

**AGREEMENT
CITY OF FRESNO, CALIFORNIA
CONSULTANT SERVICES**

This Agreement is made and entered into effective _____, by and between the CITY OF FRESNO, a California municipal corporation (City), and Michael K. Nunley & Associates, Inc., a California corporation (Consultant).

RECITALS

WHEREAS, the City desires to obtain professional engineering services for Design of Booster Pump Replacements at Pump Stations 89A, 133, and 150 (Project); and

WHEREAS, the Consultant is engaged in the business of furnishing services as a civil engineering consultant and hereby represents that it desires to and is professionally and legally capable of performing the services called for by this Agreement; and

WHEREAS, the Consultant acknowledges that this Agreement is subject to the requirements of Fresno Municipal Code Section 4-107 and Administrative Order No. 6-19; and

WHEREAS, this Agreement will be administered for the City by its Director of Public Utilities (Director) or designee.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and of the covenants, conditions, and promises hereinafter contained to be kept and performed by the respective parties, it is mutually agreed as follows:

1. Scope of Services. The Consultant shall perform to the satisfaction of the City the services described in **Exhibit A**, including all work incidental to, or necessary to perform, such services even though not specifically described in **Exhibit A**.

2. Term of Agreement and Time for Performance. This Agreement shall be effective from the date first set forth above and shall continue in full force and effect through the earlier of complete rendition of the services hereunder or December 31, 2024, subject to any earlier termination in accordance with this Agreement. The services of the Consultant as described in **Exhibit A** are to commence upon the City's issuance of a written "Notice to Proceed." Work shall be undertaken and completed in a sequence assuring expeditious completion, but in any event, all such services shall be completed within seven hundred and fifty (750) consecutive calendar days from such authorization to proceed.

3. Compensation.

(a) The Consultant's sole compensation for satisfactory performance of all services required or rendered pursuant to this Agreement shall be a total fee not to exceed One hundred and two thousand five hundred twenty three dollars (\$102,523), paid on a time and materials basis in accordance with the schedule of fees contained in **Exhibit A**, and a contingency amount not to exceed fifteen thousand three hundred seventy nine dollars (\$15,379) for any additional work rendered pursuant to Subsection (c) below and authorized in writing by the Director.

(b) Detailed statements shall be rendered monthly and will be payable in the normal course of City business. The City shall not be obligated to reimburse any expense for which it has not received a detailed invoice with applicable copies of representative and identifiable receipts or records substantiating such expense.

(c) The parties may modify this Agreement to increase or decrease the scope of services or provide for the rendition of services not required by this Agreement, which modification shall include an adjustment to the Consultant's compensation. Any change in the scope of services must be made by written amendment to the Agreement signed by an authorized representative for each party. The Consultant shall not be entitled to any additional compensation if services are performed prior to a signed written amendment.

4. Termination, Remedies, and Force Majeure.

(a) This Agreement shall terminate without any liability of the City to the Consultant upon the earlier of: (i) the Consultant's filing for protection under the federal bankruptcy laws, or any bankruptcy petition or petition for receiver commenced by a third party against the Consultant; (ii) seven calendar days prior written notice with or without cause by the City to the Consultant; (iii) the City's non-appropriation of funds sufficient to meet its obligations hereunder during any City fiscal year of this Agreement, or insufficient funding for the Project; or (iv) expiration of this Agreement.

(b) Immediately upon any termination or expiration of this Agreement, the Consultant shall (i) immediately stop all work hereunder; (ii) immediately cause any and all of its subcontractors to cease work; and (iii) return to the City any and all unearned payments and all properties and materials in the possession of the Consultant that are owned by the City. Subject to the terms of this Agreement, the Consultant shall be paid compensation for services satisfactorily performed prior to the effective date of termination. The Consultant shall not be paid for any work or services performed or costs incurred which reasonably could have been avoided.

(c) In the event of termination due to failure of the Consultant to satisfactorily perform in accordance with the terms of this Agreement, the City may withhold an amount that would otherwise be payable as an offset to, but not in excess of, the City's damages caused by such failure. In no event shall any payment by the City pursuant to this Agreement constitute a waiver by the City of any breach of this Agreement which may then exist on the part of the Consultant, nor shall such payment impair or prejudice any remedy available to the City with respect to the breach.

