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**ADDENDUM NO. 1 TO  
REQUEST FOR PROPOSAL NO. 9153  
FOR THIRD PARTY ADMINISTRATOR FOR INSURANCE CLAIMS**

**SACRAMENTO AREA SEWER DISTRICT  
RISK MANAGEMENT**

Request for Proposal (RFP) No. 9153 is amended as follows:

1. The following replaces Section 2. in the RFP in its entirety:

SacSewer seeks a service provider for claims consultants, claims adjusting and administration services for several liability insurance types, including general liability, and property and, potentially, worker's compensation claims. Backup-into-structure claims are out of scope for this RFP.

2. The original Sample Agreement, Attachment B, in the RFP is replaced in its entirety with the Sample Agreement, Attachment B, in this Addendum No. 1.
3. The following replaces Section 7.K., Task 11, in the RFP in its entirety:

K. Task 11 - Liability Claims Adjusting

- i. Handle insurance claims brought against SacSewer.
- ii. Adjust and negotiate on SacSewer's behalf with claimants.

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4. The following is added to the end of Section 7 in the RFP:

**Optional Services**

The service(s) listed below may need to be performed for this program, but SacSewer will make final determination if the service(s) is/are needed at a future point in time and will notify the awarded proposer in writing.

- A. Optional Task 1 - Worker's Compensation Claims Adjusting
  - i. Handle worker's compensation claims brought against SacSewer.
  - ii. Adjust and negotiate on SacSewer's behalf with claimants.
  - iii. Investigate, finalize, including fitness for duty, and report on claims.

5. Attachment E is added and incorporated into this RFP.

Thank you,

Matt Rapparlie  
Risk Analyst

## Attachment B

### SACRAMENTO AREA SEWER DISTRICT

#### AGREEMENT FOR (Title)

THIS AGREEMENT is made and entered into on \_\_\_\_\_ by and between the SACRAMENTO AREA SEWER DISTRICT, a county sanitation district pursuant to and operating under the authority of the County Sanitation District Act, commencing at Health and Safety Code section 4700 et.seq., hereinafter referred to as "SacSewer," and [CONSULTANT NAME], a [nature of business, such as: an individual, a partnership, a California corporation, etc.], hereinafter referred to as "CONSULTANT".

#### RECITALS

WHEREAS, SacSewer determined that it is desirable to retain a consultant to provide for [description of services to be rendered]; and

WHEREAS, CONSULTANT proposed to provide the requested services for the compensation to be provided herein; and

WHEREAS, SacSewer issued a Request for Proposal (RFP) and selected CONSULTANT from among the respondents because CONSULTANT meets SacSewer's needs and provides the best value; and

WHEREAS, SacSewer and CONSULTANT desire to enter into this Agreement on the terms and conditions set forth herein.

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

1. **SCOPE OF SERVICES**

CONSULTANT shall provide services in the amount, type and manner described in Exhibit [Identifier], which is attached hereto and incorporated herein.

2. **TERM**

This Agreement shall be effective and commence as of the date first written above and shall remain in effect until all services covered by this Agreement are completed, which is estimated to be [Date].

3. **NOTICE**

Any notice, demand, request, consent, or approval that either party hereto may or is required to give the other pursuant to this Agreement shall be in writing and shall be either personally delivered or sent by mail, addressed as follows:

**TO SACSEWER:**

Sacramento Area Sewer District  
10060 Goethe Rd.  
Sacramento, CA 95827  
Attn: Contracts Payment Desk

**TO CONSULTANT:**

Name  
Address  
Attn:

Either party may change the address to which subsequent notice and/or other communications can be sent by giving written notice designating a change of address to the other party, which shall be effective upon receipt.

4. **COMPLIANCE WITH LAWS**

CONSULTANT shall observe and comply with all applicable federal, state, and county and SacSewer laws, regulations and ordinances.

5. **GOVERNING LAWS AND JURISDICTION**

This Agreement shall be deemed to have been executed and to be performed within the State of California and shall be construed and governed by the internal laws of the State of California. Any legal proceedings arising out of or relating to this Agreement shall be brought in Sacramento County, California.

6. **ECONOMIC SANCTIONS**

Pursuant to California State Executive Order N-6-22 (Order) imposing economic sanctions against Russia and declaring support of Ukraine, SacSewer shall terminate any contract with any individual or entity that is in violation of the Order or that is subject to economic sanctions therein, and shall not enter a contract with any such individual or entity while the Order is in effect.

7. **LICENSES AND PERMITS**

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

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

**8. PERFORMANCE STANDARDS**

CONSULTANT shall perform its services under this Agreement in accordance with the industry and/or professional standards applicable to CONSULTANT's services.

**9. OWNERSHIP OF WORK PRODUCT**

All technical data, evaluations, plans, specifications, reports, documents, or other work products developed by CONSULTANT provided hereunder shall be the exclusive property of SacSewer and shall be delivered to SacSewer upon completion of the services authorized hereunder. CONSULTANT may retain copies thereof for its files and internal use. Publication of the information directly derived from work performed or data obtained in connection with services rendered under this Agreement must first be approved in writing by SacSewer. SacSewer recognizes that all technical data, evaluations, plans, specifications, reports, and other work products are instruments of CONSULTANT's services and are not designed for use other than what is intended by this Agreement.

**10. STATUS OF CONSULTANT**

**[Option (A)]**

A. It is understood and agreed that CONSULTANT (including CONSULTANT's employees) is an independent contractor and that no relationship of employer-employee exists between the parties hereto. CONSULTANT's assigned personnel shall not be entitled to any benefits payable to employees of SacSewer. SacSewer is not required to make any deductions or withholdings from the compensation payable to CONSULTANT under the provisions of this Agreement; and as an independent contractor, CONSULTANT hereby agrees to indemnify, defend, and hold SacSewer harmless from any and all claims, including reasonable attorneys' fees, that may be made against SacSewer based upon any contention by any third party that an employer-employee relationship exists by reason of this Agreement.

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

C. If, in the performance of this Agreement, any third persons are employed by CONSULTANT, such person shall be entirely and exclusively under the direction, supervision, and control of CONSULTANT. All terms of employment, including hours, wages, working conditions, discipline, hiring, and discharging, or any other terms of employment or requirements of law, shall be determined by CONSULTANT, and SacSewer shall have no right or authority over such persons or the terms of such employment.

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

whatsoever. CONSULTANT shall not be covered by worker's compensation; nor shall CONSULTANT be entitled to compensated sick leave, vacation leave, retirement entitlement, participation in group health, dental, life and other insurance programs, or entitled to other fringe benefits payable by SacSewer to employees of SacSewer.

E. It is further understood and agreed that CONSULTANT must issue W-2 and 941 Forms for income and employment tax purposes, for all of CONSULTANT's assigned personnel under the terms and conditions of this Agreement.

[OR Option (B)]

A. It is understood and agreed that CONSULTANT (including CONSULTANT's employees) is an independent contractor and that no relationship of employer-employee exists between the parties hereto. CONSULTANT's assigned personnel shall not be entitled to any benefits payable to employees of SacSewer as an independent contractor, CONSULTANT hereby agrees to indemnify, defend, and hold SacSewer harmless from any and all claims, including reasonable attorneys' fees, that may be made against SacSewer based upon any contention by any third party that an employer-employee relationship exists by reason of this Agreement.

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

C. If, in the performance of this Agreement, any third persons are employed by CONSULTANT, such person shall be entirely and exclusively under the direction, supervision, and control of CONSULTANT. All terms of employment, including hours, wages, working conditions, discipline, hiring, and discharging, or any other terms of employment or requirements of law, shall be determined by CONSULTANT, and SacSewer shall have no right or authority over such persons or the terms of such employment.

D. It is further understood and agreed that as an independent contractor and not an employee of SacSewer, neither the CONSULTANT nor CONSULTANT's assigned personnel shall have:

- (1) Any entitlement as a SacSewer employee.
- (2) Except as otherwise provided by this Agreement, the right to act on behalf of SacSewer in any capacity whatsoever as agent, nor to bind County to any obligation whatsoever.
- (3) CONSULTANT shall not be covered by worker's compensation; nor shall CONSULTANT be entitled to compensated sick leave, vacation leave, retirement entitlement, participation in group health, dental, life and other insurance programs, or entitled to other fringe benefits payable by SacSewer to employees of SacSewer.

E. Notwithstanding CONSULTANT's status as an independent contractor, SacSewer shall withhold from payments made to CONSULTANT such sums as are required to be withheld from employees by the Federal Internal Revenue Code; the Federal Insurance Compensation Act; the State Personal Income Tax Law and the State Unemployment Insurance Code; provided, however, that said withholding is for the purpose of avoiding SacSewer's liability under said laws and does not abrogate CONSULTANT's status as an independent contractor as described in this Agreement. Further, CONSULTANT is not included in any group covered by SacSewer's present agreement with the federal Social Security Administration.

