



**SRWA**  
STANISLAUS REGIONAL  
WATER AUTHORITY



## **Request for Proposals**

**For**

**SRWA OWNERS ADVISOR DESIGN-BUILD  
CONSTRUCTION MONITORING SERVICES  
&  
CITY OF CERES LOCAL FACILITIES  
CONSTRUCTION MANAGEMENT SERVICES**

Submit Proposals to:  
Stanislaus Regional Water Authority  
156 South Broadway, Ste. 270  
Turlock, CA 95380

**Proposal Submission Deadline:**  
**Thursday, September 24, 2020**  
**3:00 p.m. PST**

Direct questions with regard to this RFP to:  
Robert L. Granberg, P.E., DBIA, General Manager  
156 South Broadway, Suite 270  
Turlock, CA 95380  
(209) 401-0439  
granbergassociates@gmail.com

## Background

The Stanislaus Regional Water Authority (SRWA) is a joint-powers authority formed in 2015 between the cities of Turlock and Ceres (Cities), in partnership with the Turlock Irrigation District (TID), for the purpose of constructing regional facilities to divert and treat surface water for delivery to the Cities. The SRWA recently awarded a design-build contract for the regional facilities described below.

The Cities are responsible for delivering their own facilities which include terminal reservoirs to receive SRWA finished water and pump stations to deliver stored water to their respective water distribution systems.

It is the desire and intent of the SRWA and the City of Ceres to solicit qualified construction management firms to propose services to the SRWA and the City of Ceres. In addition, the City of Turlock will consider qualifications of those firms submitting proposals for use in soliciting proposals at a later date.

This Request for Proposals (RFP) seeks proposals from qualified firms to provide:

- 1) Owners advisor construction quality monitoring services for the SRWA Regional Surface Water Supply Project Design-Build contract recently awarded to CH2MHILL Engineers, Inc. (a subsidiary of Jacobs), and
- 2) Construction management services for the City of Ceres terminal facilities being delivered under a design-bid-build procurement to be awarded by the City of Ceres.

Interested firms are encouraged to propose on either or both. Successful proposer(s) will enter into contracts directly with SRWA and/or the City of Ceres.

## **SRWA REGIONAL SURFACE WATER SUPPLY PROJECT**

The SRWA Regional Surface Water Supply Project elements include a raw water pump station, an approximate 4,000 foot, 48-inch raw water pipeline, a 15 million gallon per day (mgd) water treatment plant, a five mile 30-inch finished water pipeline to the City of Ceres, a seven mile 42-inch finished water pipeline to the City of Turlock, Aldrich Road bridge replacement over the TID Ceres Main Canal and associated work.

The raw water pump station will be built upon a recently constructed wetwell to draw water through an existing infiltration gallery in the Tuolumne River for delivery to the water treatment plant. A flow split structure will be constructed on the water treatment plant site to divert flow to the Ceres Main Canal.

The water treatment plant consists of a conventional water treatment plant with flocculation/sedimentation, intermediate ozone contactor, biologically active filters, clearwell and finished water pump station. Other support facilities include solids drying basins, storm drainage basin, chemical storage, maintenance shop, administration building, fencing and landscaping.

SRWA has entered into a Design-Build Contract with CH2MHILL Engineers, Inc. to provide design, construction, construction management, startup and acceptance testing services. The value of the Design-Build Contract is \$195,400,357.

To learn more about the project, interested parties are referred to the Regional Surface Water Project Final Contract Technical Appendices found on the SRWA website at [stanrwa.org](http://stanrwa.org).

The successful proposer will become part of the SRWA Advisor group to support project implementation by providing construction quality monitoring and SRWA/Design-Builder collaboration during construction. As the Design-Builder, CH2MHILL Engineers, Inc. has single source responsibility to design, construct and test the facilities in accordance with the Design-Build Contract. Services sought through this RFP are intended to achieve alignment of the Design-Builder team's knowledge and expertise with the SRWA's stated goals of 1) improved drinking water quality; 2) improved water supply reliability; and 3) improved operational flexibility in a cost effective manner. Successful project execution will require not only a success driven Design-Builder but an effective SRWA/Design-Builder partnering relationship that is focused on a high degree of cooperation and collaboration.

To assist the SRWA in achieving project success, the most qualified firm will possess leadership, technical and facilitative skills and a commitment to put the project first. This will be achieved through demonstrated success performing construction oversight in the following areas:

- Construction methods
- Risk allocation
- Environmental sensitivity

- Permit compliance
- Innovation
- Safe work practices
- Stakeholder/public facilitation
- Integrated project delivery
- Conflict awareness and resolution

### **CITY OF CERES LOCAL FACILITIES**

The City of Ceres is constructing local facilities which will serve as the SRWA finished water terminal reservoir and will be integrated into the Ceres water distribution system. Ceres will be constructing their local facilities under a design-bid-build project delivery with construction anticipated to begin in early 2021.

Project elements include:

- 3 million gallon (MG), partially buried, prestressed concrete tank
- 10 mgd booster pump station
- Electrical building with standby generator
- 500 feet of onsite piping ranging from 18” to 30”
- 4,000 feet of 18” potable water transmission main to connect the existing distribution system

### **CITY OF TURLOCK LOCAL FACILITIES**

Similarly, the City of Turlock is constructing local facilities which will serve as the SRWA finished water terminal reservoir. Turlock will be constructing their local facilities under a design-bid-build project delivery with construction anticipated to begin in the fall of 2021 with project completion in late 2022.

Project elements include:

- 2.5 MG prestressed concrete tank
- Pump station building to contain booster pumps, piping, appurtenances, chemicals and electrical equipment
- Tank overflow basin
- 12,000 feet of potable water transmission mains ranging from 16 to 54 in to connect the existing distribution system

The City of Turlock is not intending to award a construction management contract from this RFP but intends to use proposer qualifications to solicit construction management proposals at a later date.

## **CONTRACT AWARD AND SCHEDULE**

After proposal evaluation, the successful proposer(s) will be recommended for SRWA Board authorization to enter into an Agreement for Special Services (Attachment A) for Owners Advisor Construction Monitoring Services. Separately, the City of Ceres will recommend for the Ceres City Council authorization to enter into a Standard Agreement for Professional Consultant Services (Attachment B).

The **estimated** schedule for procurement of services is as follows:

<b>Proposals due:</b>	<b>September 24, 2020</b>
<b>Potential interviews with firms:</b>	<b>October 5-9, 2020</b>
<b>Award of Special Services Agreement (SRWA):</b>	<b>November 19, 2020</b>
<b>Award of Contract (City of Ceres)</b>	<b>December/January</b>
<b>Commence Contract (SRWA):</b>	<b>December 1, 2020</b>
<b>Commence Contract (City of Ceres):</b>	<b>TBD</b>
<b>Contract Completion (SRWA):</b>	<b>December, 2023</b>
<b>Contract Completion (City of Ceres)</b>	<b>TBD</b>

Proposals must comply with the requirements specified in the section of this RFP entitled "Proposal Submittal Requirements." The scope of services that the prospective consultant must provide as part of the agreement with the SRWA and City of Ceres is specified in the section entitled "Scope of Services." SRWA Technical Advisory Committee and City of Ceres staff will recommend a preferred proposer contract to their respective governing bodies based on the criteria specified in the section of this RFP entitled "Selection Criteria."

## **SCOPE OF SERVICES**

### **SRWA OWNERS ADVISOR CONSTRUCTION MONITORING SERVICES**

The scope of services outlined below represents the minimum to be provided by the owners advisor construction monitoring firm. Firms shall describe their approach to these tasks in a detailed proposed scope of services. Firms shall identify and describe any other tasks proposed for proper control of the work per the firm's experience, knowledge, and capabilities.

- Understanding of the project elements and construction especially as relates to the role of owners advisor during construction and acceptance testing.
- Attendance at all established Design-Builder construction planning and regular construction meetings and other meetings in coordination with the Design-Build team and SRWA.
- Preparation of a video and photographic record of initial site conditions, and as the project progresses.
- Provide field inspection and documentation of work for conformance with the technical requirements and Design-Build contract documents.

