

SACRAMENTO AREA FLOOD CONTROL AGENCY

CONTRACT NO. [NUMBER]
with
[CONSULTANT]
for
[DESCRIPTION OF SERVICES]

THIS Agreement shall be effective the [DAY] day of [MONTH] [YEAR], by and between the SACRAMENTO AREA FLOOD CONTROL AGENCY, a joint powers authority established pursuant to the laws of the State of California, hereinafter referred to as "SAFCA", and [CONSULTANT NAME], hereinafter referred to as "CONSULTANT".

RECITALS

WHEREAS, the Executive Director has determined that it is desirable to retain a consultant to provide [DESCRIPTION OF SERVICES] services; and

WHEREAS, CONSULTANT by reason of the firm's qualifications, experience and facilities for performing the type of services contemplated herein has proposed to provide the desired services; and

WHEREAS, SAFCA Resolution [RESO #], authorizes the Deputy Executive Director to enter into an Agreement for said services with CONSULTANT; and

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

AGREEMENT

1. SCOPE OF SERVICE

The scope of services covered by this Agreement are those services identified in Exhibit [EXHIBIT #] attached hereto and by this reference incorporated herein. If there is conflict between the terms of this Contract and Exhibit A, the terms of the Contract shall prevail.

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

2. **TERM OF AGREEMENT**

Unless amended pursuant to Section 17 or terminated pursuant to Section 16 herein, this Agreement shall

[CHOOSE ONE OF THE FOLLOWING TWO]

expire when the services identified in Section 1 above are fully performed.
 expire on the [DAY] day of [MONTH] [YEAR].

3. **SCHEDULE FOR PERFORMANCE**

CONSULTANT shall perform the services identified in Exhibit [EXHIBIT # USUALLY- A] **[CHOOSE ONE OF THE FOLLOWING THREE]**

- as expeditiously as is consistent with generally accepted standards of professional skill and care and the orderly progress of work.
- in accordance with the Project Schedule attached as Exhibit [EXHIBIT #].
- in accordance with the Project Schedule shown in Exhibit [EXHIBIT #]

4. **COMPENSATION AND PRICE CEILING**

[CHOOSE ONE OF THE FOLLOWING]

The compensation to be paid by SAFCA to CONSULTANT for the services rendered hereunder shall be on a time and expense basis based upon the Rate Schedule attached as Exhibit [EXHIBIT #].

TOTAL PRICE CEILING:

\$[AMOUNT]

Total compensation for services rendered by CONSULTANT to SAFCA, including reimbursable expenses, shall not exceed the Total Price Ceiling.

SAFCA shall make no payment to CONSULTANT in any greater amount for any extra, further or additional services unless such services and payment therefore have been mutually agreed to and this Agreement has been formally amended in accordance with Section 17.

5. **INVOICING AND PAYMENT**

CONSULTANT shall submit periodic invoices, not more frequently than monthly, for the services rendered during the preceding period. CONSULTANT shall reference the contract number on all invoices. CONSULTANT shall use the format, content, and support documentation for invoices specified by SAFCA to identify the actual level of work effort, including the hours actually worked by each classification or employee name, and the actual expenditures on tasks and subtasks and/or project status with respect to any work product, milestone, or other events required by this Agreement. The detail in the monthly invoice shall inform SAFCA of both the nature and progress of work. Payment for reimbursable expenses

will be made in accordance with Exhibit B. The IRS current guidelines for mileage and meal reimbursement will be strictly adhered to and override the current Exhibit B.

SAFCA shall approve or disapprove said invoice or billing within ten (10) days following receipt thereof, and shall pay, within thirty (30) days approval, all approved invoices and billings. SAFCA reserves the right to withhold payment of disputed specific items and shall give notice to the CONSULTANT, pursuant to Section 6 herein, of all such disputed specific items within ten (10) days following receipt of billing or invoices. The parties shall exercise good faith and diligence in the resolution of any disputed invoiced amounts.

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

6. NOTICES

Any notices or other communications to be given to either party pursuant to this Agreement shall be given by delivering same in writing to the parties at the addresses set forth below:

| | | |
|-------|----------------------------------------------------------------------------------------------------------------------------------|------------------------------|
| SAFCA | SACRAMENTO AREA FLOOD CONTROL AGENCY 1007 7th Street, 7th Floor Sacramento, CA 95814 ATTENTION: [SAFCA Project Manager] | 916 874-7606 Fax 874-8289 |
|-------|----------------------------------------------------------------------------------------------------------------------------------|------------------------------|

| | |
|------------|------------------------------------------------------------------------------------|
| CONSULTANT | [CONSULTANT NAME] [ADDRESS] [CITY, STATE ZIP] ATTENTION: [CONTACT PERSON] |
|------------|------------------------------------------------------------------------------------|

Such notice shall be deemed given when deposited into the United States mail, postage prepaid, addressed to the parties at the addresses above. Nothing shall preclude the giving of personal notice or notice by facsimile machine provided, however, that notice by facsimile machine shall be followed by notice deposited into the United States mail as discussed above.