(d) Upon any breach of this Agreement by the Consultant, the City may (i) exercise any right, remedy (in contract, law or equity), or privilege which may be available to it under applicable laws of the State of California or any other applicable law; (ii) proceed by appropriate court action to enforce the terms of the Agreement; and/or (iii) recover all direct, indirect, consequential, economic and incidental damages for the breach of the Agreement. If it is determined that the City improperly terminated this Agreement for default, such termination shall be deemed a termination for convenience.

(e) The Consultant shall provide the City with adequate written assurances of future performance, upon Director's request, in the event the Consultant fails to comply with any terms or conditions of this Agreement.

(f) The Consultant shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Consultant and without its fault or negligence such as, acts of God or the public enemy, acts of the City in its contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Consultant shall notify Director in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, and shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to Director of the cessation of such occurrence.

5. Confidential Information, Ownership of Documents and Copyright License.

(a) Any reports, information, or other data prepared or assembled by the Consultant pursuant to this Agreement shall not be made available to any individual or organization by the Consultant without the prior written approval of the City. During the term of this Agreement, and thereafter, the Consultant shall not, without the prior written consent of the City, disclose to anyone any Confidential Information. The term Confidential Information for the purposes of this Agreement shall include all proprietary and confidential information of the City, including but not limited to business plans, marketing plans, financial information, designs, drawings, specifications, materials, compilations, documents, instruments, models, source or object codes and other information disclosed or submitted, orally, in writing, or by any other medium or media. All Confidential Information shall be and remain confidential and proprietary in the City.

(b) Any and all original sketches, pencil tracings of working drawings, plans, computations, specifications, computer disk files, writings and other documents prepared or provided by the Consultant pursuant to this Agreement are the property of the City at the time of preparation and shall be turned over to the City upon expiration or termination of the Agreement or default by the Consultant. The Consultant grants the City a copyright license to use such drawings and writings. The Consultant shall not permit the reproduction or use thereof by any other person except as otherwise expressly provided herein. The City may modify the design including any drawings or writings. Any use by the City of the aforesaid sketches, tracings, plans, computations, specifications, computer disk files, writings and other documents in completed form as to other projects or extensions of this Project, or in uncompleted form, without specific written verification by the Consultant will be at the City's sole risk and without liability or legal exposure to the Consultant. The Consultant may keep a copy of all drawings and specifications for its sole and exclusive use.

(c) If the Consultant should subcontract all or any portion of the services to be performed under this Agreement, the Consultant shall cause each subcontractor to also comply with the requirements of this Section 5.

(d) This Section 5 shall survive expiration or termination of this Agreement.

6. Professional Skill. It is further mutually understood and agreed by and between the parties hereto that inasmuch as the Consultant represents to the City that the Consultant and its subcontractors, if any, are skilled in the profession and shall perform in accordance with the standards of said profession necessary to perform the services agreed to be done by it under this Agreement, the City relies upon the skill of the

Consultant and any subcontractors to do and perform such services in a skillful manner and the Consultant agrees to thus perform the services and require the same of any subcontractors. Therefore, any acceptance of such services by the City shall not operate as a release of the Consultant or any subcontractors from said professional standards.

7. Indemnification. To the furthest extent allowed by law including California Civil Code section 2782.8, the Consultant shall indemnify, hold harmless and defend the City and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage), and from any and all claims, demands and actions in law or equity (including reasonable attorney's fees and litigation expenses) that arise out of, pertain to, or relate to the negligence, recklessness or willful misconduct of the Consultant, its principals, officers, employees, agents or volunteers in the performance of this Agreement.

If the Consultant should subcontract all or any portion of the services to be performed under this Agreement, the Consultant shall require each subcontractor to indemnify, hold harmless and defend the City and each of its officers, officials, employees, agents and volunteers in accordance with the terms of the preceding paragraph.

This section shall survive termination or expiration of this Agreement.

8. Insurance.

(a) Throughout the life of this Agreement, the Consultant shall pay for and maintain in full force and effect all insurance as required in **Exhibit B**, which is incorporated into and part of this Agreement, with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated no less than "A-VII" in the Best's Insurance Rating Guide, or (ii) as may be authorized in writing by the City's Risk Manager or designee at any time and in its sole discretion. The required policies of insurance as stated in Exhibit B shall maintain limits of liability of not less than those amounts stated therein. However, the insurance limits available to the City, its officers, officials, employees, agents and volunteers as additional insureds, shall be the greater of the minimum limits specified therein or the full limit of any insurance proceeds to the named insured.