[AND – Optional based on in state vs out-of-state service provider]

F. Notwithstanding subparagraphs (A) and (E), it is further understood and agreed that SacSewer shall withhold seven percent (7%) of all income paid to CONSULTANT under this Agreement for payment and reporting to the California Franchise Tax Board because CONSULTANT does not qualify as (1) a corporation with its principal place of business in California, (2) a partnership with a permanent place of business in California, (3) a corporation qualified to do business in California by the Secretary of State, or (4) an individual with a permanent residence in the State of California.

**11. CONSULTANT IDENTIFICATION**

CONSULTANT shall provide SacSewer with the following information for the purpose of compliance with California Unemployment Insurance Code section 1088.8: CONSULTANT's name, address, telephone number, social security number, and whether dependent health insurance coverage is available to CONSULTANT.

**12. COMPLIANCE WITH CHILD, FAMILY AND SPOUSAL SUPPORT REPORTING OBLIGATIONS**

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

B. CONSULTANT's failure to cure such default within 90 days of notice by SacSewer shall be grounds for termination of this Agreement.

**13. BENEFITS WAIVER**

If CONSULTANT is unincorporated, CONSULTANT acknowledges and agrees that CONSULTANT is not entitled to receive the following benefits and/or compensation from SacSewer: medical, dental, vision and retirement benefits, life and disability insurance, sick leave, bereavement leave, jury duty leave, parental leave, or any other similar benefits or compensation otherwise provided to permanent civil service employees pursuant to SacSewer's Employee Benefits documents for all of its Employee Groups, the Civil Service Rule, the Sacramento County Employees' Retirement System and/or any and all

memoranda of understanding between SacSewer and its employee organizations. Should CONSULTANT or any employee or agent of CONSULTANT seek to obtain such benefits from SacSewer, CONSULTANT hereby agrees to indemnify, defend, and hold SacSewer harmless from any and all claims, including reasonable attorneys' fees, that may be made against SacSewer for such benefits.

**14. RETIREMENT BENEFITS/STATUS**

CONSULTANT acknowledges and agrees that SacSewer has not made any representations regarding entitlement, eligibility for and/or right to receive ongoing Sacramento County Employee Retirement System (SCERS) retirement benefits during the term of this Agreement. By entering into this Agreement, CONSULTANT assumes sole and exclusive responsibility for any consequences, impacts or action relating to such retirement benefits that is or will be occasioned as a result of the services provided by CONSULTANT under this Agreement. CONSULTANT waives any rights to proceed against SacSewer should SCERS modify or terminate retirement benefits based on CONSULTANT's provision of services under this Agreement.

**15. SCERS POST RETIREMENT EMPLOYMENT POLICY**

A. Any employee of, or contractor retained by, CONSULTANT who is retired from County or SacSewer service is subject to SCERS Post Retirement Employment Policy and must adhere to limitations on post-retirement service, including a 180-day waiting period before working for the County or SacSewer, and a 960-hour per calendar year cap when working for the County or SacSewer.

B. CONSULTANT shall report to SacSewer in writing, the names of current and future employees who will provide services under this Agreement, that are retired from County or SacSewer employment.

C. CONSULTANT must report to SacSewer in writing on a semi-annual basis (January 5th and July 5th of each calendar year), the names of employees retired from County or SacSewer employment providing services under this Agreement, and hours those employees have worked during the applicable reporting period. CONSULTANT shall submit reports to [SDASCERSReporting@sacsewer.com](mailto:SDASCERSReporting@sacsewer.com).

D. CONSULTANT shall not assign employees to provide services under this Agreement in violation of SCERS Post Retirement Employment Policy.

**16. CONFLICT OF INTEREST**

CONSULTANT and CONSULTANT's officers and employees shall not have a financial interest, or acquire any financial interest, direct or indirect, in any business, property or source of income which could be financially affected by or otherwise conflict in any manner or degree with the performance of services required under this Agreement.

**17. LOBBYING AND UNION ORGANIZATION ACTIVITIES**

A. CONSULTANT shall comply with all certification and disclosure requirements prescribed by Section 319, Public Law 101-121 (31 U.S.C. § 1352) and any implementing regulations.

B. If services under this Agreement are funded with state funds granted to SacSewer, CONSULTANT shall not utilize any such funds to assist, promote or deter union organization by employees performing work under this Agreement and shall comply with the provisions of Government Code Sections 16645 through 16649.

**18. NONDISCRIMINATION IN EMPLOYMENT, SERVICES, BENEFITS AND FACILITIES**

A. CONSULTANT agrees and assures SacSewer that CONSULTANT and any subconsultants shall comply with all applicable federal, state, and local Anti-discrimination laws, regulations, and ordinances and to not unlawfully discriminate, harass, or allow harassment against any employee, applicant for employment, employee or agent of SacSewer, or recipient of services contemplated to be provided or provided under this Agreement, because of race, ancestry, marital status, color, religious creed, political belief, national origin, ethnic group identification, sex, sexual orientation, age (over 40), medical condition (including HIV and AIDS), or physical or mental disability. CONSULTANT shall ensure that the evaluation and treatment of its employees and applicants for employment, the treatment of SacSewer employees and agents, and recipients of services are free from such discrimination and harassment.

B. CONSULTANT represents that it is in compliance with and agrees that it will continue to comply with the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.), the Fair Employment and Housing Act (Government Code § 12900 et seq.), and regulations and guidelines issued pursuant thereto.

C. CONSULTANT agrees to compile data, maintain records and submit reports to permit effective enforcement of all applicable anti-discrimination laws and this provision.

D. CONSULTANT shall include this nondiscrimination provision in all subcontracts related to this Agreement.

**19. INDEMNIFICATION**

To the fullest extent permitted by law, for work or services (including professional services), provided under this Agreement, CONSULTANT shall indemnify, defend, and hold harmless, SACRAMENTO AREA SEWER DISTRICT, and the COUNTY OF SACRAMENTO, their governing Boards, officers, directors, officials, employees, and authorized volunteers and agents (each, an "Indemnified Party," and collectively "Indemnified Parties"), from and against any and all claims, demands, actions, losses, liabilities, damages, and all expenses and costs incidental thereto (collectively "Claims"), including cost of defense, settlement, arbitration, expert fees, and reasonable attorneys' fees, resulting from injuries to or death of any person, including employees of either party

hereto, and damage to or destruction of property, or loss of use or reduction in value thereof, including the property of either party hereto, and recovery of monetary losses incurred by the Indemnified Parties directly attributable to the performance of CONSULTANT, arising out of, pertaining to, or , or resulting from the negligent acts, errors, omissions, recklessness, or willful misconduct of CONSULTANT, its employees, or CONSULTANT's subconsultants or subcontractors at any tier, or any other party for which CONSULTANT is legally liable under law.

The right to defense and indemnity under this indemnity obligation arises upon occurrence of an event giving rise to a Claim and, thereafter, upon tender in writing to CONSULTANT. Upon receipt of tender, CONSULTANT shall provide prompt written response that it accepts tender. Failure to accept tender may be grounds for termination of the Agreement. CONSULTANT shall control the defense of Indemnified Parties; subject to using counsel reasonably acceptable to Indemnified Parties. Both parties agree to cooperate in the defense of a Claim.

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

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

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

**20. INSURANCE**

Without limiting CONSULTANT's indemnification, CONSULTANT shall maintain in force at all times during the term of this Agreement and any extensions or modifications thereto, insurance as specified in Exhibit [Identifier]. It is the responsibility of CONSULTANT to notify its insurance advisor or insurance carrier(s) regarding coverage, limits, forms and other insurance requirements specified in Exhibit [Identifier]. It is understood and agreed that SacSewer shall not pay any sum to CONSULTANT under this Agreement unless and until SacSewer is satisfied that all insurance required by this Agreement is in force at the time services hereunder are rendered. Failure to maintain insurance as required in this agreement may be grounds for material breach of contract.

**21. INFORMATION TECHNOLOGY ASSURANCES**

CONSULTANT shall take all reasonable precautions to ensure that any hardware, software, and/or embedded chip devices used by CONSULTANT in the performance of services under this Agreement, other than those owned or provided by SacSewer, shall be free from viruses. Nothing in this provision shall be construed to limit any rights or remedies otherwise available to SacSewer under this Agreement.

**22. COMPENSATION AND PAYMENT OF INVOICES LIMITATIONS**

A. Compensation under this Agreement shall be limited to the Maximum Total Payment Amount set forth in Exhibit [Identifier], or Exhibit [Identifier] as modified by SacSewer in accordance with express provisions in this Agreement.

