

**STANDARD AGREEMENT
FOR CONSULTANT SERVICES**

THIS AGREEMENT, made and entered into in the City of Modesto, State of California, this ___ day of _____, 20___, (“Effective Date”) by and between the CITY OF MODESTO, a municipal corporation of the State of California, hereinafter referred to as "City", and _____, a California corporation, hereinafter referred to as "Consultant".

This Agreement is made with regard to the following recitals:

A. The City has determined that an _____ should be prepared for the City to _____.

B. Consultant represents that it is qualified, willing and able to provide the services to prepare said document(s).

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.

Consultant shall undertake and complete the preparation of the scope of work as set forth and described in the documents attached hereto and referred to as Exhibit "A" or "project". The Consultant shall perform the services as described in Exhibit "A" in a manner compatible with the standards of its profession, and shall produce a fully complete project that is acceptable to City.

2. TERM OF AGREEMENT.

This Agreement is effective as of the date first written above 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.

Consultant shall undertake and complete the preparation of the scope of work as set forth and described in the documents commonly referred to as "project" attached hereto as Exhibit "A" and made a part hereof. City hereby gives Consultant notice to proceed with the preparation of the project in the manner described in Exhibit "A", as of the Effective Date of this agreement. Consultant shall diligently proceed with the preparation of the project and agrees to complete said preparation within the time period set forth in Exhibit "A".

3. COMPENSATION.

Consultant agrees to accept a sum not to exceed \$_____ as full remuneration for performing all services and furnishing all staffing and materials called for in Exhibit "A" and for performance by Consultant of all of its duties and obligations under this Agreement.

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

4. 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 City with the services contemplated by this Agreement. Consultant further warrants 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.

5. PERFORMANCE BY KEY EMPLOYEE.

Consultant has represented to City that _____, will be the person 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 _____ percent (___%) or more of the time to be devoted to the project that is the subject of this Agreement will be that of the above-named person.

6. 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 the City, and may be used by City as it may require without any additional cost to City. No reports shall be used by the Consultant for purposes other than this contract without the express prior written consent of City.

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 the City data files or any City medium furnished to Consultant in the performance of this Agreement will at all

times remain the property of the 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 the City.

7. 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 City through the City Manager.

8. INTEREST OF CONTRACTOR.

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 City Clerk at the start and end of this contract if so required at the option of City.

9. AMENDMENTS.

Both parties to this Agreement understand that it may become desirable or necessary during the execution 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.

10. **INDEPENDENT CONTRACTOR.**

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 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 the City. No agent, officer, or employee of the 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, 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 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 or Consultant's assigned personnel shall have any entitlement as a City employee, right to act on behalf of the City in any capacity whatsoever as an agent, or to bind the 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.

11. **ASSIGNMENT.**

Neither this Agreement nor any portion thereof shall be subcontracted or assigned without the express prior written consent of the City in each and every instance.

12. **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 City at the request of City.

13. **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.

FOR CONSULTANT: Name: _____
Address: _____
Attention: _____
Phone: (____) _____

FOR CITY: Name: City of Modesto
Address: P.O. Box 642
Modesto, CA 95353
Attention: _____
Phone: (209) _____

14. INSURANCE REQUIREMENTS.

The Consultant shall provide at its own expense and maintain at all times the following insurance with insurance companies licensed in the State of California and shall provide evidence of such insurance to the City as may be required by the Risk Manager of the City. The policies or certificates thereof shall provide that, thirty (30) days prior to cancellation or material change in the policy, notices of same shall be given to the Risk Manager of the City by certified mail, return receipt requested, for all of the following stated insurance policies.

(a) Worker's Compensation - in compliance with the statutes of the State of California, plus employer's liability with a minimum limit of liability of \$1,000,000.

(b) General Liability insurance with a minimum limit of liability per occurrence of \$1,000,000 for bodily 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. This insurance shall indicate on the certificate of insurance the following coverages and indicate the policy aggregate limit applying to: premises and operations; broad form contractual; independent consultants and subcontractors; products and completed operations as applicable.