(b) If at any time during the life of the Agreement or any extension, the Consultant or any of its subcontractors/sub-consultants fail to maintain any required insurance in full force and effect, all services and work under this Agreement shall be discontinued immediately, and all payments due or that become due to the Consultant shall be withheld until notice is received by the City that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to the City. Any failure to maintain the required insurance shall be sufficient cause for the City to terminate this Agreement. No action taken by the City pursuant to this section shall in any way relieve the Consultant of its responsibilities under this Agreement. The phrase "fail to maintain any required insurance" shall include, without limitation, notification received by the City that an insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.

(c) The fact that insurance is obtained by the Consultant shall not be

deemed to release or diminish the liability of the Consultant, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify the City shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by the Consultant. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of the Consultant, its principals, officers, agents, employees, persons under the supervision of the Consultant, vendors, suppliers, invitees, consultants, sub-consultants, subcontractors, or anyone employed directly or indirectly by any of them.

(d) If the Consultant should subcontract all or any portion of the services to be performed under this Agreement, the Consultant shall require each subcontractor/sub-consultant to provide insurance protection, as an additional insured, to the City and each of its officers, officials, employees, agents and volunteers in accordance with the terms of this section, except that any required certificates and applicable endorsements shall be on file with the Consultant and the City prior to the commencement of any services by the subcontractor. The Consultant and any subcontractor/sub-consultant shall establish additional insured status for the City, its officers, officials, employees, agents and volunteers by using Insurance Service Office (ISO) Form CG 20 10 11 85 or both CG 20 10 10 01 and CG 20 37 10 01 or by an executed manuscript company endorsement providing additional insured status as broad as that contained in ISO Form CG 20 10 11 85.

9. Conflict of Interest and Non-Solicitation.

(a) Prior to the City's execution of this Agreement, the Consultant shall complete a City of Fresno conflict of interest disclosure statement in the form as set forth in **Exhibit C**. During the term of this Agreement, the Consultant shall have the obligation and duty to immediately notify the City in writing of any change to the information provided by the Consultant in such statement.

(b) The Consultant shall comply, and require its subcontractors to comply, with all applicable (i) professional canons and requirements governing avoidance of impermissible client conflicts; and (ii) federal, state and local conflict of interest laws and regulations including, without limitation, California Government Code Section 1090 et. seq., the California Political Reform Act (California Government Code Section 87100 et. seq.), the regulations of the Fair Political Practices Commission concerning disclosure and disqualification (2 California Code of Regulations Section 18700 et. seq.) and Section 4-112 of the Fresno Municipal Code (Ineligibility to Compete). At any time, upon written request of the City, the Consultant shall provide a written opinion of its legal counsel and that of any subcontractor that, after a due diligent inquiry, the Consultant and the respective subcontractor(s) are in full compliance with all laws and regulations. The Consultant shall take, and require its subcontractors to take, reasonable steps to avoid any appearance of a conflict of interest. Upon discovery of any facts giving rise to the appearance of a conflict of interest, the Consultant shall immediately notify the City of these facts in writing.

(c) In performing the work or services to be provided hereunder, the Consultant shall not employ or retain the services of any person while such person either is employed by the City or is a member of any City council, commission, board,

committee, or similar City body. This requirement may be waived in writing by the City Manager, if no actual or potential conflict is involved.

(d) The Consultant represents and warrants that it has not paid or agreed to pay any compensation, contingent or otherwise, direct or indirect, to solicit or procure this Agreement or any rights/benefits hereunder.

(e) Neither the Consultant, nor any of the Consultant's subcontractors performing any services on this Project, shall bid for, assist anyone in the preparation of a bid for, or perform any services pursuant to, any other contract in connection with this Project. The Consultant and any of its subcontractors shall have no interest, direct or indirect, in any other contract with a third party in connection with this Project unless such interest is in accordance with all applicable law and fully disclosed to and approved by the City Manager, in advance and in writing.

(f) If the Consultant should subcontract all or any portion of the work to be performed or services to be provided under this Agreement, the Consultant shall include the provisions of this Section 9 in each subcontract and require its subcontractors to comply therewith.

(g) This Section 9 shall survive expiration or termination of this Agreement.

10. Recycling Program. In the event the Consultant maintains an office or operates a facility(ies), or is required herein to maintain or operate same, within the incorporated limits of the City of Fresno, the Consultant at its sole cost and expense shall:

(a) Immediately establish and maintain a viable and ongoing recycling program, approved by the City's Solid Waste Management Division, for each office and facility. Literature describing the City recycling programs is available from the City's Solid Waste Management Division and by calling the City of Fresno Recycling Hotline at (559) 621-1111.