B. CONSULTANT shall submit an invoice in accordance with the procedures prescribed by SacSewer [insert applicable option, e.g. on a monthly basis, upon completion of services, etc., as appropriate and change the following submittal language as needed.] for services provided. Invoices shall be submitted to SacSewer no later than the fifteenth (15th) day following the invoice period, and SacSewer shall pay CONSULTANT within thirty (30) days after receipt of an appropriate and correct invoice.

C. SacSewer operates on a July through June fiscal year. Invoices for services provided in any fiscal year must be submitted no later than July 31, one month after the end of the fiscal year. Invoices submitted after July 31 for the prior fiscal year shall not be honored by SacSewer unless CONSULTANT has obtained prior written SacSewer approval to the contrary.

D. CONSULTANT shall maintain for four years following termination of this Agreement full and complete documentation of all services and expenditures associated with performing the services covered under this Agreement. Expense documentation shall include: time sheets or payroll records for each employee; receipts for supplies; applicable subcontract expenditures; applicable overhead and indirect expenditures.

E. In the event CONSULTANT fails to comply with any provisions of this Agreement, SacSewer may withhold payment until such non-compliance has been corrected.

**23. ALLOCATED COSTS**

SacSewer shall pay for all reasonable costs incurred by CONSULTANT in the prosecution and defense of claims and/or litigation which CONSULTANT is required to undertake in the name and in behalf of SacSewer or its officers, employees or agents, consisting of court filing fees, court reporter's fees, transcript fees and other legal costs, attorney's fees, fees for expert witnesses and services, and investigatory costs. Investigatory costs shall not be deemed to be reimbursable unless they are of a specialized nature, and consist of services which would and should not ordinarily have been performed by CONSULTANT in the ordinary administration and investigation of claims. Such costs as listed above may be reimbursed to CONSULTANT or, at the sole discretion of SacSewer, may be paid directly to providers upon submission of itemized billing in a form acceptable to SacSewer. SacSewer reserves the right to require direct payment to providers, as it sees fit.

**24. LEGAL ADVICE AND TRAINING INFORMATION**

If under this Agreement CONSULTANT is to provide advice and/or training of SacSewer personnel on legal issues that may affect policies and procedures, then CONSULTANT shall advise and consult with Risk Manager and District Counsel. Only those materials approved by District Counsel shall be utilized.

**25. LEGAL SERVICES ADMINISTRATION**

A. Except as hereinafter provided, the CONSULTANT will select, retain, prescribe the rate of compensation for, assign files to, and supervise all law firms required to defend personal injury and property damage claims. The term of retention shall be determined by the CONSULTANT. All authority conferred upon the CONSULTANT shall be exercised within its sole discretion.

B. The performance of the CONSULTANT will be evaluated, in part, on the basis of the cost, efficiency, and competency with which legal services in the defense of personal injury and property damage claims are conducted. The supervisory authority exercised by the CONSULTANT may include, at the CONSULTANT's option, designation of the identity of attorneys to whom files are assigned, advance approval of the hiring of experts, and advance approval of the nature, extent, and scope of interrogatories, depositions, and other discovery undertaken in defense. Payments for legal services shall be made directly by the County to the retained law firms. However, billable hours for which compensation is paid shall be approved by the CONSULTANT.

C. Services of any retained law firm may be terminated either by 1) the CONSULTANT, in his/her sole discretion, 2) District Counsel, or 3) the Board of Directors.

D. Upon direction of the Board of Directors, CONSULTANT shall be required to utilize the Request for Proposal (RFP) process, as prescribed by the District Counsel, for retaining legal defense attorney firms. It is required that the District Counsel and Risk Management participate in the selection process of such RFP.

**26. ANNUAL REVIEW**

Each year in February, unless otherwise specified by SacSewer, the Board of Directors will conduct a public hearing for the purpose of undertaking an annual review of the claims management program. As a foundation for that hearing, the CONSULTANT shall prepare and file, under the direction and control of the District Counsel, a public written report summarizing the claims experience for the preceding calendar year. The report shall include cumulative data identifying claims payouts, service fees paid to the CONSULTANT, legal fees paid to each retained law firm, the CONSULTANT's evaluation of legal services rendered on behalf of the County pursuant to this contract, and such other information as the District Counsel may prescribe. A draft report will be submitted to the District Counsel, with a copy to the Risk and Loss Control Manager, approximately four weeks prior to the required report.

Notices of the hearing, a copy of the annual report, and an invitation to appear and be heard, will be given to each retained law firm, the press, and any and all other interested parties by the District Counsel.

**27. BUSINESS ASSOCIATE REQUIREMENTS**

**HIPAA Business Associate Provisions:** If SacSewer has determined that under this Agreement CONSULTANT is a "Business Associate" of County, as defined in the Health Insurance Portability and Accountability Act (42 CFR §160.03), then CONSULTANT

shall comply with the Business Associate provisions contained in Exhibit D, which is attached hereto and incorporated by reference herein

**28. DECISION MAKING AUTHORITY**

Any and all decisions by SacSewer relating to the management and conduct of the defense of claims shall be provided exclusively by the SacSewer Board of Directors or District Counsel. As to such matters, the CONSULTANT shall not be authorized to act upon directions, recommendations, requests or advice issued by any other SacSewer committee, commission, officer, or employee.

**29. SETTLEMENT AUTHORITY**

The CONSULTANT is hereby authorized and vested with authority, in the name and in behalf of SacSewer, its officers, employees, agents and volunteers, to compromise and settle claims, excluding backup into structure claims, against the respective entities and, in their respective capacities as such, their officers, employees, agents and volunteers, for maximum amounts determined and authorized by the District Engineer in writing, per SacSewer Resolution SD-0558, Authority No. 28, and as it may be amended from time to time.

The CONSULTANT shall, with respect to the payment of any claim, whether as a result of compromise or settlement or otherwise, and whether in an amount which is less than, more than or exactly within CONSULTANT's settlement authority specified, obtain such waivers, releases, court approvals, dismissals with prejudice, and other agreements or processes as are necessary to ensure that such payments constitute a full and complete satisfaction and release of the SacSewer and its officers, employees and agents from all liability associated with the claim. Such duties shall extend to the obtaining, review, and approval of settlements made by carriers of the SacSewer's excess liability insurance as well as other insurance policies where the CONSULTANT has claims settlement responsibilities.

**30. SUBCONTRACTS, ASSIGNMENT**

A. CONSULTANT shall obtain prior written approval from SacSewer before subcontracting any of the services delivered under this Agreement. CONSULTANT remains legally responsible for the performance of all contract terms including work performed by third parties under subcontracts. Any subcontracting will be subject to all applicable provisions of this Agreement. CONSULTANT shall be held responsible by SacSewer for the performance of any subconsultant whether approved by SacSewer or not.

B. This Agreement is not assignable by CONSULTANT in whole or in part, without the prior written consent of SacSewer.

**31. AMENDMENT AND WAIVER**

Except as provided herein, no alteration, amendment, variation, or waiver of the terms of this Agreement shall be valid unless made in writing and signed by both parties. Waiver by either party of any default, breach or condition precedent shall not be construed as a waiver of any other default, breach or condition precedent, or any other right hereunder.

No interpretation of any provision of this Agreement shall be binding upon SacSewer unless agreed in writing by the District Engineer and counsel for SacSewer.

**32. SUCCESSORS**

This Agreement shall bind the successors of SacSewer and CONSULTANT in the same manner as if they were expressly named.

**33. TIME**

Time is of the essence of this Agreement.

**34. INTERPRETATION**

This Agreement shall be deemed to have been prepared equally by both of the parties, and the Agreement and its individual provisions shall not be construed or interpreted more favorably for one party on the basis that the other party prepared it.

**35. DISTRICT ENGINEER**

As used in this Agreement, "District Engineer" shall mean the District Engineer of the Sacramento Area Sewer District, or his designee.

**36. DISPUTES**

In the event of any dispute arising out of or relating to this Agreement, the parties shall attempt, in good faith, to promptly resolve the dispute mutually between themselves. Pending resolution of any such dispute, CONSULTANT shall continue without delay to carry out all its responsibilities under this Agreement unless the Agreement is otherwise terminated in accordance with the Termination provisions herein. SacSewer shall not be required to make payments for any services that are the subject of this dispute resolution process until such dispute has been mutually resolved by the parties. If the dispute cannot be resolved within 15 calendar days of initiating such negotiations or such other time period as may be mutually agreed to by the parties in writing, either party may pursue its available legal and equitable remedies, pursuant to the laws of the State of California. Nothing in this Agreement or provision shall constitute a waiver of any of the government claim filing requirements set forth in Title 1, Division 3.6, of the California Government Code or as otherwise set forth in local, state and federal law.

**37. TERMINATION**

A. SacSewer may terminate this Agreement without cause upon [number of days] days written notice to the other party. Notice shall be deemed served on the date of mailing. If notice of termination for cause is given by SacSewer to CONSULTANT and it is later determined that CONSULTANT was not in default or the default was excusable, then the notice of termination shall be deemed to have been given without cause pursuant to this paragraph (A).