(c) Automobile Liability insurance with a minimum limit of liability per occurrence of \$1,000,000 for bodily injury and property damage. This insurance shall cover any automobile for bodily injury and property damage.

(d) Professional Liability insurance with a minimum limit of \$1,000,000 per claim and policy aggregate. If coverage is on a claims made basis it shall be maintained for at least three (3) years following completion of the work.

If at any time any of said policies shall be unsatisfactory to the City, as to form or substance, or if a company issuing such policy shall be unsatisfactory to the City, the Consultant shall promptly obtain a new policy, submit the same to the Risk Manager for approval and submit a certificate thereof as hereinabove provided. Upon failure of the Consultant to furnish, deliver or maintain such insurance and certificates as above provided, this Agreement, at the election of the City, may be forthwith declared suspended or terminated. Failure of the Consultant to obtain and/or maintain any required insurance shall not relieve the Consultant from any liability under this Agreement, nor shall the insurance requirements be construed to conflict with or otherwise limit the obligations of the Consultant concerning indemnification. The City, its agents, officers, employees, and volunteers shall be named as an additional insured on all insurance policies required herein, except Workers' Compensation and Professional Liability. The Workers' Compensation insurer shall agree to waive all rights of subrogation against the City, its agents, officers, employees, and volunteers for losses arising from work performed by Consultant for the City. The Consultant's insurance policy(ies) shall

include a provision that the coverage is primary as respects the City; shall include no special limitations to coverage provided to additional insured; and, shall be placed with insurer(s) with acceptable Best's rating of A:VII or with approval of the Risk Manager. The Consultant must deliver certificates evidencing existence of the insurance listed above to the City prior to the time the contract is signed.

CONSULTANT shall provide CITY with separate endorsements evidencing proof of the CITY's additional insured status as to both the general liability and automobile liability insurance policies. In addition, CONSULTANT shall provide CITY with a Workers Compensation subrogation waiver by way of a separate endorsement. All endorsements referenced above must include the applicable policy number.

For any claims related to this project, the CONSULTANT'S insurance coverage shall be primary insurance as respects the Entity, its officers, officials, employees, and volunteers. 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.

15. 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 its 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 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 cooperate reasonably with Consultant, willful destruction of Consultant's property by City, dishonesty or theft.

Termination by City for Lack of Budgeted Funds

The City may terminate this Agreement effective July 1 of any given year upon the 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 its 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 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 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, and at City's cost, 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.

16. CERTIFIED PAYROLL REQUIREMENT.

For consultants performing field work on public works contracts on which prevailing wages are required: The Consultant shall comply with the provisions of Section 1776 of the California Labor Code, regarding payroll records, and shall require its subconsultants and subcontractors to comply with that section as may be required by law.

17. **INDEMNITY.**

The Consultant shall hold the City, its agents, officers, employees, and volunteers, harmless from and save, defend and indemnify them against any and all claims, losses, liabilities, judgments or damages from every cause, including but not limited to injury to person or property or wrongful death, including reasonable costs and expenses of defense of any judicial or administrative action, arising directly or indirectly out of any negligent or intentional act or omission of Consultant, or its agents, officers, employees, or volunteers relating to or during the performance of its obligations under this Agreement.

Consultant's obligation to defend, indemnify, and hold the 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.

18. **DISPUTE RESOLUTION.**

All claims, controversies, or disputes arising out of, or relating to the formation of this Agreement, or the breach, termination execution, enforcement, interpretation, or validity of this Agreement, including the determination of the scope or applicability of this contract provision shall be determined by binding arbitration in Modesto, California, by one arbitrator, except as otherwise specified in this Agreement. The American Arbitration Association shall administer the arbitration under its Arbitration Rules then in effect, subject to the modifications of those rules contained in this paragraph. This agreement to arbitrate shall be specifically enforceable under the prevailing law of any court having jurisdiction, and the award rendered by the arbitrator may be entered in any court having jurisdiction. The appropriate venue for any arbitration or court proceeding relating to or arising out of this provision shall be in Stanislaus County, California.