7. INDEPENDENT CONTRACTOR

A. It is understood and agreed by the parties hereto that CONSULTANT 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 SAFCA. SAFCA is not required to make any deductions or withholdings from the compensation payable to CONSULTANT under the provisions of this

Agreement; and as an independent contractor, CONSULTANT hereby indemnifies and holds SAFCA harmless from any and all claims that may be made against SAFCA based upon any contention by any third party that an employer-employee relationship exists by reason of this Agreement.

B. It is further understood and agreed by the parties hereto that CONSULTANT in the performance of its obligation hereunder is subject to the control or direction of SAFCA as to the designation of tasks to be performed, and the results to be accomplished but not the means, methods or sequence used by CONSULTANT for accomplishing the results.

C. If, in the performance of this Agreement, any third persons are employed by CONSULTANT, such persons shall be entirely and exclusively under the direction, supervision, and control of CONSULTANT. All terms of employment, including hours, wages, working conditions, discipline, hiring, and discharging, or any other terms of employment or requirements of law, shall be determined by CONSULTANT.

D. It is further understood and agreed that as an independent contractor and not an employee or agent of SAFCA, CONSULTANT shall have no entitlement as a SAFCA employee, or any right to act on behalf of SAFCA in any capacity whatsoever as agent, or to bind SAFCA to any obligation whatsoever, unless CONSULTANT has been specifically authorized to negotiate legislation or enter into Agreements on SAFCA'S behalf.

E. It is further understood and agreed that CONSULTANT must issue W-2 Forms or other suitable tax forms for income and employment tax purposes, for all of CONSULTANT'S assigned personnel or subconsultants under the terms and conditions of this Agreement.

8. AUTHORITY OF CONSULTANT

It is understood and agreed that CONSULTANT is to provide information, research, advice, recommendations and consultant services to SAFCA. CONSULTANT shall possess no authority with respect to any SAFCA decision. SAFCA is responsible for and shall make all policy decisions related to work of CONSULTANT.

9. POTENTIAL CONFLICTS OF INTEREST

CONSULTANT shall disclose its involvement in any projects which may be directly affected by actions taken by SAFCA based on the services provided hereunder. CONSULTANT shall not write a proprietary specification for material or equipment from companies in which it holds a beneficial interest.

CONSULTANT certifies that it has disclosed to SAFCA any actual, apparent or potential conflicts of interest that may exist relative to the services to be provided pursuant to this Agreement. CONSULTANT hereby agrees to advise SAFCA in writing of any actual, apparent, or potential conflicts of interest that may develop subsequent to the date of execution of this Agreement and shall give such notice pursuant to Section 6 herein, within

ten (10) days of CONSULTANT'S knowledge of such conflict. SAFCA reserves the right to require CONSULTANT to submit a financial disclosure statement.

CONSULTANT agrees to refrain from other engagements that may present an actual, apparent or potential conflict of interest with respect to the work covered by this Agreement. CONSULTANT may request a waiver of these requirements from SAFCA. The request for a waiver must be in writing and shall contain a disclosure and description of the actual, apparent or potential conflict of interest and CONSULTANT'S reasons and justification for requesting such a waiver. The request shall be submitted to SAFCA pursuant to Section 6 of this Agreement.

10. OWNERSHIP OF WORK PRODUCT

All technical data, evaluations, plans, specifications, reports or other work products of CONSULTANT hereunder shall be the property of SAFCA and shall be delivered to SAFCA upon completion of the services authorized hereunder. CONSULTANT may retain copies thereof for its files and internal use. Publication or release of any or all of the information directly derived from work performed or data obtained in connection with services rendered under this Agreement must first be approved in writing by SAFCA. SAFCA shall have joint ownership of any copyright interest(s) created for documents prepared or produced under this Agreement and shall be able to utilize, reproduce or publish said documents by any means with no further compensation to or permission from CONSULTANT. Any such reuse or modification for purposes other than those intended by the CONSULTANT shall be at SAFCA's sole risk and without liability to the CONSULTANT.