- Act on the SRWA's behalf as liaison between the Design-Builder and any special inspections and materials testing firm(s) for scheduling materials testing and informing SRWA of passing and failing results.
- Act on the SRWA's behalf for monitoring critical special inspections by the Design-Builder relating to structural, mechanical, electrical, instrumentation and other inspections as necessary for the project.
- Attend and document progress meetings with SRWA staff and the Design-Builder.
- Maintain detailed project records including inspection reports, photos, measurement of quantities, meeting minutes, progress payment requests and log decisions. Describe your intended method of project documentation.
- Review Design-Builder construction schedules for potential conflicts and orderly project progression.
- Review Design-Builder progress payments and provide recommendation to the SRWA for payment.
- Monitor Design-Builder design request for clarifications and decisions issued.
- Document and review potential contract change orders. Provide recommendation for SRWA's action of potential change orders.
- Maintain notes and documents to support SRWA during dispute resolution.
- Monitor the contractor's compliance with the project Storm Water Pollution Prevention Plan (SWPPP).
- Monitor and assure the Design-Builder's adherence to their Quality Assurance/Quality Control Program.
- Monitor and assure Contractor's recording of field changes to the record drawings.
- Review and comment on Design-Builder monthly progress reports narrative and photographic documentation of major work items completed, outstanding issues, and work to be pursued in the upcoming month.
- Participate in substantial completion inspections, generation of punchlist items, and monitor successful completion of punchlist corrections.
- Participate in facility acceptance testing planning and execution.

CH2MHILL Engineers, Inc. will provide the selected owners advisor construction monitoring firm with an office, furniture, phone and data connectivity service.

## **CITY OF CERES CONSTRUCTION MANAGEMENT SERVICES**

The City of Ceres intends to contract for construction management services that will require the scope of services outlined below as the minimum construction management services. Consultants shall describe their approach to these tasks in a detailed proposed scope of services. Consultant shall identify and describe any other tasks proposed for proper control of the work as per the consultant's experience, knowledge, and capabilities:

- Understanding of the project, drawings and specifications, and construction especially as relates to the role of construction manager.

- Preparation of a contract administration manual which establishes procedures for administration of the construction contract. The manual must be consistent with the project specifications.
- Conducting and documenting the pre-construction meeting and regular construction meetings and other meetings in coordination with the Design Engineer and the City.
- Preparation of a video and photographic record of initial site conditions, and as the project progresses.
- Provide full time field inspection services and documentation of the work for conformance with the contract documents, drawings and specifications.
- Act on the City's behalf as liaison between the Contractor and any special inspections and materials testing firm(s) for scheduling materials testing and informing contractor of passing and failing results.
- Act on the City's behalf as liaison between the Contractor and the Design Engineer for scheduling critical special inspections by the Design Engineer relating to structural, mechanical, electrical, instrumentation and other inspections as necessary for the project.
- Conduct and document weekly progress meetings with the Contractor, Design Engineer and City.
- Maintaining detailed project records including inspection reports, photos, measurement of quantities, meeting minutes, progress payment requests and log decisions. Construction management documentation shall be entered in a web based system as may be proposed to be used by the firm. The firm shall arrange and pay for the software to be used for the life of the project as part of the original agreement between the firm and the City.
- Review and approve construction schedules per the project specifications.
- Review progress payments and provide recommendation to the City for payment.
- Coordinate and track design clarifications between the Design Engineer and the Contractor.
- Document, review, and negotiate contract change orders. Provide recommendation for City's action of potential change orders.
- Maintain notes and documents to support City and Design Engineer during claims proceedings.
- Monitor the contractor's compliance with the project Storm Water Pollution Prevention Plan (SWPPP).
- Monitor and assure Contractor's recording of field changes to the record drawings and specifications as per the project specifications.
- Preparation of monthly progress reports with narrative and photographic documentation of major work items completed, outstanding issues, and work to be pursued in the upcoming month.
- Schedule and conduct substantial completion inspections, issue punchlist, and recommend acceptance by the City.

The contractor selected by the City of Ceres will provide the selected construction manager with an office, furniture, phone and data connectivity service.

## **PROPOSAL SUBMITTAL REQUIREMENTS**

Proposals should provide a straightforward and concise presentation adequate to satisfy the requirements of this RFP. Proposers shall hand-deliver or mail three printed, bound copies of **each clearly identified proposal**\* as well as one electronic copy (in PDF format) on a USB flash drive to the address listed on the front page of the RFP so that the proposal(s) are received no later than the date and time specified. The U.S. Postal Service and its postmarks, or any other organization as its agent, for purposes of receiving proposals are not recognized. All proposals received after the deadline will be rejected. All materials submitted will become property of the SRWA and/or City and returned only at the SRWA or City's option.

***\* If a firm is interested in proposing on both projects, then two separate proposals and two separate fees will be required to ensure clarity in scope of services to which firm is interested.***

Each proposal must contain a statement of qualifications that includes the following information:

- **General Information** – Provide the name, address, and telephone number of the individual or firm, as well as the name of the person authorized to negotiate contract terms and make binding agreements. Include the professional qualifications necessary for completing the work.
- **Background** – Provide a narrative background of the company and its organization including any pertinent certifications.
- **Services** – Provide a list of available services provided by the firm.
- **Experience** – Describe the experience of the firm. Specifically note experience in the following areas:
  - Water treatment, pump station and pipeline construction projects
  - Integrated project delivery
  - Project management information tools
  - Fostering and maintaining cooperative atmosphere
  - Construction industry standards and codes
  - Environmental (CEQA)
  - Permitting (NPDES, WDR, SWPPP, Air, Encroachment)
  - Regulatory agencies
  - Project close out
- **Public Agencies** – Include narrative description of experience with public agencies.
- **References** – Provide three or more references for three or more separate projects that can supply information on the quality of construction monitoring or construction



management services provided by your firm within the last five (5) years. Provide the name or title of the projects, the location of the projects, the name of the contracting agencies, the total project budgets, brief project descriptions, and agency contact information.

- Pending Claims and Litigation – The firm shall provide a statement of all claims/litigation (pending as well as finalized) the firm has been involved with in the past five (5) years.

Each proposal must include a detailed scope of services that includes the following information:

- Services necessary to complete the work as identified in this RFP
- Approach for completing the scope of services
- Key employees that will make up the construction monitoring team and describe the qualifications of said team. The team shall remain consistent throughout the life of the project, except as may be approved by the SRWA or City.
- Methods and practices used to mitigate unreasonable construction costs and schedule overruns
- Method of project status reporting
- **For SRWA**, Firm's concept of the role of owners advisor performing construction monitoring and how that role differs from a design-bid-build project that you have provided construction management services
- Labor Estimate – Provide the estimated number of personnel hours, broken down by task and job title, that your firm will engage in to complete the scope of services. This estimate should be displayed in the form of a table which identifies key tasks to be performed by various employees' job titles. **Do not** include hourly rates or extended costs in the labor estimate table.
- Fees – In a separately sealed envelope, extend the cost of each task to be performed by each job title in the labor estimate with the respective hourly rate. Include any direct or indirect costs not covered in the hourly rates of employees, and clearly indicate the not to exceed cost of the work. The contract price shall be based on a lump sum, not to exceed cost. The selected firm will not be allowed to update hourly rates of staff for the life of the project. **Separate fee envelopes shall be submitted for the SRWA and the City.**

Each proposal must identify any sub-consultants providing services for the project and include a brief statement of qualifications for each sub-consultant.

The firm may submit a proposal organized according to their preference, provided it meets the requirements of the RFP. Resumes and a company qualification brochure may be added, provided they are located in an appendix to the proposal.

Should a firm have concerns about meeting any requirements of this RFP and/or the attached draft agreements, they shall include a clearly labeled subsection within an appendix with individual statements specifically identifying their concerns and exceptions. If no exceptions are stated, it is assumed that the firm understands all of the RFP

requirements and agreement attached hereto and takes no exceptions to them. The RFP and the firm's proposal shall be included as exhibits to an executed agreement to establish the scope of work of the contract.

Requests for Information (RFI) must be in writing (email is acceptable) directed to the contact person specified on the front page of this RFP. If the SRWA or City determines that a response to an RFI is necessary for clarification, then a response will be issued in writing as an addendum for the benefit of all interested firms. RFI's received less than 72 hours prior to the proposal submission deadline will not receive a response.

### **SELECTION CRITERIA**

It is the intention of the SRWA and City to select a firm (could be the same firm selected for both projects) that has sufficient expertise to complete the work on time and within budget. However, the SRWA and City of Ceres reserve the right to reject all proposals or select and contract with more than one firm for the specified services.

SRWA and Ceres staff will exercise discretion and judgment in evaluating proposals. Qualifying proposals will be scored based on the following factors, with a maximum scoring potential for each factor as shown, for a maximum potential score of 50 points.

