written approval of Agency.

6. ASSIGNMENT PROHIBITED. No party to this Agreement may assign any right or obligation pursuant to this Agreement. Any attempted or purported assignment of any right or obligation pursuant to this Agreement shall be void and of no effect.

7. PERSONNEL. Consultant shall assign only competent personnel to perform services pursuant to this Agreement. In the event that Agency, in its sole discretion, at any time during the term of this Agreement, desires the removal of any such persons, Consultant shall, immediately upon receiving notice from Agency of such desire of Agency, cause the removal of such person or persons.

8. EQUAL EMPLOYMENT OPPORTUNITY

(a) Affirmative Action in Employment. Consultant shall comply with the Affirmative Action Program and Equal Employment requirements of the Agency.

i. Consultant will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, handicap, age, or national origin. Consultant will take affirmative action to ensure that applicants for employment are employed, and that employees are treated during employment, without regard to their race, color, religion, handicap, sex, sexual orientation, age, or nation origin. Such action 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; and selection from training, including apprenticeship.

ii. Consultant will incorporate the above Affirmative Action provisions in all sub-consultants for services covered by this Agreement.

(b) General Employment Provisions Relating to Handicap/Disability Discrimination. No qualified individual with a handicap or disability shall, solely on the basis of such handicap or disability, be subjected to discrimination in employment by Consultant.

(c) Reports. Consultant shall provide such reports and/or documents to Agency demonstrating compliance with the terms hereof.

9. STANDARD OF PERFORMANCE. Consultant shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which Consultant is engaged in the geographical area in which Consultant practices its profession. All instruments of service

of whatsoever nature which Consultant delivers to agency pursuant to this Agreement shall be prepared in a substantial, first class and workmanlike manner and conform to the standards of quality normally observed by a person practicing in Consultant's profession.

Moreover, Consultant shall provide all services with diligence and in a timely manner in accordance with the construction project schedule so that the project shall be completed as expeditiously and economically as possible within budget and in the best interests of the Agency.

10. INDEMNIFICATION. Consultant shall indemnify, defend, and hold harmless the Agency, its officers, employees, and agents from and against any and all claims, loss, costs, expenses (including, but not limited to, attorney's fees and costs incurred by the Agency), injury, or damage arising out of or relating to the negligent, reckless, or willful mis-performance of Consultant's services under this Agreement with the exception of injuries and damages caused by Agency's sole negligence, active negligence, or willful misconduct.

11. GOVERNMENTAL REGULATIONS. To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Consultant shall comply with all applicable rules and regulations to which Agency is bound by the terms of such fiscal assistance program.

12. DOCUMENTS. All reports, data, maps, models, charts, studies, surveys, photographs, memoranda or other written documents or materials prepared by Consultant pursuant to this Agreement shall become the property of Agency upon completion of the work to be performed hereunder or upon termination of the Agreement.

13. COMPLIANCE WITH APPLICABLE LAWS. Consultant shall comply with all laws applicable to the performance of the work hereunder, including, but not limited to, laws prohibiting discrimination based on race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status or sex.

14. USE OF RECYCLED PRODUCTS. CONSULTANTS shall prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.

15. PROFESSIONAL SEAL. Where applicable in the determination of the contract administrator, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation. The stamp/seal shall be in a block entitled "Seal and Signature of Registered Professional with report/design responsibility" as per sample below.



Seal and Signature of Registered Professional  
with report/design responsibility.

16. AMENDMENTS. This Agreement may be amended or modified only by a written agreement signed by all parties.

17. VALIDITY. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

18. GOVERNING LAW. This Agreement shall be governed by the laws of the State of California and any suit or action by either party shall be brought in the County of San Joaquin, California.

19. MEDIATION. Should any dispute arise out of this Agreement, the parties shall meet in mediation and attempt to reach a resolution with the assistance of a mutually acceptable mediator. Neither party shall be permitted to file a legal action without first meeting in mediation and making a good faith attempt to reach a mediated resolution. The costs of the mediator, if any, shall be shared equally by the parties. If a mediated settlement is reached, neither party shall be deemed the prevailing party for purposes of the settlement, and each party shall bear its own legal costs.

20. ATTORNEYS FEES. If a party brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party is entitled to reasonable attorney's fees in addition to any other relief to which that party may be entitled. Such fees may be set by the court in the same action or in a separate action brought for that purpose.

21. NO-WAIVER. The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.

22. SURVIVAL. All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between Agency and Consultant survive the termination of this Agreement.

23. CONFLICT OF INTEREST. Consultant may serve other clients, but none who are active within the corporate limits of city or who conduct business that would place

Consultant in a “conflict of interest” as that term is defined in the Political Reform Act, codified at California Government Code § 81000 *et seq.*

24. SOLICITATION. Consultant agrees not to solicit business at any meeting, focus group or interview related to this Agreement, either orally or through any written materials.

25. TERMINATION FOR CAUSE. If Consultant refuses or fails to perform the services under this Agreement or any separable part with care and diligence or if it should persistently or repeatedly refuse or should fail to supply enough properly skilled labor to perform the services in a timely manner or if it should fail to make prompt payment to subcontractors or subconsultants or if it should persistently disregard laws, ordinances, or instructions given by Agency, or breach any term of this Agreement, Agency may serve written notice upon Consultant of Owner’s intention to terminate the Agreement. The notice will contain the reasons for such intention to terminate the Agreement, and unless within five (5) days after the service of such notice such violations shall cease and Agency is satisfied with arrangements for corrections, the Agreement shall upon the expiration of said five (5) days cease and terminate. In such case, Consultant shall be liable to Agency for shall be entitled to any and all losses and damages caused by the termination and any breaches of the Agreement.

26. TERMINATION FOR CONVENIENCE. Agency may, without prejudice to any other right or remedy, terminate the Agreement in whole or in part at any time, for any reason, at its convenience by giving Consultant five (5) days written notice. Upon receipt of any such notice, the Consultant shall, unless the notice directs otherwise, immediately discontinue the services on the date and to the extent specified in the notice.

In any such termination for the convenience of Agency, Consultant shall only be entitled to payment for services it has completed in accordance with the Agreement prior to receipt of the notice of termination. Under no circumstance shall Consultant be entitled to any other payment. More specifically, upon a termination for convenience, Consultant shall not be entitled to any lost profits on services that were not completed or anticipated overhead on services that were not completed, or any type of incidental or consequential damages relating to a termination for convenience. The payments described in this paragraph shall be the sole and exclusive remedy to which Consultant is entitled in the event of Termination for Convenience, and Consultant will be entitled to no other compensation or damages and expressly waives same.

If, after notice of Termination for Cause, it is determined that Consultant was not in default, the termination shall be deemed to have been for the convenience of Agency. In such event, Consultant may only recover from Agency payment in accordance with the above paragraph. Moreover, in the event that the Agreement is “terminated” under this provision, all provisions of this Agreement shall remain in full force and effect after such termination.