B. SacSewer may terminate this Agreement for cause immediately upon giving written notice to CONSULTANT should CONSULTANT materially fail to perform any of the covenants contained in this Agreement in the time and/or manner specified. In the event of such termination, SacSewer may proceed with the work in any manner deemed proper by

SacSewer. If notice of termination for cause is given by SacSewer to CONSULTANT and it is later determined that CONSULTANT was not in default or the default was excusable, then the notice of termination shall be deemed to have been given without cause pursuant to paragraph (A) above.

C. SacSewer may terminate or amend this Agreement immediately upon giving written notice to CONSULTANT, 1) if advised that funds are not available from external sources for this Agreement or any portion thereof, including if distribution of such funds to SacSewer is suspended or delayed; 2) if funds for the services and/or programs provided pursuant to this Agreement are not appropriated by the State; 3) if funds in SacSewer's yearly proposed and/or final budget are not appropriated by SacSewer for this Agreement or any portion thereof; or 4) if funds that were previously appropriated for this Agreement are reduced, eliminated, and/or re-allocated by SacSewer as a result of mid-year budget reductions.

D. If this Agreement is terminated by SacSewer under paragraph (A) or (C) above:

(1) CONSULTANT shall cease rendering services pursuant to this Agreement as of the termination date.

(2) CONSULTANT shall deliver to SacSewer copies of all writings prepared pursuant to this Agreement. The term "writings" shall be construed to mean and include: handwriting, typewriting, drawings, blueprints, printing, electronic media, photostating, photographing, and every other means of recording upon any tangible thing, any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof.

(3) CONSULTANT shall not incur any expenses under this Agreement after notice of termination and shall cancel any outstanding expenses obligations to a third party that CONSULTANT can legally cancel.

E. If this Agreement is terminated under paragraphs (A) or (C), above, CONSULTANT shall be paid for authorized and approved services performed prior to the termination date in accordance with the provisions of the Compensation and Payment of Invoices Limitations provision of this Agreement.

[AND]

F. The District Engineer has authority to terminate this Agreement under paragraphs (A), (B), or (C), above.

**38. REPORTS**

CONSULTANT shall, without additional compensation therefor, make fiscal, program evaluation, progress, and such other reports as may be reasonably required by the District Engineer concerning CONSULTANT's activities as they affect the contract duties and purposes herein. SacSewer shall explain procedures for reporting the required information.

**39. AUDITS AND RECORDS**

A. Upon SacSewer's request, SacSewer or its designee shall have the right at reasonable times and intervals to audit, at CONSULTANT's premises, CONSULTANT's financial and program records as SacSewer deems necessary to determine CONSULTANT's compliance with legal and contractual requirements and the correctness of claims submitted by CONSULTANT. CONSULTANT shall maintain such records for a period of four years following termination of the Agreement, and shall make them promptly available for copying upon SacSewer's request at SacSewer's expense. SacSewer shall have the right to withhold any payment under this Agreement until CONSULTANT has provided access to CONSULTANT's financial and program records related to this Agreement.

B. All records maintained by CONSULTANT of every kind or description that are prepared in whole or part by or for CONSULTANT in connection with this Agreement shall be the SacSewer's sole property. CONSULTANT shall not make available to any individual or organization any report, document or data which was given to, prepared by or assembled by CONSULTANT pursuant to this Agreement unless prior written consent is given by the SacSewer. Such records and files shall be subject to inspection at any time, upon reasonable notice by SacSewer, by the District Engineer or his/her authorized designee, SacSewer auditors, or any independent consultant or contractor retained by the SacSewer to review such records and files.

C. The CONSULTANT shall maintain and store all claim files, bills, computer reports, and other records relating to SacSewer claims, payments or billings in accordance with SacSewer's Records Retention Schedule and direction. The CONSULTANT shall retain documents and information in accordance with a reasonable standard of care, and shall retain general liability and property claims for a period of Resolution + 5 years (CCP §§ 337 et seq.; GC §§ 911.2, 60201) and workers' compensation claims for a period of Resolution + 30 years (8 CCR 10102; 8 CCR 15400.2, 8 CCR §3204(d)(1) et seq., 29 CFR 1910.1020, GC §§12946, 12960, 60201, CCP §337 et seq.). Prior to destroying any SacSewer records associated with any claims, CONSULTANT shall contact SacSewer for express written permission to do so.

D. During the term of this Agreement, CONSULTANT shall maintain within its office, within the boundaries of the County, written records evidencing the performance by CONSULTANT of the services required by this Agreement of a type, in such detail, and as otherwise may be prescribed by SacSewer. Such records shall include, but not be limited to, time sheets prepared by claims adjusters showing the nature and amount of time expended by the adjusters in administering and investigating claims, copies of all written notices and other communications transmitted by the CONSULTANT to carriers of SacSewer liability insurance, and billing statements received by CONSULTANT for all expenses for which reimbursement is sought from SacSewer. CONSULTANT shall also maintain in the office within this County a filing system for the claims which it administers in such manner as is prescribed by SacSewer.

E. CONSULTANT recognizes that SacSewer records are accessible to the public, and must be made promptly available to a requestor, and CONSULTANT agrees to provide the

appropriate facilities and services in full compliance with the California Public Records Act when directed by SacSewer to do so. CONSULTANT will follow SacSewer guidance and instruction in the case of any Public Records Act requests. If the CONSULTANT terminates or sells its business, it shall promptly notify SacSewer, and provide options to SacSewer for the disposition of its records. This provision shall survive in the event of termination of this Agreement.

**40. PRIOR AGREEMENTS**

This Agreement constitutes the entire contract between SacSewer and CONSULTANT regarding the subject matter of this Agreement. Any prior agreements, whether oral or written, between SacSewer and CONSULTANT regarding the subject matter of this Agreement are hereby terminated effective immediately upon full execution of this Agreement.

**41. SEVERABILITY**

If any term or condition of this Agreement or the application thereof to any person(s) or circumstance is held invalid or unenforceable, such invalidity or unenforceability shall not affect other terms, conditions, or applications which can be given effect without the invalid term, condition, or application; to this end the terms and conditions of this Agreement are declared severable.

**42. FORCE MAJEURE**

Neither CONSULTANT nor SacSewer shall be liable or responsible for delays or failures in performance resulting from events beyond the reasonable control of such party and without fault or negligence of such party. Such events shall include but not be limited to acts of God, strikes, lockouts, riots, acts of war, epidemics, acts of government, fire, power failures, nuclear accidents, earthquakes, unusually severe weather, acts of terrorism, or other disasters, whether or not similar to the foregoing, and acts or omissions or failure to cooperate of the other party or third parties (except as otherwise specifically provided herein).

**43. SURVIVAL OF TERMS**

All services performed and deliverables provided pursuant to this Agreement are subject to all of the terms, conditions, price discounts and rates set forth herein, notwithstanding the expiration of the initial term of this Agreement or any extension thereof. Further, the terms, conditions and warranties contained in this Agreement that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Agreement shall so survive.

**44. DUPLICATE COUNTERPARTS**

This Agreement may be executed in duplicate counterparts. The Agreement shall be deemed executed when it has been signed by both parties.

**45. AUTHORITY TO EXECUTE**

Each person executing this Agreement represents and warrants that he or she is duly authorized and has legal authority to execute and deliver this Agreement for or on behalf

of the parties to this Agreement. Each party represents and warrants to the other that the execution and delivery of the Agreement and the performance of such party's obligations hereunder have been duly authorized.

**(SIGNATURE PAGE FOLLOWS)**

SAMPLE

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

**SACRAMENTO AREA SEWER DISTRICT,** [CONSULTANT's name, nature of business]  
a county sanitation district pursuant to and operating under the authority of the County Sanitation District Act, commencing at Health and Safety Code section 4700 et.seq.

By: \_\_\_\_\_  
Christoph Dobson, District Engineer

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

Name: \_\_\_\_\_

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

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

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

Agreement Approved by the Board of Directors with Authority Delegated to the District Engineer to execute the Agreement on behalf of SacSewer.

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

Item Number: \_\_\_\_\_

Resolution No.: \_\_\_\_\_

THIS AGREEMENT FORMAT HAS BEEN APPROVED BY DISTRICT COUNSEL  
[OR]  
CONTRACT AND CONSULTANT TAX STATUS REVIEWED AND APPROVED BY  
DISTRICT COUNSEL

By: \_\_\_\_\_  
Click or tap here to enter text.  
Click or tap here to enter text.