- Demonstrated qualifications, competence, abilities, and knowledge of personnel assigned (14 points)
- Experience of the Firm to provide the specified services (14 points)
- Record of the Firm in accomplishing similar work on time and within budget (10 points)
- Completeness of proposal (5 points)
- Financial responsibility [years in business, number of projects completed, annual volume of work in dollars, etc.] (3 points)
- Cost (4 points)

Once submitted, all proposals become public records and subject to disclosure, either in part or in whole, under the California Public Records Act.

The SRWA and City may hold interviews with top ranking proposers. These interviews will be held solely at the discretion of the SRWA and/or City and after the initial proposal scoring. The interviews, if held, are to be attended by SRWA Technical Advisory Committee members, City of Ceres representatives as well as the members of the team proposed to be utilized on this project(s), to gain further insight into the proposer's expertise and capabilities for the purpose of making selection recommendation to the SRWA Board and/or City of Ceres City Council.

### **END OF REQUEST FOR PROPOSALS**

# ATTACHMENT A

## DRAFT

**AGREEMENT FOR SPECIAL SERVICES**  
between  
**Stanislaus Regional Water Authority**  
and

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For  
**Owners Advisor Construction Monitoring Services**  
For The  
**Stanislaus Regional Water Authority**  
**Regional Surface Water Supply Project**  
**Design-Build Contract**

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**THIS AGREEMENT** is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between the **Stanislaus Regional Water Authority**, a joint powers authority of the State of California hereinafter referred to as "SRWA" and \_\_\_\_\_, a \_\_\_\_\_, hereinafter referred to as "CONSULTANT."

### WITNESSETH:

**WHEREAS**, in accordance with California Government Code §37103, SRWA has a need for Owners Advisor Construction Management services; and

**WHEREAS**, CONSULTANT has represented itself as duly trained, qualified, and experienced to provide such special service, hereinafter referred to as "Services."

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

**1. SCOPE OF WORK:** CONSULTANT shall furnish all labor, equipment, materials and process, implements, tools, and machinery, except as otherwise specified, which are necessary and required to provide the Services and shall perform such special services in accordance with the standards of its profession and the specifications attached hereto as Exhibit \_\_. CONSULTANT shall provide Services that are acceptable to SRWA.

**2. PERSONNEL AND EQUIPMENT:** CONSULTANT shall provide all personnel needed to accomplish the Services hereunder. CONSULTANT shall additionally acquire, provide, maintain, and repair, at its sole cost and expense, such equipment, materials, and supplies as CONSULTANT shall reasonably require to accomplish said Services.

**3. SAFETY REQUIREMENT:** All Services and merchandise must comply with California State Division of Industrial Safety orders and O.S.H.A.

**4. COMPENSATION:** SRWA agrees to pay CONSULTANT in accordance with Exhibit \_ as full remuneration for performing all Services and furnishing all staffing and materials called for in Exhibit \_ and for performance by CONSULTANT of all of its duties and obligations under this Agreement. In no event shall the total amount of this Agreement exceed \_\_\_\_\_ and No/100<sup>ths</sup> Dollars (\$\_\_\_\_\_). CONSULTANT agrees that compensation shall be paid in the manner and at the times set forth below:

(a) Invoices: CONSULTANT shall submit dated invoices to SRWA specifying the date, location and service rendered, and the charge therefor.

(b) Payment:

(1) All payments by SRWA shall be made in arrears, after satisfactory service, as determined and approved by SRWA, has been provided. Payment shall be made by SRWA no more than thirty (30) days from the SRWA's receipt of invoice.

(2) SRWA shall normally pay by voucher or check within ten (10) working days after each SRWA Board meeting at which payments can be authorized, provided that the SRWA receives the invoice at least five (5) working days prior to the SRWA's Board meeting date.

(3) If SRWA disputes any items on an invoice for a reasonable cause, which includes but is not limited to unsatisfactory service, SRWA may deduct that disputed item from the payment, but shall not delay payment for the undisputed portions. The amounts and reasons for such deletions shall be documented to CONSULTANT within fifteen (15) working days after receipt of invoice by SRWA. SRWA shall assign a sequential reference number to each deletion.

(4) If dispute is settled, payment shall be by voucher or check payable to and mailed to CONSULTANT within five (5) working days of dispute settlement.

(5) SRWA reserves the right to only pay for such services rendered to the satisfaction of SRWA.

**5. TERM OF AGREEMENT:** This Agreement shall become effective XXX, 2020 and end XXX, 2023, subject to availability of funds.

**6. INSURANCE:** CONSULTANT shall not commence work or services under this Agreement until CONSULTANT has obtained SRWA's approval regarding all insurance requirements, forms, endorsements, amounts, and carrier ratings, nor shall CONSULTANT allow any subcontractor to commence work or services on a subcontract until all similar insurance required of the subcontractor shall have been so obtained and approved. CONSULTANT shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work or services hereunder by CONSULTANT, its agents, representatives, employees or subcontractors. Failure to maintain or renew coverage or to provide evidence of renewal may constitute a material breach of contract.

(a) Minimum Scope of Insurance: When applicable, coverage shall be at least as broad as:

(1) Insurance Services Office Commercial General Liability coverage (occurrence Form CG 00 01) with an additional insured endorsement (form CG 20 10 for ongoing operations and 20 37 for products/completed operations), to be approved by the SRWA. .

(2) Insurance Services Office Form CA 00 01 covering Automobile Liability, Code 1 (any auto).

(3) Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

(4) Errors and Omissions/Professional Liability Insurance.

(b) Minimum Limits of Insurance: CONSULTANT shall maintain limits no less than:

(1) General Liability (including operations, products and completed operations): \$2,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

(2) Automobile Liability: \$1,000,000 per occurrence for bodily injury and property damage.

(3) Workers' Compensation: as statutorily required by the State of California. Employer's Liability: \$1,000,000 per accident for bodily injury or disease.

(4) Errors and Omissions/Professional Liability: \$1,000,000 per claim.

(c) Deductibles and Self-Insured Retentions: Upon request of SRWA, any deductibles or self-insured retentions must be declared to and approved by SRWA. At the option of SRWA, either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects SRWA, its elective and appointive boards, officers, agents, employees, and volunteers; or (2) CONSULTANT shall provide a financial guarantee satisfactory to SRWA guaranteeing payment of losses and related investigations, claim administration and defense expenses.

(d) Other Insurance Provisions: The commercial general liability policy shall contain, or be endorsed to contain, the following provisions:

(1) SRWA, its elective and appointive boards, officers, agents, employees, and volunteers are to be covered as additional insured with respect to liability arising out of work or operations performed by or on behalf of CONSULTANT, including materials, parts or equipment furnished in connection with such work or operations, which coverage shall be maintained in effect for at least three (3) years following the completion of the work specified in the contract. General liability coverage can be provided in the form of an endorsement to CONSULTANT's insurance (at least as broad as CG 20 10 for ongoing operations and CG 20 37 for products/completed operations), or as a separate Owners and Contractors Protective Liability policy providing both ongoing operations and completed operations coverage.

(2) For any claims related to this project, CONSULTANT's insurance coverage shall be primary insurance as respects SRWA and any insurance or self-insurance

maintained by SRWA shall be excess of CONSULTANT's insurance and shall not contribute with it.

(3) In the event of cancellation, non-renewal, or material change that reduces or restricts the insurance coverage afforded to SRWA under this Agreement, the insurer, broker/producer, or CONSULTANT shall provide SRWA with thirty (30) days' prior written notice of such cancellation, non-renewal, or material change.

(4) Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of Section 2782 of the Civil Code.

(e) Acceptability of Insurers: Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII.

(f) Verification of Coverage: CONSULTANT shall furnish SRWA with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by SRWA before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive CONSULTANT'S obligation to provide them. SRWA reserves the right, at any time, to require complete, certified copies of all required insurance policies and endorsements.

(g) Waiver of Subrogation: With the exception of professional liability, CONSULTANT hereby agrees to waive subrogation which any insurer of CONSULTANT may acquire from CONSULTANT by virtue of the payment of any loss. The commercial general liability policy and workers' compensation policy shall be endorsed to contain a waiver of subrogation in favor of SRWA for all work performed by CONSULTANT, its agents, employees, independent contractors and subcontractors. CONSULTANT agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation.

(h) Subcontractors: CONSULTANT shall include all subcontractors as insured under its policies or shall furnish separate certificates and endorsements for each subcontractor. All insurance coverage for subcontractors shall be subject to all of the requirements stated herein.