This paragraph is not intended to and does not waive the claim filing requirements found in California Government Code section 900 et seq. In the event that a timely and legally sufficient, arbitrable claim is filed by Consultant with City, and the claim is rejected in whole or in part by City, this paragraph shall result in the conclusive, final, and binding resolution of all the issues presented in the claim by Consultant so long as any issues presented by the claim are arbitrable. Claims rejected by City or by operation of law, shall be submitted by Consultant to arbitration pursuant to the Arbitration Rules of the American Arbitration Association within ninety (90) days after mailing of the written rejection by City to Consultant. Otherwise, the claim or claims shall be deemed waived in their entirety.

The “fast track” rules of the American Arbitration Association shall apply to any claim or counterclaim less than ONE HUNDRED FIFTY THOUSAND AND 00/100 (\$150,000.00) DOLLARS. In arbitration not proceeding under the “fast track” rules, the arbitrator shall have the power to order that depositions be taken and other discovery be made. Both City and Consultant shall have the right, upon written notice, to take no more than three (3) depositions of the other as a matter of right in an arbitration proceeding under the “fast track” rules.

Whether or not City and Consultant may be engaged in interstate commerce, any controversy or dispute mentioned above shall be determined by, and the parties shall be bound by, the substantive law of the State of California, and not the Federal Arbitration Act at 9 USC Section 1 et seq.

The arbitrator may grant any remedy or relief deemed by the arbitrator just and equitable under the circumstances, whether or not such relief could be awarded in a court of law. The arbitrator shall be empowered to award monetary sanctions against a party for failure of cooperation in the arbitration. The arbitrator shall, in written award, allocate all the costs of

the arbitration, including the fees of the arbitrator and the reasonable attorney fees of the prevailing party, against the party who did not prevail. The prevailing party shall be the party in whose favor the majority of the central issues in the case are resolved.

Notwithstanding anything in this provision to the contrary, the arbitrator shall have no power to award punitive damages or other damages not measured by the party's actual damages (excluding litigation costs and fees) against any party. This limitation of the arbitrator's powers under this Agreement shall not operate as an exclusion of the issue of punitive damages from this Agreement to Arbitrate sufficient to vest jurisdiction in a court with respect to that issue.

Consultant shall include in all subcontracts a specification whereby the subcontractor consents to being joined in an arbitration between City and Consultant involving the work of the subcontractor to be joined. Consultant's failure to do so shall be a breach of this Agreement.

The parties hereby waive any rights provided by Title 9.2 of the California Code of Civil Procedure, Section 1296. The arbitrator's award shall be deemed final, conclusive and binding to the fullest extent allowed by California law.

19. **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.

20. 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.

21. 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.

22. AUDIT.

The 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 four (4) years following the date of final payment for Consultant services. City's representative shall have the right to reproduce any of the aforesaid documents.

23. GOVERNING LAW.

This Agreement shall be governed according to the laws of the State of California.

24. HEADINGS NOT CONTROLLING.

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

25. 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. Consultant shall fully comply with all applicable federal, state, and local laws, ordinances, regulations and permits.

26. CITY BUSINESS LICENSE.

Consultant will have a City of Modesto business license.

IN WITNESS WHEREOF, the City of Modesto, a municipal corporation, has authorized the execution of this Agreement in duplicate by its City Manager and attestation by its City Clerk under authority of Resolution No. 20__-____, adopted by the Council of the City of Modesto on the ____ day of _____, 20__, and _____ has caused this agreement to be duly executed in duplicate as of the Effective Date.

CITY OF MODESTO,
a municipal corporation

CONSULTANT,
a California corporation*

By _____
GREG NYHOFF, City Manager

By _____
Name Title

By _____
Name Title

ATTEST:

(Seal)

By _____
STEPHANIE LOPEZ, City Clerk

Consultant's Federal ID # _____

APPROVED AS TO FORM:
SUSANA ALCALA WOOD, City Attorney

By _____
(Name of reviewing City Attorney), (Title)

APPROVED AS TO FORM:

By _____
MARY AKIN, Risk Manager

** Corporations - signature of two (2) officers required or one (1) officer plus corporate seal.*

Partnership - signature of a partner required

Sole Proprietorship - signature of proprietor required