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

Prepared by: \_\_\_\_\_  
Click or tap here to enter text., [Title]  
Finance Department

**EXHIBIT A to Agreement  
Between  
SACRAMENTO AREA SEWER DISTRICT  
And \_\_\_\_\_**

**SCOPE OF SERVICES**

**1. SERVICE LOCATION(S)**

- A. Facility Name(s): FACILITY
- B. Street Address: STREET
- C. City and Zip Code: CITY

**2. REQUEST FOR PROPOSAL [AND/OR] CONSULTANT'S PROPOSAL**

A. The scope of services to be provided by this Agreement consists of those services set forth in CONSULTANT's Proposal dated [Date] attached hereto as Attachment [Identifier] and incorporated herein by this reference. In the event of any conflict, inconsistency, or ambiguity between this Agreement and the Proposal, this Agreement shall govern. CONSULTANT agrees to perform all services stated in this Agreement for the compensation described herein.

[OR]

A. The scope of services to be provided by this Agreement are those services identified in SacSewer's Request for Proposal (RFP) dated [Date], and CONSULTANT's Proposal dated [Date]. Both the RFP and the Proposal are hereby incorporated into this Agreement as Attachments [Identifier] and [Identifier], respectively, and made a part of this Agreement. In the event of any inconsistencies or ambiguities, the Proposal shall govern over the RFP, and this Agreement shall govern over all. CONSULTANT agrees to perform all services stated in this Agreement for the compensation described herein.

[AND]

B. The District Engineer or designee, may negotiate with CONSULTANT and approve reasonable modifications in tasks, work products, schedules, milestones, and staff assignments so long as such modifications are within the general scope of services provided under this Agreement, do not exceed the Maximum Total Payment Amount, and are determined to be in the best interest of SacSewer.

[Optional]

**C. ON-CALL OR SPECIAL SERVICES**

Special Services shall be provided by CONSULTANT on an "on-call" basis: when requested by SacSewer's Project Manager, CONSULTANT shall provide project-specific proposals and shall commence the proposed services only upon written authorization of SacSewer's District Engineer. CONSULTANT agrees to perform all services stated in this Agreement for the compensation described herein.

**3. SCHEDULE**

A. CONSULTANT shall complete the services in an expeditious manner and transmit all applicable materials to SacSewer as stated in Attachment [Identifier] or as mutually adjusted with SacSewer's Project Manager.

[OR]

A. CONSULTANT shall perform the services in an expeditious manner in accordance with a mutually acceptable schedule developed between SacSewer and CONSULTANT.

**4. RESPONSIBILITIES OF SACSEWER AND CONSULTANT FOR SCOPE**

A. SacSewer, or its authorized representatives, shall review all documents submitted by CONSULTANT and render decisions pertaining thereto as promptly as is reasonable under the circumstances at the time in order to avoid unreasonable delay of the progress of CONSULTANT. SacSewer shall furnish information and services as required by this Agreement and shall render approvals and decisions as expeditiously as is reasonably necessary under the circumstances at the time for the orderly progress of the CONSULTANT's services and of the project.

B. CONSULTANT shall be solely responsible for the quality and accuracy of its work and the work of its subconsultants performed in connection with this Agreement. Any review, approval, or concurrence therewith by SacSewer shall not be deemed to constitute acceptance or waiver by SacSewer of any error or omission as to such work. CONSULTANT shall coordinate the activities of any subconsultants and is responsible to ensure that all plans, drawings, and specifications are coordinated and interface with the other applicable plans, drawings, and specifications to produce a unified, workable, and acceptable whole functional product.

**5. AUTHORITY OF CONSULTANT PERFORMING SCOPE OF WORK**

CONSULTANT is retained to provide and perform the scope of services covered by this Agreement. CONSULTANT, including CONSULTANT's assigned personnel, shall have no authority to represent SacSewer or SacSewer staff at any meetings of public or private agencies unless an appropriate SacSewer official provides prior written authorization for such representation which outlines the purpose, scope and duration of such representation. CONSULTANT shall possess no authority or right to act on behalf of SacSewer in any capacity whatsoever as agent, nor to bind SacSewer to any obligations whatsoever. SacSewer is responsible for making all policy and governmental decisions related to the work covered by this Agreement.

**6. PUBLICATION OF DOCUMENTS AND DATA**

CONSULTANT shall not publish, or disclose to any third party, documents, data, or any confidential information relative to the work of SacSewer without the prior written consent of SacSewer, however submission or distribution to meet official regulatory requirements, or for other purposes authorized by this Agreement, shall not be construed as publication in derogation of the rights of either SacSewer or CONSULTANT.

7. **PROJECT PERSONNEL**

In the performance of the services hereunder, CONSULTANT shall provide the personnel as set forth in the Proposal. Any change in such personnel or reassignment in their project responsibilities must be agreed to in writing by the District Engineer or his authorized representative before any such change may be made. Key contacts for this project shall be as follows:

**SacSewer:**

NAME:  
PHONE:  
FAX:  
E-MAIL:

**CONSULTANT:**

NAME:  
PHONE:  
FAX:  
E-MAIL:

SAMPLE

**EXHIBIT B to Agreement**  
**between**  
**SACRAMENTO AREA SEWER DISTRICT**  
**And \_\_\_\_\_**

**SACSEWER INSURANCE REQUIREMENTS**

Without limiting CONSULTANT's indemnification, CONSULTANT shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Agreement by CONSULTANT, its agents, representatives, or employees. SacSewer shall retain the right at any time to review the coverage, form, and amount of the insurance required hereby. If in the opinion of SacSewer Risk Manager, insurance provisions in these requirements do not provide adequate protection for SacSewer and for members of the public, SacSewer may require CONSULTANT to obtain insurance sufficient in coverage, form and amount to provide adequate protection. SacSewer's requirements shall be reasonable but shall be imposed to assure protection from and against the kind and extent of risks that exist at the time a change in insurance is required.

**1. Verification of Coverage**

CONSULTANT shall furnish SacSewer with certificates evidencing coverage required below. Copies of required endorsements must be attached to certificates provided. SacSewer Risk Manager may approve self-insurance programs in lieu of required policies of insurance if, in the opinion of the Risk Manager, the interests of SacSewer and general public are adequately protected. All certificates, evidences of self-insurance, and additional insured endorsements are to be received and approved by SacSewer before performance commences. SacSewer reserves the right to require that CONSULTANT provide complete copies of any policy of insurance including endorsements offered in compliance with these specifications.

**2. Minimum Scope of Insurance**

Coverage shall be at least as broad as:

A. GENERAL LIABILITY: Insurance Services Office's Commercial General Liability occurrence coverage form CG 0001. Including, but not limited to Premises/Operations, Products/Completed Operations, Contractual, and Personal & Advertising Injury, without additional exclusions or limitations, unless approved by SacSewer Risk Manager.

B. AUTOMOBILE LIABILITY: Insurance Services Office's Commercial Automobile Liability coverage form CA 0001. Commercial Automobile Liability: auto coverage symbol "1" (any auto) for corporate/business owned vehicles. If there are no owned or leased vehicles, symbols 8 and 9 for non-owned and hired autos shall apply. Personal Lines automobile insurance shall apply if vehicles are individually owned.

C. WORKERS' COMPENSATION: Statutory requirements of the State of California and Employer's Liability Insurance.

D. PROFESSIONAL LIABILITY or Errors and Omissions Liability insurance appropriate to CONSULTANT'S profession.

E. CYBER LIABILITY, INCLUDING IDENTITY THEFT, INFORMATION AND NETWORK SECURITY and PRIVACY INJURY:

Coverage shall include but is not limited to:

- (1) Third party injury or damage (including loss or corruption of data) arising from a negligent act, error or omission or a data breach.
- (2) Defense, indemnity and legal costs associated with regulatory breach (including HIPAA), negligence or breach of contract.
- (3) Administrative expenses for forensic expenses and legal services.
- (4) Crisis management expenses for printing, advertising, mailing of materials and travel costs of crisis management firm, including notification expenses.
- (5) Identity event service expenses for identity theft education, assistance, credit file monitoring to mitigate effects of personal identity event, post event services.

F. UMBRELLA or Excess Liability policies are acceptable where the need for higher liability limits is noted in the Minimum Limits of Insurance and shall provide liability coverages that at least follow form over the underlying insurance requirements where necessary for Commercial General Liability, Commercial Automobile Liability, Employers' Liability, and any other liability coverage (other than Professional Liability) designated under the Minimum Scope of Insurance.

3. **Minimum Limits of Insurance**

CONSULTANT shall maintain limits no less than:

A. General Liability shall be on an Occurrence basis (as opposed to Claims Made basis). Minimum limits and structure shall be:

|                                 |             |
|---------------------------------|-------------|
| (1) General Aggregate:          | \$5,000,000 |
| (2) Products Comp/Op Aggregate: | \$5,000,000 |
| (3) Personal & Adv. Injury:     | \$5,000,000 |
| (4) Each Occurrence:            | \$5,000,000 |

B. Automobile Liability:

- (1) Commercial Automobile Liability for Corporate/business owned vehicles including non-owned and hired, \$1,000,000 Combined Single Limit.
- (2) Personal Lines Automobile Liability for Individually owned vehicles, \$250,000 per person, \$500,000 each accident, \$100,000 property damage.