**7. INDEMNIFICATION:** CONSULTANT shall indemnify, defend, and hold harmless SRWA and its elective and appointive boards, officers, agents, employees, and volunteers from and against any and all claim, demand, cost, or liability that arises out of, pertains to, or relates to, the negligence, recklessness, or willful misconduct of CONSULTANT and its employees or agents in the performance of services under this contract, but this indemnity does not apply to liability for damages arising from the sole negligence, active negligence, or willful misconduct of SRWA.

**8. INDEPENDENT CONTRACTOR RELATIONSHIP:** All acts of CONSULTANT, its agents, officers, and employees and all others acting on behalf of CONSULTANT relating to the performance of this Agreement, shall be performed as independent contractors and not as agents, officers, or employees of SRWA. CONSULTANT, by virtue of this Agreement, has no authority to bind or incur any obligation on behalf of SRWA. CONSULTANT has no authority or responsibility to exercise any rights or power vested in the SRWA. No agent, officer, or employee of the SRWA is to be considered an employee of CONSULTANT. It is understood by both CONSULTANT and SRWA that this Agreement shall not under any circumstances be construed or considered to create an employer-employee relationship or a joint venture.

CONSULTANT, its agents, officers and employees are and, at all times during the terms of this Agreement, shall represent and conduct themselves as independent contractors and not as employees of SRWA.

CONSULTANT shall determine the method, details and means of performing the work and services to be provided by CONSULTANT under this Agreement. CONSULTANT shall be responsible to SRWA only for the requirements and results specified in this Agreement, and, except as expressly provided in this Agreement, shall not be subjected to SRWA's control with respect to the physical action or activities of the CONSULTANT in fulfillment of this Agreement. CONSULTANT has control over the manner and means of performing the services under this Agreement. CONSULTANT is permitted to provide services to others during the same period service is provided to SRWA under this Agreement. If necessary, CONSULTANT has the responsibility for employing other persons or firms to assist CONSULTANT in fulfilling the terms and obligations under this Agreement.

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 term of employment or requirement of law shall be determined by the CONSULTANT.

It is understood and agreed that as an independent contractor and not an employee of SRWA neither the CONSULTANT or CONSULTANT'S assigned personnel shall have any entitlement as a SRWA employee, right to act on behalf of the Authority in any capacity whatsoever as an agent, or to bind the SRWA to any obligation whatsoever.

It is further understood and agreed that CONSULTANT must issue W-2 forms or other forms as required by law for income and employment tax purposes for all of CONSULTANT'S personnel.

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

**9. VOLUNTARY TERMINATION:** SRWA may terminate this Agreement without cause or legal excuse by providing thirty (30) days' written notice to CONSULTANT.

**10. TERMINATION OF STATED EVENT:**

(a) Termination on Occurrence of Stated Events. This Agreement shall terminate automatically on the date on which any of the following events occur: (1) bankruptcy or insolvency of CONSULTANT, (2) legal dissolution of CONSULTANT, or (3) death of key principal(s) of CONSULTANT.

(b) Termination by SRWA for Default of CONSULTANT. Should CONSULTANT default in the performance of this Agreement or materially breach any of its provisions, at its option SRWA may terminate this Agreement by giving written notification to CONSULTANT. The termination date shall be the effective date of the notice. For the purposes of this section, material breach of this Agreement shall include but not be limited to any of the following: failure to perform required services or duties, willful destruction of SRWA's property by CONSULTANT, dishonesty or theft.

(c) Termination by CONSULTANT for Default of SRWA. Should SRWA default in the performance of this Agreement or materially breach any of its provisions, at its option CONSULTANT may terminate this Agreement by giving written notice to SRWA. The termination date shall be the effective date of the notice. For the purposes of this section, material breach of this Agreement shall include but not be limited to any of the following: failure to cooperate reasonably with CONSULTANT, willful destruction of CONSULTANT's property by SRWA, dishonesty or theft.

(d) Termination for Failure to Make Agreed-Upon Payments. Should SRWA fail to pay CONSULTANT all or any part of the payments set forth in this Agreement on the date due, at its option CONSULTANT may terminate this Agreement if the failure is not remedied within thirty (30) days after CONSULTANT notifies SRWA in writing of such failure to pay. The termination date shall be the effective date of the notice.

(e) Termination by SRWA for Change of CONSULTANT'S Tax Status. If the Authority determines that CONSULTANT does not meet the requirements of federal and state tax laws for independent contractor status, SRWA may terminate this Agreement by giving written notice to CONSULTANT. The termination date shall be the effective date of the notice.

(f) In the Event of Termination. If this Agreement is terminated pursuant to this Paragraph, CONSULTANT shall cease all its work on the project as of the termination date and shall see to it that its employees, subcontractors and agents are notified of such termination and cease their work. If SRWA so requests, and at SRWA's cost, CONSULTANT shall provide sufficient oral or written status reports to make SRWA reasonably aware of the status of CONSULTANT'S work on the project. Further, if SRWA so requests, and at SRWA's cost, CONSULTANT shall deliver to SRWA any work products whether in draft or final form which have been produced to date.

If the Agreement is terminated pursuant to any of the subsections contained in this paragraph, SRWA will pay CONSULTANT an amount based on the percentage of work completed on the termination date, this percentage shall be determined by SRWA in its sole discretion. If the Agreement is terminated pursuant to the subparagraph entitled Termination by SRWA for Default of CONSULTANT, CONSULTANT understands and agrees that SRWA may, in SRWA's sole discretion, refuse to pay CONSULTANT for that portion of CONSULTANT'S services which were performed by CONSULTANT on the project prior to the termination date and which remain unacceptable and/or not useful to SRWA as of the termination date.

**11. CONFORMANCE WITH FEDERAL AND STATE LAW:** All equipment, supplies and services used by CONSULTANT in the performance of this Agreement shall conform to the laws of the government of the United States and the State of California.

**12. NONDISCRIMINATION:** In connection with the execution of this Agreement, CONSULTANT shall not discriminate against any employee or applicant for employment because of age, race religion, color, sex, or national origin. CONSULTANT shall take affirmative action to insure that applicants are employed, and the employees are treated during their employment, without regard to their age, race, religion, color, sex or national origin. Such actions shall include, but not be limited to, the following: employment, promotions, demotions or transfer; recruitment or recruitment advertising; layoff or termination; rate of pay or other forms of compensation; and selection for training, including apprenticeship. CONSULTANT shall also comply with the requirement of Title VII of the Civil Rights Act of 1964 (P.L. 88-352) and with all applicable regulations, statutes, laws, etc., promulgated pursuant to the civil rights acts of the government of the United States and the State of California now in existence or hereafter enacted. Further, CONSULTANT shall comply with the provisions of Section 1735 of the California Labor Code.



**13. TIME:** Time is of the essence in this Agreement.

**14. ENTIRE AGREEMENT AND MODIFICATION:** This Agreement supersedes all previous Agreements and constitutes the entire understanding of the parties hereto. CONSULTANT shall be entitled to no other benefits than those specified herein. No changes, amendments or alterations shall be effective unless in writing and signed by both parties. CONSULTANT specifically acknowledges that in entering into and executing this Agreement, CONSULTANT relies solely upon the provisions contained in this Agreement and no others.

**15. OBLIGATIONS OF CONSULTANT:** Throughout the term of this Agreement, CONSULTANT shall possess, or secure all licenses, permits, qualifications and approvals legally required to conduct business. CONSULTANT warrants that it has all of the necessary professional capabilities and experience, as well as all tools, instrumentalities, facilities and other resources necessary to provide the SRWA with the services contemplated by this Agreement. CONSULTANT further represents that it will follow the best current, generally accepted and professional practices to make findings, render opinions, prepare factual presentations, and provide professional advice and recommendations regarding this project.

**16. OWNERSHIP OF DOCUMENTS:** All reports, data, drawings, plans, designs, specifications, graphics, calculations, working papers, models, flow diagrams, visual aids, and other incidental work or materials furnished hereunder shall become and remain the property of the SRWA, and may be used by SRWA as it may require without any additional cost to SRWA. No reports shall be used by the CONSULTANT for purposes other than this contract without the express prior written consent of SRWA.

**17. NEWS AND INFORMATION RELEASE:** CONSULTANT agrees that it will not issue any news releases in connection with either the award of this Agreement, or any subsequent amendment of or efforts under this Agreement, without first obtaining review and approval of said news releases from the Authority.

**18. INTEREST OF CONSULTANT:** CONSULTANT warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. CONSULTANT warrants that, in performance of this Agreement, CONSULTANT shall not employ any person having any such interest. CONSULTANT agrees to file a Statement of Economic Interests with the Agency at the start and end of this contract if so required at the option of SRWA.