11. INDEMNIFICATION

To the fullest extent permitted by law, for work or services provided under this Agreement, CONSULTANT shall indemnify, defend and hold harmless SAFCA, its Board of Directors, officers, employees, and authorized agents and volunteers from and against any and all demands, claims, actions, liabilities, losses, damages, and all expenses and costs, including cost of defense, settlement, arbitration, expert fees, and reasonable attorneys' fees, resulting from injuries to or death of any person, including employees of either party hereto, and damage to or destruction of property, or loss of use or reduction in value thereof, including the property of either party hereto, and recovery of monetary losses incurred by SAFCA directly attributable to the performance of CONSULTANT, to the extent arising out of, pertaining to, or relating to the negligent, recklessness or willful misconduct of the CONSULTANT, its employees, or the CONSULTANT's subconsultants or subcontractors at any tier, or any other party for which CONSULTANT is legally liable under law.

The right to defense and indemnity under this section arises upon occurrence of an event giving rise to a claim and, thereafter, upon tender in writing to CONSULTANT. CONSULTANT shall defend SAFCA with counsel reasonably acceptable to SAFCA. CONSULTANT'S indemnification and defense obligation shall require CONSULTANT to defend SAFCA until any of the following occur: (1) the judgment has become final by a Court of Competent Jurisdiction, (2) other mutually agreeable dispute resolution or settlement

process establishing the proportionate percentage of fault of the parties under law. In the event that fault is apportioned between CONSULTANT and SAFCA, CONSULTANT'S final cost of defense shall not exceed its proportionate percentage of fault. To the extent that CONSULTANT'S cost of defense exceeds its proportionate percentage of fault, SAFCA shall reimburse CONSULTANT.

If requested by SAFCA, CONSULTANT agrees to participate, at its own expense, in the defense of a claim to provide testimony or to produce documents or other information relevant to the defense of the claim.

To the extent permitted by law, this indemnity obligation shall not be limited by the types and amounts of insurance or self-insurance maintained by the CONSULTANT or the CONSULTANT'S subconsultants or subcontractors at any tier.

Nothing in this indemnity obligation shall be construed to create any duty to, any standard of care with reference to, or any liability or obligation, contractual or otherwise, to any third party.

The provisions of this Section shall survive the expiration or termination of this Agreement.

12. INSURANCE

CONSULTANT agrees that it will maintain in full force and effect, for the duration of the performance of the work covered by this Agreement, at its sole cost and expense, insurance coverages as set forth in Exhibit C attached hereto. With the exception of Worker's Compensation Insurance, which shall be provided in accordance with the statutory requirements of the State of California, CONSULTANT'S subconsultants and/or subcontractors shall maintain insurance coverages at such limits determined by CONSULTANT. It is the responsibility of CONSULTANT to notify its insurance advisor or insurance carrier(s) regarding coverage, limits, forms and other insurance requirements specified in Exhibit C. It is understood and agreed that SAFCA shall not pay any sum to CONSULTANT under this Agreement unless and until SAFCA is satisfied that all insurance required by this Agreement is in force at the time services hereunder are rendered.

13. PROFESSIONAL SERVICES

CONSULTANT agrees that the work hereunder shall be performed and completed in a professional manner and according to the professional standards observed by a competent practitioner of the profession in which CONSULTANT and any sub-consultants are engaged. CONSULTANT shall not, either during or after the term of this Agreement, disclose to any third party any confidential information relative to the work of SAFCA without the prior written consent of SAFCA. SAFCA representatives shall, with reasonable notice, have access to the work for purpose of inspecting same and determining that the work is being performed in accordance with the terms of the Agreement.

14. NON-DISCRIMINATION IN EMPLOYMENT

A. CONSULTANT shall not discriminate against any employee, applicant for employment or volunteer because of race, color, creed, religion, national origin, sex, age, or physical or mental handicap. CONSULTANT shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, religion, sex, national origin, age, or physical or mental handicap. Such action shall include, but not be limited to the following: employment, promotion, demotion or transfer; recruitment or advertising; layoff or termination; rates of pay or other forms of compensation; or selection for training, including apprenticeship. CONSULTANT agrees to post in conspicuous places, available to employees and applicants for employment, notices that CONSULTANT shall provide an atmosphere free of sexual harassment for employees, clients, and volunteers.

B. CONSULTANT shall, in all solicitations or advertisements for employees placed by or on behalf of CONSULTANT, state that all qualified applicants will receive consideration for employment without regard to race, color, creed, religion, sex, national origin, ancestry, age, or physical or mental handicap.