C. Workers' Compensation: Statutory.

- D. Employer's Liability: \$1,000,000 per accident for bodily injury or disease.
- E. Professional Liability : \$2,000,000 per claim and aggregate.
- F. Cyber Liability including errors and omissions, Identity Theft, Information Security and Privacy Injury Liability: \$5,000,000 per claim or incident and \$5,000,000 aggregate.

4. **Deductibles and Self-Insured Retention**

Any deductible or self-insured retention that apply to any insurance required by this Agreement must be declared and accepted by SacSewer.

5. **Claims Made Professional Liability Insurance**

If professional liability coverage is written on a Claims Made form:

- A. The "Retro Date" must be shown, and must be on or before the date of the Agreement or the beginning of Agreement performance by CONSULTANT.
- B. Insurance must be maintained and evidence of insurance must be provided for at least one (1) year after completion of the Agreement.
- C. If coverage is cancelled or non-renewed, and not replaced with another claims made policy form with a "Retro Date" prior to the contract effective date, CONSULTANT must purchase "extended reporting" coverage for a minimum of one (1) year after completion of the Agreement.

6. **Other Insurance Provisions**

The insurance policies required in this Agreement are to contain, or be endorsed to contain, as applicable, the following provisions:

7. **All Policies:**

- A. ACCEPTABILITY OF INSURERS: Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-: VII. SACRAMENTO AREA SEWER DISTRICT Risk Manager may waive or alter this requirement, or accept self-insurance in lieu of any required policy of insurance if, in the opinion of the Risk Manager, the interests of SACRAMENTO AREA SEWER DISTRICT and the general public are adequately protected.
- B. MAINTENANCE OF INSURANCE COVERAGE: The CONSULTANT shall maintain all insurance coverages and limits in place at all times and provide SACRAMENTO AREA SEWER DISTRICT with evidence of each policy's renewal within ten (10) days after its anniversary date. CONSULTANT is required by this Agreement to immediately notify SACRAMENTO AREA SEWER DISTRICT if they receive a communication from their insurance carrier or agent that any required insurance is to be canceled, non-renewed, reduced in scope or limits (except for reduction due to claims), or otherwise materially changed. CONSULTANT shall provide evidence that such cancelled or non-renewed or otherwise materially changed insurance has been replaced or its cancellation notice withdrawn without any interruption in coverage, scope, or limits. Failure to maintain required insurance in force shall be considered a material breach of the Agreement.

8. **Commercial General Liability and/or Commercial Automobile Liability:**
- A. **ADDITIONAL INSURED STATUS:** SACRAMENTO AREA SEWER DISTRICT, and the County of Sacramento and their governing Boards, officers, directors, officials, employees, and authorized volunteers and agents (each an “Additional Insured Party,” and collectively “Additional Insured Parties”), are to be included as additional insureds as respects: liability arising out of activities performed by or on behalf of CONSULTANT in the performance of work; products and completed operations of CONSULTANT; premises owned, occupied or used by CONSULTANT in the performance of the work; or automobiles owned, leased, hired or borrowed by CONSULTANT. The coverage shall contain no endorsed limitations on the scope of protection afforded to the Additional Insured Parties.
- B. **PRIMARY INSURANCE:** For any claims related to this agreement, CONSULTANT’s insurance coverage shall be primary insurance as respects any insurance or self-insurance maintained by the Additional Insured Parties. Any insurance or self-insurance maintained by the Additional Insured Parties shall be excess of CONSULTANT’s insurance and shall not contribute with it.
- C. **SEVERABILITY OF INTEREST:** CONSULTANT’s insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer’s liability.
- D. **SUBCONTRACTORS:** CONSULTANT shall be responsible for the acts and omissions of all its subcontractors and additional insured endorsements as provided by CONSULTANT’s subcontractor.
9. **Professional Liability:**
- PROFESSIONAL LIABILITY PROVISION:** Any professional liability or errors and omissions policy required hereunder shall apply to any claims, losses, liabilities, or damages, demands, and actions arising out of or resulting from professional services provided under this Agreement.
10. **Workers’ Compensation:**
- WORKERS’ COMPENSATION WAIVER OF SUBROGATION:** The workers’ compensation policy required hereunder shall be endorsed (via a specific endorsement or as required by written contract) to state that the workers’ compensation carrier waives its right of subrogation against the SACRAMENTO AREA SEWER DISTRICT, and the County of Sacramento and their governing Boards, officers, directors, officials, employees, and authorized volunteers and agents, which might arise by reason of payment under such policy in connection with performance under this Agreement by CONSULTANT. Should CONSULTANT be self-insured for workers’ compensation, CONSULTANT hereby agrees to waive its right of subrogation against SACRAMENTO AREA SEWER DISTRICT, and the County of Sacramento and their governing Boards, officers, directors, officials, employees, and authorized volunteers and agents
11. **Notification of Claim**
- If any claim for damages is filed with CONSULTANT or if any lawsuit is instituted against CONSULTANT, that arise out of or are in any way connected with CONSULTANT’s

performance under this Agreement and that in any way, directly or indirectly, contingently or otherwise, affect or might reasonably affect SACRAMENTO AREA SEWER DISTRICT, or any Additional Insured Party, CONSULTANT shall give prompt and timely notice thereof to SACRAMENTO AREA SEWER DISTRICT. Notice shall be prompt and timely if given within thirty (30) days following the date of receipt of a claim or ten (10) days following the date of service of process of a lawsuit.

SAMPLE

**EXHIBIT C to Agreement  
between  
SACRAMENTO AREA SEWER DISTRICT  
And \_\_\_\_\_**

**COMPENSATION**

**1. MAXIMUM PAYMENT TO CONSULTANT**

The Maximum Total Payment Amount under this Agreement is: \$ \_\_\_\_\_.

**2. COMPENSATION COMPONENTS**

A. Time and Expenses: Compensation for services rendered shall be paid on a time and expenses basis at the usual and customary rates for the services actually rendered, as stated in CONSULTANT's Proposal, attached hereto as Attachment [Identifier] and by this reference incorporated herein, and shall not exceed \$ \_\_\_\_\_. The rates stated in Attachment [Identifier] shall apply for all services provided throughout the term of this Agreement. Total compensation, including fees, expenses, and profit for services rendered by CONSULTANT shall not exceed the Maximum Total Payment Amount under this Agreement listed above.

B. Special or Optional Services: Compensation in the amount of \$ \_\_\_\_\_ for services identified in Exhibit [Identifier] as special or optional services may only be released upon written authorization by the District Engineer, or duly authorized designee.

C. Contingency: An additional contingency in the amount of \$ \_\_\_\_\_ is hereby established for possible additional services that may be identified during performance of the work covered by this Agreement and which are within the general work parameters of this Agreement. Such contingency may only be released upon written authorization by the District Engineer.

D. Rate Increases: SacSewer's Project Manager and CONSULTANT may negotiate an adjustment to rates effective January 1st of each year throughout the term of this Agreement, effective January 1, 20[XX], provided that annual adjustments shall not exceed a three percent (3%) increase over the prior year's rates. CONSULTANT shall submit new negotiated rates to SacSewer's Project Manager not less than 30 days prior to said effective date.

Rate increases may only be initiated upon written authorization by the SacSewer's Project Manager. Total compensation, including fees, expenses, and profit for services rendered by CONSULTANT shall not exceed the Maximum Total Payment Amount under this Agreement listed above.

E. Consultant Expenses:

(1) Non-Reimbursable Expenses Are As Follows: Non-reimbursable expenses include alcoholic beverages, expenses associated with a non-employee who

accompanies the employee on official business, personal expenses, and traffic fines or parking tickets.

(2) Invoices: CONSULTANT must submit itemized invoices that detail labor hours and expenses. In order to be reimbursed for travel related expenses, CONSULTANT must submit itemized invoices for airfare, hotel stays, cab or shuttle fees, restaurant fees, and related expenses. CONSULTANT must separate out line items for non-taxable expenses.

(3) Lodging, Meals, and Travel: Lodging, meals, and travel during this contract period shall be reimbursed as follows:

- a. Per diem for lodging (equal to the federal standard CONUS per diem rate for Sacramento County at the time of contract negotiation) will be reimbursed for each work night, up to five nights per week.
- b. Per diem for meals and incidentals (equal to the federal standard CONUS per diem rate for Sacramento County at the time of contract negotiation) will be reimbursed for each work day, up to five days per week.
- c. Airfare and local and home transportation costs will be reimbursed at cost with no markup.
- d. Mileage will be reimbursed at the current IRS rate which can be accessed by clicking the following link: <https://www.irs.gov/tax-professionals/standard-mileage-rates>

F. Maximum Allowable Markups: Maximum allowable markups will be five percent (5%) on subconsultants and other direct costs (ODCs).