**19. AMENDMENTS:** Both parties to this Agreement understand that it may become desirable or necessary during the execution of this Agreement, for SRWA or CONSULTANT to modify the scope of services provided for under this Agreement. Any material extension or change in the scope of work shall be discussed with SRWA and the change and cost shall be memorialized in a written amendment to the original contract prior to the performance of the additional work.

Until a change order is so executed, SRWA will not be responsible to pay any charges CONSULTANT may incur in performing such additional services, and CONSULTANT shall not be required to perform any such additional services.

**20. PATENT/COPYRIGHT MATERIALS:** Unless otherwise expressly provided in the contract, CONSULTANT shall be solely responsible for obtaining the right to use any patented or copyrighted materials in the performance of this Agreement. CONSULTANT shall furnish a warranty of such right to use to SRWA at the request of SRWA.

**21. CERTIFIED PAYROLL REQUIREMENT:** For CONSULTANTS performing field work on public works contracts on which prevailing wages are required, CONSULTANT shall comply with the provisions of the California Labor Code including, but not limited to, Section 1776 regarding payroll records, and shall require its sub-consultants and sub-contractors to comply with that section as may be required by law.

**22. PARTIAL INVALIDITY:** If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.

**23. WAIVER:** The waiver by any party to this Agreement of a breach of any provision hereof shall be in writing and shall not operate or be construed as a waiver of any other or subsequent breach hereof unless specifically stated in writing.

**24. AUDIT:** SRWA's duly authorized representative shall have access at all reasonable times to all reports, contract records, contract documents, contract files, and personnel necessary to audit and verify CONSULTANT'S charges to SRWA under this Agreement.

CONSULTANT agrees to retain reports, records, documents, and files related to charges under this Agreement for a period of four (4) years following the date of final payment for CONSULTANT services. SRWA's representative shall have the right to reproduce any of the aforesaid documents.

**25. GOVERNING LAW:** This Agreement shall be governed according to the laws of the State of California.

**26. HEADINGS NOT CONTROLLING:** Headings used in the Agreement are for reference purposes only and shall not be considered in construing this Agreement.

**27. COMPLIANCE WITH LAWS:** CONSULTANT shall insure compliance with all safety and hourly requirements for employees, in accordance with federal, state, and county safety and health regulations and laws including, but not limited to, prevailing wage laws, if applicable. CONSULTANT shall fully comply with all applicable federal, state, and local laws, ordinances, regulations and permits.

**28. BUSINESS LICENSE:** CONSULTANT will have a Stanislaus County business license.

**29. ASSIGNMENT:** This Agreement is binding upon SRWA and CONSULTANT and their successors. Except as otherwise provided herein, neither SRWA nor CONSULTANT shall assign, sublet, or transfer interest in this Agreement or any part thereof without the prior written consent of the other.

**30. RECORD INSPECTION AND AUDIT:** CONSULTANT shall maintain adequate records to permit inspection and audit of CONSULTANT's time and material charges under this Agreement. CONSULTANT shall make such records available to SRWA during normal business hours upon reasonable notice. Such records shall be turned over to SRWA upon request.

**31. EXCLUSIVE USE:** Services provided within the scope of this Agreement are for the exclusive use of SRWA and CONSULTANT agrees that, until final approval by SRWA, all data, plans, specifications, reports, and other documents will not be released to third parties by

CONSULTANT without the prior written consent of SRWA.

**32. EMPLOYMENT OF AUTHORITY OFFICIAL OR EMPLOYEE:** CONSULTANT shall employ no SRWA official or employee in the work performed pursuant to this Agreement. No officer or employee of SRWA shall have any financial interest in this Agreement in violation of California Government Code Sections 1090 *et seq.*; nor shall AUTHORITY violate any provision of its Conflict of Interest Code adopted pursuant to the provisions of California Government Code Sections 87300 *et seq.*

**33. NOTICE:** Any and all notices permitted or required to be given hereunder shall be deemed duly given and effective (1) upon actual delivery, if delivery is by hand; or (2) five (5) days after delivery into the United States mail, if delivery is by postage paid, registered, or certified (return receipt requested) mail. Each such notice shall be sent to the parties at the address respectively indicated below or to any other address as the respective parties may designate from time to time:

**for CONSULTANT:** \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**PHONE:** \_\_\_\_\_

**EMAIL:** \_\_\_\_\_

**for AUTHORITY: SRWA**

**ATTN: ROBERT L. GRANBERG, P.E., DBIA**

**156 SOUTH BROADWAY, SUITE 270**

**TURLOCK, CALIFORNIA 95380-5454**

**PHONE: (209) 538-5758**

**granbergassociates@gmail.com**

**34. AUTHORITY CONTRACT ADMINISTRATOR:** The SRWA's contract administrator and contact person for this Agreement is:

Robert L. Granberg, P.E., DBIA

156 S. Broadway, Ste. 270

Turlock, California 95380-5456

Telephone: (209) 401-0439

E-mail: granbergassociates@gmail.com

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed by and through their respective officers thereunto duly authorized.

**SRWA, a Joint Powers Authority**

By: \_\_\_\_\_  
Chris Vierra, Board Chair

Date: \_\_\_\_\_

**APPROVED AS TO SUFFICIENCY:**

By: \_\_\_\_\_  
Robert L. Granberg, General Manager

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Richard Shanahan

**ATTEST:**

By: \_\_\_\_\_  
Allison Martin, Board Secretary

**CONSULTANT**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Print name: \_\_\_\_\_

Date: \_\_\_\_\_

**ATTACHMENT B**  
**STANDARD AGREEMENT**  
**FOR**  
**PROFESSIONAL**  
**CONSULTANT SERVICES**

THIS AGREEMENT is made and entered into in the CITY of Ceres, State of California, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the CITY OF CERES, a municipal corporation of the State of California, hereinafter referred to as "CITY", and \_\_\_\_\_ hereinafter referred to as "CONSULTANT".

NOW, THEREFORE, in consideration of this Agreement, and the mutual promises, covenants, and stipulations hereinafter contained, the parties agree as follows:

**1. SCOPE OF SERVICES**

In compliance with all terms and conditions of this Agreement, the CONSULTANT shall provide those services specified in the "Scope of Services" attached hereto as Exhibit "A" and incorporated herein by this reference, which services may be referred to herein as the "services" or "work" hereunder. As a material inducement to the CITY entering into this Agreement, CONSULTANT represents that it is a provider of work and services consistent with the standards of care, diligence and skill ordinarily exercised by professional consultants in similar circumstances in accordance with sound professional practices and that CONSULTANT is experienced in performing the work and services contemplated herein. CONSULTANT covenants that it will follow professional standards in performing the work and services required hereunder and that all work product will be of good quality, fit for the purpose intended.

**2. COMPLIANCE WITH LAW**

All services rendered hereunder shall be provided in accordance with all applicable ordinances, resolutions, statutes, rules, and regulations of the CITY and any Federal, State, or local governmental agency having jurisdiction in effect at the time service is rendered.

Should the CITY discover a violation of any of the applicable ordinances, resolutions, statutes, rules or regulations referred to in this paragraph 2, the CITY shall give written notice of such violation to CONSULTANT, and CONSULTANT shall have a reasonable time to cure such violation(s).

Should a conflict arise between any of the various ordinances, resolutions, statutes, rules and regulations, CONSULTANT shall advise the CITY of such conflict, and the parties shall mutually agree upon a resolution of such conflicts.

### **3. LICENSES, PERMITS, FEES, & ASSESSMENTS**

CONSULTANT shall obtain at its sole cost and expense such licenses, permits, and approvals as may be required by law for the performance of the services required by this Agreement. CONSULTANT shall have the sole obligation to pay for any fees, assessments and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for the CONSULTANT'S performance of the services required by this Agreement, and shall indemnify, defend and hold harmless CITY against any such fees, assessments, taxes, penalties, or interest levied, assessed, or imposed against CITY hereunder.

### **4. FAMILIARITY WITH WORK**

By executing this Agreement, CONSULTANT warrants that CONSULTANT: (a) has thoroughly investigated and considered the scope of services to be performed; (b) has carefully considered how the services should be performed; and, (c) fully understands the facilities, difficulties, and restrictions attending performance of the services under this Agreement. If services involve work upon any site, CONSULTANT warrants that CONSULTANT has or will investigate the site and is or will be fully acquainted with the conditions there existing, prior to commencement of services hereunder. Should the CONSULTANT discover any latent or unknown conditions which will materially affect the performance of the services hereunder, CONSULTANT shall immediately inform the CITY of such fact and shall not proceed except at CONSULTANT'S risk until written instructions are received from the Contract Officer.