(b) Immediately contact the City's Solid Waste Management Division at (559) 621-1452 and schedule a free waste audit, and cooperate with such Division in their conduct of the audit for each office and facility.

(c) Cooperate with and demonstrate to the satisfaction of the City's Solid Waste Management Division the establishment of the recycling program in paragraph (i) above and the ongoing maintenance thereof.

11. General Terms.

(a) Except as otherwise provided by law, all notices expressly required of the City within the body of this Agreement, and not otherwise specifically provided for, shall be effective only if signed by the Director or designee.

(b) Records of the Consultant's expenses pertaining to the Project shall be kept on a generally recognized accounting basis and shall be available to the City or its authorized representatives upon request during regular business hours throughout the life of this Agreement and for a period of three years after final payment or, if longer, for any period required by law. In addition, all books, documents, papers, and records of the Consultant pertaining to the Project shall be available for the purpose of making audits, examinations, excerpts, and transcriptions for the same period of time. If any litigation,

claim, negotiations, audit or other action is commenced before the expiration of said time period, all records shall be retained and made available to the City until such action is resolved, or until the end of said time period whichever shall later occur. If the Consultant should subcontract all or any portion of the services to be performed under this Agreement, the Consultant shall cause each subcontractor to also comply with the requirements of this paragraph. This Section 11(b) shall survive expiration or termination of this Agreement.

(c) Prior to execution of this Agreement by the City, the Consultant shall have provided evidence to the City that the Consultant is licensed to perform the services called for by this Agreement (or that no license is required). If the Consultant should subcontract all or any portion of the work or services to be performed under this Agreement, the Consultant shall require each subcontractor to provide evidence to the City that subcontractor is licensed to perform the services called for by this Agreement (or that no license is required) before beginning work.

12. Nondiscrimination. To the extent required by controlling federal, state and local law, the Consultant shall not employ discriminatory practices in the provision of services, employment of personnel, or in any other respect on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. Subject to the foregoing and during the performance of this Agreement, the Consultant agrees as follows:

(a) The Consultant will comply with all applicable laws and regulations providing that no person shall, on the grounds of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity made possible by or resulting from this Agreement.

(b) The Consultant will not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. The Consultant shall ensure that applicants are employed, and the employees are treated during employment, without regard to their race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. Such requirement shall apply to the Consultant's employment practices including, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provision of this nondiscrimination clause.

(c) The Consultant will, in all solicitations or advertisements for employees placed by or on behalf of the Consultant in pursuit hereof, state that all qualified applicants will receive consideration for employment without regard to race,

religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era.

(d) The Consultant will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice advising such labor union or workers' representatives of the Consultant's commitment under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(e) If the Consultant should subcontract all or any portion of the services to be performed under this Agreement, the Consultant shall cause each subcontractor to also comply with the requirements of this Section 12.

13. Independent Contractor.

(a) In the furnishing of the services provided for herein, the Consultant is acting solely as an independent contractor. Neither the Consultant, nor any of its officers, agents or employees shall be deemed an officer, agent, employee, joint venturer, partner or associate of the City for any purpose. The City shall have no right to control or supervise or direct the manner or method by which the Consultant shall perform its work and functions. However, the City shall retain the right to administer this Agreement so as to verify that the Consultant is performing its obligations in accordance with the terms and conditions thereof.

(b) This Agreement does not evidence a partnership or joint venture between the Consultant and the City. The Consultant shall have no authority to bind the City absent the City's express written consent. Except to the extent otherwise provided in this Agreement, the Consultant shall bear its own costs and expenses in pursuit thereof.

(c) Because of its status as an independent contractor, the Consultant and its officers, agents and employees shall have absolutely no right to employment rights and benefits available to City employees. The Consultant shall be solely liable and responsible for all payroll and tax withholding and for providing to, or on behalf of, its employees all employee benefits including, without limitation, health, welfare and retirement benefits. In addition, together with its other obligations under this Agreement, the Consultant shall be solely responsible, indemnify, defend and save the City harmless from all matters relating to employment and tax withholding for and payment of the Consultant's employees, including, without limitation, (i) compliance with Social Security and unemployment insurance withholding, payment of workers' compensation benefits, and all other laws and regulations governing matters of employee withholding, taxes and payment; and (ii) any claim of right or interest in the City employment benefits, entitlements, programs and/or funds offered employees of the City whether arising by reason of any common law, de facto, leased, or co-employee rights or other theory. It is acknowledged that during the term of this Agreement, the Consultant may be providing services to others unrelated to the City or to this Agreement.