15. FINANCIAL RECORDS

A. CONSULTANT shall retain all financial records, including, but not limited to, documents, reports, books and accounting records which pertain to any work or transaction performed pursuant to this Agreement for four (4) years after the expiration of this Agreement, including records of all of its reimbursable expenses incurred in connection therewith which shall be maintained in accordance with generally accepted accounting principles consistently applied. SAFCA or any duly authorized representative of SAFCA shall, with reasonable notice, have access to and the right to examine, audit and copy such records. The Auditor or his or her designated representative shall not disclose to any other person any personally identifiable information concerning client services performed by CONSULTANT derived as a result of the conduct of any audit.

B. CONSULTANT shall be afforded the opportunity to review any draft audits prepared following review of its financial records and shall be afforded the opportunity to provide an explanation to the auditor regarding any issues raised as a result of said draft audit. Said explanation shall be included and discussed in the final audit report.

C. CONSULTANT shall reimburse SAFCA for any overpayment, determined to have been made as a result of an audit of CONSULTANT'S records as discussed above, not later than ten (10) days following the date of service of written notice to CONSULTANT of the amount of overpayment.

16. TERMINATION

SAFCA shall have the right to terminate this Agreement at any time by serving upon CONSULTANT thirty (30) days advance written notice of termination. The notice shall be

deemed served and effective for all purposes on the date it is deposited in the United States mail; postage prepaid and addressed to CONSULTANT at the address indicated in Section 6. In the event SAFCA issues such notice of termination:

A. CONSULTANT shall cease rendering services as of the effective date of the termination pursuant to this Agreement.

B. CONSULTANT shall deliver to SAFCA copies of all writings prepared pursuant to this Agreement. The term “writings” shall be construed to mean and include handwriting, typewriting, computer files and records, drawings, blueprints, printing, photocopy, photographing, and every other means of recording upon any tangible thing, any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof.

C. SAFCA shall have full ownership and control of all such writings delivered by CONSULTANT pursuant to this Agreement.

D. SAFCA shall pay CONSULTANT for work performed until the effective date of termination, subject to the limitations prescribed by Sections 4 and 5 of this Agreement.

Notwithstanding the thirty-day notice provision contained within this section it is hereby agreed that SAFCA may terminate this Agreement or amend this Agreement immediately upon written notice served upon CONSULTANT that funds are not available from external sources for this Agreement or for any portion thereof; or that SAFCA has not budgeted sufficient funds for this Agreement in SAFCA’S final budget for applicable fiscal year(s). In this event CONSULTANT shall cease rendering services immediately upon being served with the above notice.

17. AMENDMENTS

Modifications or amendments to the terms of this Agreement shall be in writing and executed by both parties.

18. SUCCESSORS AND WAIVERS

This Agreement shall bind the successors of SAFCA and CONSULTANT in the same manner as if they were expressly named. Waiver by either party of any default, breach, or condition precedent shall not be construed as a waiver of any other default, breach or condition precedent or any other right hereunder.

19. ASSIGNMENT

CONSULTANT shall not assign or transfer its duties, responsibilities or interests pursuant to this Agreement without the express written consent of SAFCA.

20. INTERPRETATION AND ENFORCEMENT

Interpretation and enforcement of this Agreement shall be governed by the laws of the State of California.

21. DISPUTES

Any dispute arising under this Agreement shall be decided by SAFCA'S Executive Director who shall put his decision in writing and give notice to CONSULTANT pursuant to Section 6. The decision of the Executive Director shall be final unless within thirty (30) days from the date of mailing such copy CONSULTANT appeals the decision in writing to the Board of Directors of SAFCA. In connection with any appeal proceeding under this paragraph, CONSULTANT shall be afforded the opportunity to be heard and offer evidence in support of its appeal. Pending a final decision of the dispute hereunder, CONSULTANT shall proceed diligently with the performance of the Agreement and in accordance with the Executive Director's decision. Nothing contained herein shall impair SAFCA'S or CONSULTANT'S right to bring suit in a court of competent jurisdiction after exhausting the administrative remedy herein. Any court proceedings shall be brought in Sacramento, California.

22. SUBCONTRACTING

The 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 the written authorization of SAFCA, except that which is expressly identified in Exhibit [EXHIBIT #].

23. CONFIDENTIAL INFORMATION

All data, documents, discussions, or other information developed or received by or for CONSULTANT in performance of this Agreement are confidential and CONSULTANT shall not disclose such information to any person except as authorized by the Executive Director or Agency Counsel, or their designee, or as required by law.