### **5. FURTHER RESPONSIBILITIES OF PARTIES**

Both parties agree to use reasonable care and diligence to perform their respective obligations under this Agreement. Both parties agree to act in good faith to execute all instruments, prepare all documents, and take all actions as may be reasonably necessary to carry out the purposes of this Agreement. Unless hereafter specified, neither party shall be responsible for the service of the other.

## **6. ADDITIONAL SERVICES**

CITY shall have the right at any time during the performance of the services, without invalidating this Agreement, to order extra work or make changes by altering, adding to or deducting from said work. No such extra work may be undertaken unless a written order is first given by the Contract Officer to the CONSULTANT, incorporating therein any adjustment in (i) the Contract Sum, and/or (ii) the time to perform this Agreement, which said adjustments are subject to the written approval of the CONSULTANT. Any change in compensation of ten percent (10%) or less of the Contract Sum, may be approved by the Contract Officer. Any greater change, taken either separately or cumulatively must be approved by the CITY Council. It is expressly understood by CONSULTANT that the provisions of this section shall not apply to services specifically set forth in the Scope of Services or reasonably contemplated therein. CONSULTANT hereby acknowledges that it accepts the risk that the services to be provided pursuant to the Scope of Services may be more costly or time consuming than CONSULTANT anticipates and that CONSULTANT shall not be entitled to additional compensation therefore.

## **7. TERM OF AGREEMENT**

This Agreement shall be effective upon execution by both parties and will continue in effect until CITY'S acceptance of and payment for all services authorized by CITY and performed by CONSULTANT, unless terminated earlier in accordance with the provisions of the termination clause in this Agreement.

## **8. COMMENCEMENT OF WORK**

CONSULTANT shall not undertake any work or incur any costs whatsoever under the terms of this Agreement except upon the prior receipt of a fully executed Purchase Order from the Ceres Department of Finance. Any costs incurred by CONSULTANT prior to receipt of a purchase order shall be at CONSULTANT'S expense.

## **9. COMPENSATION**

CONSULTANT agrees to accept a sum not to exceed \$\_\_\_\_\_ (maximum compensation) as full remuneration for performing all services and furnishing all staffing and materials for the work in accordance with Exhibit "A" attached hereto and for performance by

CONSULTANT of all of its duties and obligations under this Agreement, except that additional services may be authorized as provided in paragraph 6 of this agreement.

The Compensation shall be paid pursuant in the manner at the times set forth below:

CITY shall pay CONSULTANT on a time and materials basis for CONSULTANT'S actual costs for all work called for in Exhibit "A" to this Agreement. All work to be performed under this Agreement shall be billed at the hourly rates set forth in Exhibit "B" attached hereto. CONSULTANT shall submit monthly invoices to CITY which include detailed tasks, hours worked, and billable rates for all work completed, and detailed receipt for any out-of-pocket costs paid by CONSULTANT in connection with work performed on this project. CONSULTANT shall be paid within thirty (30) days of receipt by the CITY of a properly prepared invoice. If additional services are approved, they will be billed at the hourly rates set forth in Exhibit "B" and may not exceed the amount approved in writing by the Contract Officer.

**10. TIME OF ESSENCE**

Time is of the essence in the performance of this Agreement.

**11. SCHEDULE OF PERFORMANCE**

CONSULTANT shall perform all services within \_\_\_\_\_ weeks from receipt of a notice to proceed from the CITY. When requested by the CONSULTANT, and for good cause, extensions to the time period specified herein may be approved in writing by the Contract Officer.

**12. FORCE MAJEURE**

The time period(s) specified in the Schedule of Performance for performance of the services rendered pursuant to this Agreement shall be extended because of any delays due to unforeseeable causes beyond the control of CONSULTANT and without the fault or negligence of CONSULTANT, including but not limited to severe weather, fires, earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, litigation, and/or acts of any governmental agency, including the CITY, if the CONSULTANT shall within ten (10) days of the commencement of such delay notify the Contract Officer in writing of the causes of the delay. The Contract Officer shall ascertain the facts and the extent of delay, and extend the time for performing the services for the period of the enforced delay when and if in the judgment of the Contract Officer such delay is justified. The Contract Officer's determination



shall be final and conclusive upon the parties to this Agreement. In no event shall CONSULTANT be entitled to recover damages against the CITY for any delay in the performance of this Agreement, however caused, CONSULTANT'S sole remedy being extension of the Agreement pursuant to this Section.

### **13. OBLIGATIONS OF CONSULTANT**

Throughout the term of this Agreement, CONSULTANT shall possess, or secure all licenses, permits, qualifications and approvals legally required to conduct business. CONSULTANT warrants that he has all of the necessary professional capabilities and experience, as well as all tools, instrumentalities, facilities and other resources necessary to provide CITY with the services contemplated by this Agreement. CONSULTANT further warrants that he will reasonably follow the current, generally accepted and professional practices to make findings, render opinions, prepare factual presentations, and provide professional advice and recommendations regarding this project. These reviews shall be performed by senior personnel experienced in the areas necessary to perform the reviews and capable of making appropriate recommendations for modifications, as necessary.

### **14. PERFORMANCE BY KEY EMPLOYEE**

CONSULTANT has represented to CITY that \_\_\_\_\_ will be the person(s) primarily responsible for the performance of the services referred to in this Agreement. CITY has entered into this Agreement in reliance on that representation by CONSULTANT. CONSULTANT therefore agrees that \_\_\_\_\_ shall be responsible during the term of this Agreement for directing all activities of CONSULTANT and shall devote sufficient time to activities of CONSULTANT to personally supervise the services hereunder. Said person(s) shall not be replaced without the consent of CITY, which consent will not be unreasonably withheld.

### **15. CONTRACT OFFICER**

The Contract Officer for the services performed under this Agreement shall be \_\_\_\_\_, or such person as may be designated by the CITY Manager of the CITY. It shall be the CONSULTANT'S responsibility to assure that the Contract Officer is kept informed of the progress of the performance of the services and the CONSULTANT shall

refer any decisions, which must be made by CITY to the Contract Officer. Unless otherwise specified herein, any approval of CITY required hereunder shall mean the approval of the Contract Officer. The Contract Officer shall have authority to sign all documents on behalf of the CITY required hereunder to carry out the terms of this Agreement.

#### **16. PROHIBITION AGAINST SUBCONTRACTING OR ASSIGNMENT**

The experience, knowledge, capability, and reputation of CONSULTANT, its principals, and employees were a substantial inducement for the CITY to enter into this Agreement. Therefore, CONSULTANT shall not contract with any other entity to perform in whole or in part the services required hereunder without the express written approval of the CITY. In addition, neither this agreement nor any interest herein may be transferred, assigned, conveyed, hypothecated, or encumbered voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without the prior written approval of CITY. Transfers restricted hereunder shall include the transfer to any person or group and/or control of CONSULTANT, taking all transfers into account on a cumulative basis. In the event of any such unapproved transfer, including any bankruptcy proceeding, this Agreement shall, at CITY's option, be void. No approved transfer shall release the CONSULTANT or any surety of CONSULTANT of any liability hereunder without the express consent of CITY.

#### **17. OWNERSHIP OF DOCUMENTS/TITLE TO DATA**

##### **Ownership of Documents**

All reports, drawings, designs, graphics, working papers and other incidental work or materials furnished hereunder shall become and remain the property of CITY, and may be used by CITY as it may require without any additional cost to CITY. No reports shall be used by CONSULTANT for purposes other than this contract without the express prior written consent of CITY.

Any use of the work product for other project(s) without specific written authorization from CONSULTANT will be at CITY'S sole risk and without liability to CONSULTANT. Further, any and all liability arising out of changes made to, or reuse of, CONSULTANT'S deliverables under this Agreement by CITY or persons other than CONSULTANT is waived as against CONSULTANT and CITY assumes full responsibility for such changes unless CITY has given

CONSULTANT prior notice and has received from CONSULTANT written consent for such changes.

#### **Title to Data**

If, as a part of the Agreement, CONSULTANT is required to produce data such as, but not limited to, drawings, plans, specifications, calculations, models, flow diagrams, visual aids and other related materials, the originals of all such data generated under this Agreement will be delivered to CITY upon the completion or termination of services under the contract.