14. Notices. Any notice required or intended to be given to either party under the terms of this Agreement shall be in writing and shall be deemed to be duly given if delivered personally, transmitted by facsimile followed by telephone confirmation of receipt, or sent by United States registered or certified mail, with postage prepaid, return

receipt requested, addressed to the party to which notice is to be given at the party's address set forth on the signature page of this Agreement or at such other address as the parties may from time to time designate by written notice. Notices served by United States mail in the manner above described shall be deemed sufficiently served or given at the time of the mailing thereof.

15. Binding. Subject to Section 16, below, once this Agreement is signed by all parties, it shall be binding upon, and shall inure to the benefit of, all parties, and each parties' respective heirs, successors, assigns, transferees, agents, servants, employees, and representatives.

16. Assignment.

(a) This Agreement is personal to the Consultant and there shall be no assignment by the Consultant of its rights or obligations under this Agreement without the prior written approval of the City Manager or designee. Any attempted assignment by the Consultant, its successors or assigns, shall be null and void unless approved in writing by the City Manager or designee.

(b) The Consultant hereby agrees not to assign the payment of any monies due the Consultant from the City under the terms of this Agreement to any other individual(s), corporation(s) or entity(ies). The City retains the right to pay any and all monies due the Consultant directly to the Consultant.

17. Compliance With Law. In providing the services required under this Agreement, the Consultant shall at all times comply with all applicable laws of the United States, the State of California and the City, and with all applicable regulations promulgated by federal, state, regional, or local administrative and regulatory agencies, now in force and as they may be enacted, issued, or amended during the term of this Agreement.

18. Waiver. The waiver by either party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement. No provisions of this Agreement may be waived unless in writing and signed by all parties to this Agreement. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.

19. Governing Law and Venue. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California, excluding, however, any conflict of laws rule which would apply the law of another jurisdiction. Venue for purposes of the filing of any action regarding the enforcement or interpretation of this Agreement and any rights and duties hereunder shall be Fresno County, California.

20. Headings. The section headings in this Agreement are for convenience and reference only and shall not be construed or held in any way to explain, modify or add to the interpretation or meaning of the provisions of this Agreement.

21. Severability. The provisions of this Agreement are severable. The invalidity, or unenforceability of any one provision in this Agreement shall not affect the other provisions.

22. Interpretation. The parties acknowledge that this Agreement in its final form

is the result of the combined efforts of the parties and that, should any provision of this Agreement be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this Agreement in favor of or against either party, but rather by construing the terms in accordance with their generally accepted meaning.

23. Attorney's Fees. If either party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of this Agreement, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorney's fees and legal expenses.

24. Exhibits. Each exhibit and attachment referenced in this Agreement is, by the reference, incorporated into and made a part of this Agreement.

25. Precedence of Documents. In the event of any conflict between the body of this Agreement and any exhibit or attachment hereto, the terms and conditions of the body of this Agreement shall control and take precedence over the terms and conditions expressed within the exhibit or attachment. Furthermore, any terms or conditions contained within any exhibit or attachment hereto which purport to modify the allocation of risk between the parties, provided for within the body of this Agreement, shall be null and void.

26. Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

27. No Third Party Beneficiaries. The rights, interests, duties and obligations defined within this Agreement are intended for the specific parties hereto as identified in the preamble of this Agreement. Notwithstanding anything stated to the contrary in this Agreement, it is not intended that any rights or interests in this Agreement benefit or flow to the interest of any third parties.

28. Extent of Agreement. Each party acknowledges that they have read and fully understand the contents of this Agreement. This Agreement represents the entire and integrated agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be modified only by written instrument duly authorized and executed by both the City and the Consultant.

29. The City Manager, or designee, is hereby authorized and directed to execute and implement this Agreement. The previous sentence is not intended to delegate any authority to the City Manager to administer the Agreement, any delegation of authority must be expressly included in the Agreement.

[Signatures follow on the next page.]

IN WITNESS WHEREOF, the parties have executed this Agreement at Fresno, California, the day and year first above written.