### 3. CONSULTANT COMPLIANCE WITH REQUIREMENTS OF CONTRACT FUNDING RESOURCES

#### **State Of California Grant Funding - Clean Water State Revolving Fund (SRF) Regulations/Proposition 1**

As compensation for services rendered under this Agreement is funded by State grant monies in conjunction with the SRF/Proposition 1, concerning invoices issued under contract, Consultant is required to segregate expenses into categories including eligible, and those identified as ineligible, pursuant to the State Water Resources Control Board SRF Policy. For information on what constitutes an ineligible expense please visit the following web link for details: [http://www.waterboards.ca.gov/water\\_issues/programs/grants\\_loans/srf/docs/fy1213/final\\_policy\\_0513.pdf](http://www.waterboards.ca.gov/water_issues/programs/grants_loans/srf/docs/fy1213/final_policy_0513.pdf)

Expenses incurred for lodging, meals, and travel shall be reimbursed as follows:

Per Diem for lodging (up to the California State HR Per Diem rate) will be reimbursed for each work night, up to five (5) nights per week.

Per Diem for meals and incidentals (up to the California State HR Per Diem rate) will be reimbursed for each work day, up to five (5) days per week.

For information on California State HR Per Diem rates please visit the following web link for details: <http://www.calhr.ca.gov/employees/pages/travel-reimbursements.aspx>

**4. ITEMIZED TASKS AND SUBTASKS**

If CONSULTANT's Proposal contains a schedule of tasks or subtasks with identified levels of effort such as estimated hours and/or estimated costs, or identifiable work products, milestones, or other events, then compensation for these individual tasks or activities shall not exceed the identified estimate or other limiting factors without the written approval of SacSewer's Project Manager. CONSULTANT shall promptly notify SacSewer's Project Manager in writing of any tasks, subtasks, work products, or milestones that need to be reevaluated and indicate the reason and/or justification for such reevaluation. SacSewer's Project Manager is authorized to negotiate adjustments of individual tasks so long as the work is within the general scope of the project and the total compensation does not exceed the Maximum Total Payment Amount under this Agreement listed above.

**5. WORK NOT IN SCOPE OF SERVICES**

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

**6. NOTIFICATION OF 75% EXPENDITURE OF COMPENSATION**

CONSULTANT shall notify SacSewer's Project Manager in writing upon expenditure of seventy-five percent (75%) of the authorized Agreement amount. Such notice shall identify the percentage of funds expended, the percentage of work completed, an explanation of any variation between these two (2) percentages, and an assessment of the cost of the remaining work to be performed.

**7. SUBMISSION OF INVOICES**

CONSULTANT shall address and submit all invoices associated with this Agreement by U.S. mail or personal delivery to the following address:

Sacramento Area Sewer District  
10060 Goethe Road  
Sacramento, CA 95827  
ATTN: CONTRACTS ACCOUNTS PAYABLE

CONSULTANT shall include the following information on all invoices:

- (1) Contract Number: Click or tap here to enter text.
- (2) Project Name: Click or tap here to enter text.

- (3) Date of Invoice Submission
- (4) Time Period Invoice Covers
- (5) Services Provided and Respective Compensation Requested
- (6) Any other information deemed necessary by CONSULTANT and/or SacSewer

SacSewer may change the address to which subsequent invoices shall be sent by giving written notice designating a change of address to CONSULTANT, which shall be effective upon receipt.

**8. PAYMENTS**

In accordance with the Compensation and Payment of Invoices Limitations provision of this Agreement, SacSewer shall address and submit payments to CONSULTANT at [address in the Notice provision of this Agreement or the following address]

**CONSULTANT's Name**  
**Address**

CONSULTANT may change the address to which subsequent payments shall be sent by giving written notice designating a change of address to SacSewer, which shall be effective upon receipt.

**EXHIBIT D to Agreement**  
**between the SACRAMENTO AREA SEWER DISTRICT,**  
**hereinafter referred to as "SacSewer," and**  
**\_\_\_\_\_ , hereinafter referred**  
**to as "CONSULTANT"**

**HIPAA Business Associate Exhibit to Contract**

Whereas, SacSewer, pursuant to the terms of the Agreement, wishes to disclose to CONSULTANT and CONSULTANT wishes to disclose to SacSewer, certain information, some of which may constitute Protected Health Information (PHI) including any in an electronic format (Electronic Protected Health Information or EPHI);

Whereas, in the course of the performance of the Agreement, CONSULTANT will be provided with access to PHI;

Whereas, SacSewer and CONSULTANT desire to protect the privacy and provide for the security of PHI disclosed to each other in compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Title 45 Code of Federal Regulations (CFR), Title 42 CFR Section 1320d, and regulations promulgated thereunder by the U.S. Department of Health and Human Services (the HIPAA Regulations) and other applicable laws and regulations.

Whereas, it appears that the CONSULTANT is a Business Associate of SacSewer as that term is defined in the HIPAA regulations; and

Whereas, SacSewer is willing to provide CONSULTANT and its agents with access to PHI such that CONSULTANT can perform under the Agreement, under the terms of this Exhibit;

Whereas, the purpose of this Exhibit is to satisfy certain standards and requirements of HIPAA and the HIPAA Regulations, including, but not limited to, Title 45, Section 164.504(e) of the Code of Federal Regulations (CFR), as the same may be amended from time to time.

NOW, THEREFORE, in consideration of the mutual promises made herein, the parties agree as follows:

**I. HIPAA REQUIREMENTS**

**A. Definitions:**

1. "Protected Health Information" or "PHI" means any information, whether oral or recorded in any form or medium, including electronic (EPHI) as that term is defined in the Security Rule: 1) that relates to the past, present, or future physical or mental condition of an individual; the provision of health care to an individual; or the past,

present or future payment for the provision of health care to an individual, and 2) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual, and shall have the meaning given to such term under HIPAA and the HIPAA Regulations, including, but not limited to, 45 CFR Section 164.501;

2. "Individual" shall have the same meaning as the term "individual" in 45 CFR Section 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR Section 164.502(g);

3. "Privacy Rule" shall mean the "Standards for Privacy of Individually Identifiable Health Information", 45 CFR Part 160 and Part 164, subparts A and E, as amended from time to time.

4. "Security Rule" shall mean the "Security Standards", 45 CFR Parts 160, 162, and 164.

**B. Permitted Uses and Disclosures:** CONSULTANT may use and/or disclose PHI received by it pursuant to the Agreement and this Exhibit solely for the purpose of performing its obligations under the Agreement and this Exhibit or as otherwise required by law. CONSULTANT may disclose PHI to, and permit the use of PHI by, its employees, contractors, agents, or other representatives only to the extent directly related to and necessary for the performance of the Agreement and this Exhibit. CONSULTANT shall not use or disclose PHI in any manner that would constitute a violation of HIPAA and the HIPAA regulations if so used by SacSewer.

**C. Use and Disclosure for Contractor's Purposes and Data Aggregation:** CONSULTANT may, if necessary, use and disclose PHI for the proper management and administration of CONSULTANT's business or to carry out CONSULTANT's legal responsibilities. CONSULTANT may also use PHI to provide data aggregation services to SacSewer as permitted by 45 CFR Section 164.504(e)(2)(i)(B).

**D. De-Identification:** Notwithstanding anything herein to the contrary, CONSULTANT may store, analyze, access and use components of PHI that have been "de-identified" and that do not contain individually identifiable health information, provided that any such use is consistent with applicable laws and regulations.

**E. Appropriate Safeguards:** Prior to receipt of PHI in connection with the Agreement and Exhibit, CONSULTANT shall implement and maintain appropriate security safeguards to ensure that PHI is not used or disclosed by CONSULTANT in violation of this Exhibit or applicable laws and regulations. Security measures maintained by CONSULTANT shall include such appropriate administrative, technical and physical safeguards as are necessary to protect such PHI. Such safeguards shall be designed to protect the confidentiality and integrity of such PHI obtained, accessed or created from or on behalf of SacSewer. Upon request by SacSewer, CONSULTANT shall provide a written description of such safeguards. CONSULTANT shall ensure that any sub-contract it maintains in order to meet the terms of this AGREEMENT includes the same requirements for appropriate safeguards as found in this AGREEMENT.