All materials, documents, data or information obtained from CITY data files or any CITY medium furnished to CONSULTANT in the performance of this Agreement will at all times remain the property of CITY. Such data or information may not be used or copied for direct or indirect use by CONSULTANT after termination of this Agreement without written consent of CITY.

#### **18. INTEREST OF CONTRACTOR**

CONSULTANT warrants that he/it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. CONSULTANT warrants that, in performance of this Agreement, CONSULTANT shall not employ any person having any such interest. CONSULTANT agrees to file a Statement of Economic Interests with the CITY Clerk at the start and end of this contract if so required at the option of CITY.

#### **19. REPORTS**

CONSULTANT shall periodically prepare and submit to the Contract Officer such reports concerning the performance of the services required by this Agreement as the Contract Officer shall require. CONSULTANT thereby acknowledges that the CITY is greatly concerned about the cost of work and services to be performed pursuant to this Agreement. For this reason, CONSULTANT agrees that if CONSULTANT becomes aware of any facts, circumstances, techniques, or events that may or will materially increase or decrease the cost of the work or services contemplated herein, CONSULTANT shall promptly notify the Contract Officer of said fact, circumstance, technique or event.

## **20. RECORDS**

CONSULTANT shall keep, and require subcontractors to keep, such books and records as shall be necessary to perform the services required by this Agreement and enable the Contract Officer to evaluate the performance of such services. The Contract Officer shall have full and free access to such books and records at all times during normal business hours of CITY, including the right to inspect, copy, audit, and make records and transcripts from such records. Such records shall be maintained for a period of three (3) years following completion of the services hereunder, and the CITY shall have access to such records in the event any audit is required.

## **21. AMENDMENTS**

Both parties to this Agreement understand that it may become desirable or necessary during the performance of this Agreement, for CITY or CONSULTANT to modify the scope of services provided for under this Agreement. Any material extension or change in the scope of work shall be discussed with CITY and the change and cost shall be memorialized in a written amendment to the original contract prior to the performance of the additional work.

Until a change order is so executed, CITY will not be responsible to pay any charges CONSULTANT may incur in performing such additional services, and CONSULTANT shall not be required to perform any such additional services.

## **22. INDEPENDENT CONTRACTOR**

All acts of CONSULTANT, his agents, officers, and employees and all others acting on behalf of CONSULTANT relating to the performance of this Agreement, shall be performed as independent contractors and not as agents, officers, or employees of CITY. CONSULTANT, by virtue of this Agreement, has no authority to bind or incur any obligation on behalf of CITY. CONSULTANT has no authority or responsibility to exercise any rights or power vested in CITY. No agent, officer, or employee of CITY is to be considered an employee of CONSULTANT. It is understood by both CONSULTANT and CITY that this Agreement shall not under any circumstances be construed or considered to create an employer-employee relationship or a joint venture.

CONSULTANT, his agents, officers and employees are and, at all times during the term of this Agreement, shall represent and conduct themselves as independent contractors and not as employees of CITY.

CONSULTANT shall determine the method, details and means of performing the work and services to be provided by CONSULTANT under this Agreement. CONSULTANT shall be responsible to CITY only for the requirements and results specified in this Agreement and, except as expressly provided in this Agreement, shall not be subjected to CITY'S control with respect to the physical action or activities of the CONSULTANT in fulfillment of this Agreement. CONSULTANT has control over the manner and means of performing the services under this Agreement. CONSULTANT is permitted to provide services to others during the same period service is provided to CITY under this Agreement. If necessary, CONSULTANT has the responsibility for employing other persons or firms to assist CONSULTANT in fulfilling the terms and obligations under this Agreement.

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 term of employment or requirement of law shall be determined by the CONSULTANT.

It is understood and agreed that as an independent contractor and not an employee of CITY neither the CONSULTANT nor CONSULTANT'S assigned personnel shall have any entitlement as a CITY employee, right to act on behalf of CITY in any capacity whatsoever as an agent, or to bind CITY to any obligation whatsoever.

It is further understood and agreed that CONSULTANT must issue W-2 forms or other forms as required by law for income and employment tax purposes for all of CONSULTANT'S personnel.

As an independent contractor, 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.

### **23. NOTICES**

Any and all notices permitted or required to be given hereunder shall be deemed duly given and effective (1) upon actual delivery, if delivery is by hand; or (2) five (5) days after delivery into the United States mail if delivery is by postage paid registered or certified (return receipt requested) mail. Each such notice shall be sent to the parties at the address respectively indicated below or to any other address as the respective parties may designate from time to time in writing.

FOR CONSULTANT:      Name:  
                                 Address:  
                                 Attention:  
                                 Phone:

FOR CITY:                      Name:      CITY of Ceres  
                                 Address:    2720 Second St.  
                                                      Ceres, CA 95307  
                                 Attention:  
                                 Phone:

### **24. INSURANCE REQUIREMENTS**

Insurance shall be provided as specified in Exhibit "C".

### **25. TERMINATION OF AGREEMENT**

#### **Termination on Occurrence of Stated Events**

This Agreement shall terminate automatically on the date on which any of the following events occur: (1) bankruptcy or insolvency of CONSULTANT, (2) legal dissolution of CONSULTANT, or (3) death of key principal(s) of CONSULTANT.

#### **Termination by CITY for Default of CONSULTANT**

Should CONSULTANT default in the performance of this Agreement or materially breach any of his provisions, at its option CITY may terminate this Agreement by giving written notification to CONSULTANT. The termination date shall be the effective date of the notice. For the purposes of this section, material breach of this Agreement shall include but not be limited to any of the following: failure to perform required services or duties, willful destruction of CITY'S property by CONSULTANT, dishonesty or theft.

### **Termination by CONSULTANT for Default of CITY**

Should CITY default in the performance of this Agreement or materially breach any of its provisions, at his/its option CONSULTANT may terminate this Agreement by giving written notice to CITY. The termination date shall be the effective date of the notice. For the purposes of this section, material breach of this Agreement shall include but not be limited to any of the following: failure to pay CONSULTANT as hereafter provided, willful destruction of CONSULTANT'S property by CITY, dishonesty or theft.

### **Termination by CITY for Lack of Budgeted Funds**

CITY may terminate this Agreement effective July 1 of any given year upon CITY'S determination to not appropriate sufficient funds for this Agreement for the ensuing fiscal year. In such event, CITY shall give CONSULTANT not less than 30 days written notice.

### **Termination for Failure to Make Agreed-Upon Payments**

Should CITY fail to pay CONSULTANT all or any part of the payments set forth in this Agreement on the date due, at his option CONSULTANT may terminate this Agreement if the failure is not remedied within thirty (30) days after CONSULTANT notifies CITY in writing of such failure to pay. The termination date shall be the effective date of the notice.

### **Termination by CITY for Change of CONSULTANT'S Tax Status**

If CITY determines that CONSULTANT does not meet the requirements of federal and state tax laws for independent contractor status, CITY may terminate this Agreement by giving written notice to CONSULTANT. The termination date shall be the effective date of the notice.

### **Voluntary Termination**

The parties may terminate this contract upon mutual written Agreement.

### **In the Event of Termination**

If this Agreement is terminated pursuant to this Paragraph, CONSULTANT shall cease all his work on the project as of the termination date and shall see to it that his employees, subcontractors and agents are notified of such termination and cease their work. If CITY so requests, and at CITY'S cost, CONSULTANT shall provide sufficient oral or written status reports to make CITY reasonably aware of the status of CONSULTANT'S work on the project. Further, if CITY so requests, CONSULTANT shall deliver to CITY any work products whether in draft or final form which have been produced to date.

If the Agreement is terminated pursuant to any of the subsections contained in this paragraph, CITY will pay CONSULTANT an amount based on the percentage of work completed on the termination date, this percentage shall be determined by CITY in its sole discretion. If the Agreement is terminated pursuant to the subparagraph entitled Termination by CITY for Default of CONSULTANT, CONSULTANT understands and agrees that CITY may, in CITY'S sole discretion, refuse to pay CONSULTANT for that portion of CONSULTANT'S services which were performed by CONSULTANT on the project prior to the termination date and which remain unacceptable and/or not useful to CITY as of the termination date.

## **26. INDEMNITY**

CONSULTANT shall indemnify, defend and hold harmless CITY and its officers, officials and employees from and against all claims, damages, losses and expenses including reasonable attorney fees arising out of the performance of the work described herein, caused in whole or in part by any act or omission of the CONSULTANT, or any agent or employee of the CONSULTANT, except where caused by the active negligence, sole negligence, or willful misconduct of the CITY.