24. PARTIES TO AGREEMENT

CONSULTANT and SAFCA are the only parties to this Agreement. The member entities making up SAFCA are not parties and are not liable for any SAFCA obligation set forth herein.

25. INTERPRETATION

It is agreed and acknowledged by the parties hereto that the provisions of this Agreement have been arrived at through negotiation and that each of the parties has had a full and fair opportunity to have such provisions reviewed by their legal counsel. Therefore, the

normal rule of construction that any ambiguities are to be resolved against the drafting party shall not apply in construing or interpreting this Agreement.

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

A. It is the policy of the State of California, as stated in Public Contract Code Section 7110, that anyone who enters into a contract with a state agency shall recognize the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code. In compliance with Section 7110, the CONSULTANT, by CONSULTANT'S signature on this Agreement: 1) acknowledges that the CONSULTANT is aware of the state policy identified herein; and 2) the CONSULTANT, to the best of CONSULTANT'S knowledge, is fully complying with, and will continue to fully comply with, the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the State Employment Development Department.

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

C. CONSULTANT'S failure to cure such default within ninety (90) days of notice by the Jurisdictional Agency shall be grounds for termination of this Agreement.

27. FAIR EMPLOYMENT AND HOUSING ACT

The CONSULTANT and any sub-consultants, shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12900 et. seq.), the regulations promulgated there under (California Code of Regulations, Title 2, Section 7285.0 et. seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Government Code, Sections 11135-11139.5) and the regulations or standards adopted to implement such article. The CONSULTANT and any sub-consultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement. The CONSULTANT and any sub-consultants shall include the nondiscrimination and compliance provisions of this clause in all contracts and subcontracts let for the construction of the project.

28. NONDISCRIMINATION PROGRAM

The CONSULTANT and any sub-consultants agree, unless exempted, to comply with the nondiscrimination program requirements of Government Code, Section 12990, and Title 2, California Code of Regulations, Section 8103. Attention is directed to Labor Code Section

1735, which prohibits discrimination in the employment of persons upon public works because of race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, or sex of such persons, and provides for penalties.

29. DRUG-FREE WORKPLACE ACT

The CONSULTANT and any sub-consultants agree to comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350 et. seq.) and have or will provide a drug-free workplace by taking the following actions:

A. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.

B. Establish a Drug-Free awareness Program to inform employees about all of the following:

- (a) The dangers of drug abuse in the workplace;
- (b) The person's or organization's policy of maintaining a drug-free workplace;
- (c) Any available counseling, rehabilitation and employee assistance programs, and;
- (d) Penalties that may be imposed upon employees for drug abuse violations.

C. Every employee who provides services under this Agreement:

- (a) Will receive a copy of the CONSULTANT'S drug-free policy statement, and;
- (b) Will agree to abide by terms of the statement as a condition of employment.

30. AMERICANS WITH DISABILITIES ACT

The CONSULTANT and any sub-consultants agree to comply with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et. seq.), which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to ADA.

31. CHANGES IN PERSONNEL

CONSULTANT agrees that the project managers and key personnel identified as part of the project team, in CONSULTANT'S proposal and its statement of qualifications shall continue to work on the project and shall not be replaced without prior written approval of SAFCA.

32. ENTIRE AGREEMENT

This instrument and any attachments hereto constitute the entire Agreement between SAFCA and CONSULTANT concerning the subject matter hereof.

33. LICENSES, PERMITS AND CONTRACTUAL GOOD STANDING

A. CONSULTANT shall possess and maintain all necessary licenses, permits, certificates and credentials required by the laws of the United States, the State of California, and all other appropriate governmental agencies, including any certification and credentials required by SAFCA. Failure to maintain the licenses, permits, certificates, and credentials shall be deemed a breach of this Agreement and constitutes grounds for the termination of this Agreement by SAFCA.

B. CONSULTANT further certifies to SAFCA that it and its principals are not debarred, suspended, or otherwise excluded from or ineligible for, participation in federal, State or county government contracts. CONSULTANT certifies that it shall not contract with a Subcontractor that is so debarred or suspended.

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

SACRAMENTO AREA FLOOD CONTROL AGENCY
a joint exercise of powers agency

[CONSULTANT NAME]

By _____
JASON CAMPBELL
Deputy Executive Director

By _____
[SIGNATURE]

[PRINT NAME]

APPROVED AS TO FORM:

[TITLE]

By _____
M. HOLLY GILCHRIST
Agency Counsel

Distribution:

- Auditor-Controller
- Consultant
- Consultant File

Agree[CONTRACT #].doc