**F. Reporting Unauthorized Uses and Disclosures:** As required by 45 CFR Section 164.308(a)(2), the designated HIPAA Security Officer of CONSULTANT shall notify SacSewer in writing within five (5) working days of its discovery of any use or disclosure of PHI not permitted by the Agreement or this Exhibit of which CONSULTANT or its officers, employees or agents become aware. Such notice shall include the name of each individual, with address or other identifiers where known, whose unsecured protected health information (PHI) has been, or is reasonably believed by the CONSULTANT to have been, accessed, acquired, or disclosed during such unauthorized use or disclosure.

Any unauthorized use or disclosure shall be treated as discovered by the CONSULTANT on the first day on which such access, acquisition or disclosure is known to the CONSULTANT, including any person, other than the individual committing the unauthorized use or disclosure, that is an employee, officer or other agent of the CONSULTANT, or who should reasonably have known such unauthorized activities had occurred.

CONSULTANT shall promptly identify, respond to and report to SacSewer any suspected or known "security incident" of which it becomes aware. Such term is defined in the HIPAA Security Rule, 45 CFR Section 164.304: "the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system." CONSULTANT's incident report shall identify the date of the security incident, the scope of the security incident, the CONSULTANT's response to the security incident and the identification of the party responsible for causing the security incident if known.

CONSULTANT agrees that any sub-contractor of the CONSULTANT that provides services to the CONSULTANT directly related to this AGREEMENT has the same responsibilities regarding reporting unauthorized uses or disclosures as the CONSULTANT. CONSULTANT further agrees that it shall ensure that these responsibilities are defined in any sub-contract it enters into in order to service this AGREEMENT.

**G. Mitigating the Effect of Unauthorized Uses and Disclosures:** CONSULTANT shall take prompt corrective action to mitigate to the greatest extent possible, any harmful effects arising from any improper use and/or disclosure of PHI and shall take such other action pertaining to such unauthorized use or disclosure as may be required by applicable federal and state laws and regulations.

Mitigation shall include CONSULTANT notification to each individual whose unsecured protected health information (PHI or EPHI) has been, or is reasonably believed by the CONSULTANT to have been, accessed, acquired, or disclosed during such unauthorized use or disclosure. The standard for such notification shall comply with all notification requirements as specified in 45 CFR Subpart D.

Upon completion of such notification, the designated HIPAA Security Officer of CONSULTANT shall provide the SacSewer Compliance Officer a report including the following: method(s) of communication used, as specified in 45 CFR Subpart D; date such notification was made; number of individuals notified; and a copy of the content of the notification.

CONSULTANT agrees that any sub-contractor of the CONSULTANT that provides services to the CONSULTANT directly related to this AGREEMENT has the same responsibilities regarding mitigating any unauthorized uses or disclosures as the CONSULTANT. CONSULTANT further agrees that it shall ensure that these responsibilities are defined in any sub-contract it enters into in order to service this AGREEMENT.

**H. Individual Rights:** CONSULTANT shall comply with the following individual rights requirements as applicable to PHI obtained, used or maintained by CONSULTANT:

1. **Right of Access.** CONSULTANT shall provide access to PHI, at the request of SacSewer and in the time and manner designated by SacSewer, to SacSewer or, as directed, to an individual in order to meet the requirements under 45 CFR Section 164.524.

2. **Right of Addendum.** CONSULTANT shall make any Addendum to PHI that SacSewer directs or agrees to pursuant to 45 CFR Section 164.526 at the request of SacSewer or an individual, and in the time and manner designated by SacSewer.

3. **Documenting of Disclosures.** CONSULTANT shall document such disclosures of PHI as would be required for SacSewer to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR Section 164.528.

4. **Right to Accounting of Disclosures.** CONSULTANT agrees to provide SacSewer or an individual, in the time and manner designated by SacSewer, such information collected in order to permit SacSewer to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 CFR Section 164.528.

**I. County Obligations:**

1. SacSewer shall notify CONSULTANT of any limitation in its notice of privacy practices in accordance with 45 CFR Section 164.520 to the extent that such limitation may affect CONSULTANT's use or disclosure of PHI.

2. SacSewer shall notify CONSULTANT of any changes in, or revocation of, permission by an individual to use or disclose PHI, to the extent that such changes may affect CONSULTANT's use or disclosure of PHI.

3. SacSewer shall notify CONSULTANT of any restriction to the use or disclosure of PHI that SacSewer has agreed to in accordance with 45 CFR Section 164.522, to the extent that such restriction may affect CONSULTANT's use or disclosure of PHI.

**J. Contractor's Agents:** CONSULTANT shall require that any agent, subcontractor or other representative that is authorized to receive, use or have access to PHI obtained or created under the Agreement or this Exhibit shall agree in writing to adhere to the same restrictions, conditions and requirements regarding the use and/or disclosure of PHI and safeguarding of PHI that apply to CONSULTANT under this Agreement and Exhibit. CONSULTANT shall implement and maintain sanctions against any agent, subcontractor or other representative that violates such restrictions, conditions or requirements and shall mitigate the effects of any such violation. Such agreement shall identify SacSewer as a third-part beneficiary with rights of enforcement in the event of any violations by CONSULTANT's agents, subcontractors or other representatives. Additionally, the agent, subcontractor or other representative shall be required to notify CONSULTANT of any instances of which it is aware in which the confidentiality of PHI has been breached.

**K. Regulatory Compliance:** CONTACTOR shall make its internal practices, books and records relating to the use and disclosure of PHI received from SacSewer, or created or received by CONSULTANT on behalf of SacSewer, available to any state or federal agency, including the U.S. Department of Health and Human Services, for purposes of determining compliance with the HIPAA Regulations.

**L. Inspection of Records:** Within ten (10) calendar days of a written request, CONSULTANT shall make available to SacSewer for inspection during normal business hours at CONSULTANT's place of business all records, books, agreements, data, systems, policies and procedures relating to the use and/or disclosure of PHI received from, or created or received by CONSULTANT on behalf of SacSewer, for purposes of enabling SacSewer to determine CONSULTANT's compliance with the terms of this Exhibit. In the event that protected health information (PHI) has been, or is reasonably believed by the CONSULTANT to have been, accessed, acquired, or disclosed, pursuant to (G) of this Exhibit, this advance notice by SacSewer may be waived.

**M. Audit, Inspection and Enforcement By County:** With reasonable notice, SacSewer and its authorized agents or contractors may audit and/or examine CONSULTANT's facilities, systems, policies and procedures, data and records as may be necessary to determine compliance with the terms of this Exhibit. CONSULTANT shall promptly correct any violation of this Exhibit found by SacSewer and shall certify in writing that the correction has been made. SacSewer's failure to detect any unsatisfactory practice does not constitute acceptance of the practice or a waiver of SacSewer's enforcement rights under this Agreement and Exhibit.

**N. Compliance With Law:** CONSULTANT shall comply with all applicable federal and state laws and regulations, including, if applicable under the terms and requirements of the Agreement and this Exhibit, the HIPAA Standards for Electronic Transactions, 45 CFR Parts 160 and 162.

**O. Interpretation:** Any ambiguity in this Exhibit shall be resolved in favor of a meaning that permits SacSewer to comply with HIPAA and its implementing regulations.

**P. Amendment:** The parties agree to amend this Exhibit from time to time as necessary for SacSewer to comply with the requirements of HIPAA and its implementation.

**Q. Term and Termination:**

1. The terms of this Exhibit shall remain in effect for the duration of all services provided by CONSULTANT and for so long as CONSULTANT shall remain in possession of any PHI received from, or created or received by CONSULTANT on behalf of SacSewer, unless SacSewer has agreed in accordance with this section that it is not feasible to return or destroy all PHI.

2. Upon termination of the Agreement and this Exhibit, CONSULTANT shall recover any PHI relating to the Agreement and this Exhibit in the possession of its subcontractors, agents or representatives. CONSULTANT shall return to SacSewer, or destroy with consent of SacSewer, all such PHI plus all other PHI relating to the Agreement and this Exhibit in its possession and shall retain no copies. If CONSULTANT believes that it is not feasible to return or destroy the PHI as described above, CONSULTANT shall so notify SacSewer in writing. The notification shall include: i) a statement that CONSULTANT has determined that it is not feasible to return or destroy the PHI in its possession, and ii) the specific reasons for such determination. If SacSewer agrees in its sole discretion that CONSULTANT cannot feasibly return or destroy the PHI, CONSULTANT shall ensure that any and all protections, requirements and restrictions contained in this Agreement and Exhibit shall be extended to any PHI retained after the termination of the Agreement and the Exhibit, and that any further uses and/or disclosures will be limited to the purposes that make the return or destruction of the PHI infeasible.

**R. Insurance:** In addition to any insurance requirements in the Agreement, CONSULTANT shall maintain insurance, in such amounts as the SacSewer Risk Manager may deem necessary, to cover loss of PHI data and claims based upon alleged violations of privacy rights through improper use or disclosure of PHI. All such policies shall meet or exceed any minimum insurance requirements of the Agreement.