CONSULTANT'S obligation to defend, indemnify, and hold CITY, its agents, officers, and employees harmless under the provisions of this paragraph is not limited to or restricted by any requirement in this Agreement for CONSULTANT to procure and maintain a policy of insurance.

## **27. PREVAILING WAGES/CERTIFIED PAYROLL REQUIREMENT**

Should the performance of the services required by this Agreement involve the provision of field work, CONSULTANT is advised that compliance with California Labor Code Sections 1720 – 1781 regarding the payment of prevailing wages is required, including the obligation to comply with the provisions of Section 1776 of the Labor Code regarding payroll records. These provisions apply equally to the CONSULTANT and its subcontractors, and CONSULTANT shall require that its sub consultants and subcontractors comply with the Labor Code provisions.



## **28. RETENTION OF FUNDS**

CONSULTANT hereby authorizes CITY to deduct from any amount payable to CONSULTANT (whether or nor arising out of this Agreement): (i) any amounts the payment of which may be in dispute hereunder or which are necessary to compensate CITY for any losses, costs, liabilities, or damages suffered by CITY; and, (ii) all amounts for which CITY may be liable to third parties, by reason of CONSULTANT'S acts or omissions in performing or failing to perform CONSULTANT'S obligation under this Agreement. In the event that any claim is made by a third party, the amount or validity of which is disputed by CONSULTANT, or any indebtedness shall exist which shall appear to be the basis for a claim of lien, CITY may withhold from any payment due, without liability for interest because of such withholding, an amount sufficient to cover such claim. The failure of CITY to exercise such right to deduct or to withhold shall not, however, affect the obligations of the CONSULTANT to insure, indemnify, and protect CITY as elsewhere provided herein.

## **29. ENTIRE AGREEMENT**

This Agreement and its exhibits contain the entire understanding between CONSULTANT and CITY. Additional or new terms contained in this Agreement which vary from CONSULTANT'S proposal are controlling and are deemed accepted by CONSULTANT by shipment of any article or other commencement of performance hereunder. All previous proposals, offers and communications relative to this Agreement, whether oral or written, are hereby superseded except to the extent that they have been incorporated into this Agreement. No future waiver of or exception to any of the terms, conditions, and provisions of this Agreement shall be considered valid unless specifically agreed to in writing by all the parties.

## **30. PARTIAL INVALIDITY**

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

## **31. WAIVER**

The waiver by any party to this Agreement of a breach of any provision hereof shall be in writing and shall not operate or be construed as a waiver of any other or subsequent breach hereof unless specifically stated in writing.

### **32. AUDIT**

CITY'S duly authorized representative shall have access at all reasonable times to all reports, contract records, contract documents, contract files, and personnel necessary to audit and verify CONSULTANT'S charges to CITY under this Agreement.

CONSULTANT agrees to retain reports, records, documents, and files related to charges under this Agreement for a period of three (3) years following the date of final payment for CONSULTANT services. CITY'S representative shall have the right to reproduce any of the aforesaid documents.

### **33. GOVERNING LAW**

This Agreement shall be construed and interpreted both as to validity and to performance of the parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim, or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Stanislaus, State of California, or any other appropriate court in such county, and CONSULTANT covenants and agrees to submit to the personal jurisdiction of such court in the event of such action.

### **34. HEADINGS NOT CONTROLLING**

Headings used in the Agreement are for reference purposes only and shall not be considered in construing this Agreement.

### **35. CITY BUSINESS LICENSE**

CONSULTANT will have a CITY of Ceres business license, as required.

### **36. ATTORNEYS' FEES**

If either party to this Agreement is required to initiate or defend or is made a party to any action or proceeding in any way connected with this Agreement, the prevailing party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorneys' fees. Attorneys' fees shall include attorneys' fees on any appeal, and in addition a party entitled to attorneys' fees shall be entitled to all other reasonable costs for investigating such action, taking depositions and discovery, and all other necessary costs the court allows which are incurred in such litigation. All such fees shall be deemed to have accrued on commencement of such action and shall be enforceable if such action is prosecuted to judgment.

IN WITNESS WHEREOF, the **parties** have executed this Agreement on the dates indicated below.

Dated: \_\_\_\_\_, 20\_\_

CITY OF CERES, a municipal corporation

By \_\_\_\_\_  
Signature

\_\_\_\_\_  
Toby Wells, City Manager

APPROVED AS TO FORM

\_\_\_\_\_  
Tom Hallinan, City Attorney

ATTEST

\_\_\_\_\_  
Diane Nayares-Perez, City Clerk

Dated: \_\_\_\_\_, 20\_\_

CONSULTANT

By \_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name and Title

CONSULTANT's Federal ID #

\_\_\_\_\_

**EXHIBIT "A"**  
**SCOPE OF SERVICES**

*"Insert RFP"*

DRAFT

**EXHIBIT "B"**  
**SCHEDULE OF HOURLY RATES**

*"Insert Winning Bid"*

DRAFT

## EXHIBIT "C"

### INSURANCE REQUIREMENTS FOR CONSULTANTS

CONSULTANT shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the CONSULTANT, his/her agents, representatives, or employees.

#### ***Minimum Scope of insurance***

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage (Occurrence Form CG 0001).
2. Insurance Services Office Form Number CA 00 01 covering Automobile Liability, Code 1 (any auto).
3. Workers' compensation insurance as required by the State of California and Employer's Liability Insurance.
4. Errors and Omissions Liability insurance appropriate to the CONSULTANT'S profession. Architects' and engineers' coverage is to include contractual liability.

#### ***Minimum Limits of Insurance***

CONSULTANT shall maintain limits no less than:

1. General Liability (Including operations, products and completed operations as applicable.):  
**\$1,000,000** per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability:  
**\$1,000,000** per accident for bodily injury and property damage.
3. Employer's Liability:  
**\$1,000,000** per accident for bodily injury or disease.
4. Errors and Omissions Liability:  
**\$1,000,000** per occurrence.

## **SPECIAL SITUATIONS/CLAIMS HANDLING PROCEDURES**

### ***Deductibles and Self-Insured Retentions***

Any deductibles or self-insured retentions must be declared to and approved by the entity. At the option of the entity, either (a) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the entity, its officers, officials, employees and volunteers or (b) the consultant shall provide a financial guarantee satisfactory to the entity guaranteeing payment of losses and related investigations, claim administration and defense expenses.

### ***Other Insurance Provision***

The commercial general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. The Entity, its officers, officials, employees, are to be covered as insured's as respects: liability arising out of work or operations performed by or on behalf of the CONSULTANT; or automobiles owned, leased, hired or borrowed by the CONSULTANT.
2. For any claims related to this project, the CONSULTANT'S insurance coverage shall be primary insurance as respects the Entity, its officers, officials, employees. Any insurance or self-insurance maintained by the entity, its officers, officials, employees or volunteers shall be excess of the CONSULTANT'S insurance and shall not contribute with it.
3. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the entity.
4. Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of section 2782 of the Civil Code.

If General liability, Contractors Pollution Liability and/or Asbestos Pollution Liability and/or Errors and Omissions coverages are written on a claims-made form:

1. The retroactive date must be shown, and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective date, the Contractor must purchase an extended period coverage for a minimum of five (5) years after completion of contract work.

4. A copy of the claims reporting requirements must be submitted to the entity for review.
5. If the services involve lead-based paint or asbestos identification/remediation, the Contractors Pollution Liability shall not contain lead-based paint or asbestos exclusions. If the services involve mold identification/remediation, the Contractors Pollution Liability shall not contain a mold exclusion and the definition of "pollution" shall include microbial matter including mold.

### ***Acceptability of Insurers***

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the Entity.

### ***Verification of Coverage***

CONSULTANT shall furnish the Entity with original certificates and endorsements, including amendatory endorsements, effecting coverage required by this clause. The endorsements should be on forms provided by the Entity or on other than the Entity's forms, provided those endorsements conform to Entity requirements. All certificates and endorsements are to be received and approved by the Entity before work commences; however, failure to do so shall not operate as a waiver of these insurance policies, including endorsements effecting the coverage required by these specifications at any time.

### ***Waiver of Subrogation***

CONSULTANT hereby agrees to waive subrogation, which any insurer of contractor may acquire from vendor by virtue of the payment of any loss. CONSULTANT agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation.

The workers' compensation policy shall be endorsed to contain a waiver of subrogation in favor of the entity for all work performed by the consultant, its agents, employees, independent contractors and subcontractors.