CITY OF FRESNO,
a California municipal corporation

By: _____
Brock D. Buche, PE, PLS,
Interim Director of Public Utilities
Department of Public Utilities

ATTEST:
TODD STERMER, CMC
City Clerk

By: _____
Clerk Attesting
Deputy

No signature of City Attorney required.
Standard Document **#DPU-S Eng. CSA, Short Form T&M - Contingency (04-2022)** has been used without modification, as certified by the undersigned

DocuSigned by:
By: Charles Masters 5/9/2022
Charles Masters
Engineer II
Department of Public Utilities

DocuSigned by:
REVIEWED BY: Peter A. Maraccini 5/9/2022
Peter A. Maraccini, PE, PhD,
Supervising Professional Engineer
Department of Public Utilities

Addresses:
CITY:
City of Fresno
Attention: Charles Masters, Engineer II
Utilities, Planning & Engineering
2101 G Street, Building A
Fresno, CA 93706-1620
Phone: (559) 621-1630
Facsimile (559) 498-4126
E-mail: Charles.Masters@fresno.gov

Michael K. Nunley & Associates, Inc.,
a California corporation

By: Michael K. Nunley 5/9/2022

Name: Michael K. Nunley

Title: CEO/President
(If corporation or LLC., Board Chair, Pres. or Vice Pres.)

By: _____

Name: _____

Title: _____
(If corporation or LLC., CFO, Treasurer, Secretary or Assistant Secretary)

Any Applicable Professional License:
Number: _____
Name: _____
Date of Issuance: _____

CONSULTANT:
[Michael K. Nunley & Associates, Inc.]
Attention: Michael K. Nunley,
CEO/President
PO Box 1604
Arroyo Grande, CA 93421
Phone: (805) 904-6530
Facsimile (805) 904-6532
E-mail mnunley@mknassociates.us

Attachments:

1. Exhibit A - Scope of Services
2. Exhibit B - Insurance Requirements
3. Exhibit C - Conflict of Interest Disclosure Form

EXHIBIT A

SCOPE OF SERVICES

Consultant Service Agreement between City of Fresno (City) and Michael K. Nunley & Associates, Inc. (Consultant)

Design of Booster Pump Replacements at Pump Stations 89A, 133, and 150

TASK GROUP 1 – PROJECT MANAGEMENT AND BOOSTER PUMP SELECTION AND ACQUISITION TM (SCHEMATIC DESIGN PHASE)

TASK 1.1 - PROJECT KICKOFF, PROJECT MANAGEMENT AND QUALITY ASSURANCE/QUALITY CONTROL

Upon issuance of the Notice to Proceed for PS 89A, 133, and 150, the Consultant will schedule a kickoff meeting and meet with City staff to gain input regarding the City's schedules, water system operations, and existing facilities. Following the meeting, the Consultant will visit each well site. It is understood that that specific pump station sites may be changed prior to efforts starting at that location, subject to discretion of the City's Water Division.

The Consultant's project manager will coordinate Consultant and subconsultant activities and participate in meetings throughout the project. Consultant will arrange for attendees, prepare and distribute agendas, and conduct coordination meetings throughout the duration of the project.

Consultant will prepare monthly progress reports summarizing the key activities performed, upcoming work, schedule updates, and possible cost and schedule impacts (if any). Consultant will also develop and maintain an action-items/decisions made log throughout the duration of the project. The log will document action-items and decisions made throughout the project and track key information such as responsible party, due date, task completion date, etc.

In accordance with Consultant's Quality Management System, all project deliverables will be reviewed by qualified principal level reviewers to ensure Consultant work products meet the requirements of the executed scope of services and stipulated requirements of the City.

Deliverables

- Meeting Agendas and Minutes
- Monthly Progress Reports
- Action Items Log

TASK 1.2 – BOOSTER PUMP SELECTION ACQUISITION TECHNICAL MEMORANDUM (TM)

For each wellsite, Consultant will prepare a TM that will state the booster pump station design criteria and project constraints, present preliminary facility sizing and layout

information, and include budgetary costs. The report will present the following information:

- Evaluation of existing booster pumping facilities and other existing or planned infrastructure integrated with booster pumping operations (i.e., electrical/controls infrastructure, chemical systems, treatment vessels, air stripping units, deaeration/break tanks, etc.) and proposed options for modifications to each booster pump system that will improve the overall system effectiveness and efficiency and service the current and future demands of local pressure zone.
- Operational objectives for the booster pumping systems and operational parameters.
- Description of miscellaneous piping, valving, metering, and/or drainage control structures.
- Establishment of necessary clearances for operational and maintenance activities (i.e., equipment replacements, compliance sampling events, etc.).
- A description of electrical requirements including a process schematic including alarms and telemetry system for remote operation and data logging.
- Identification of site constraints related to the booster pump station and the most appropriate mitigation measures (including associated costs).
- Identification of building setbacks required by approved City of Fresno Development Department Conditional Use Permit issued for each wellsite
- Integrated aesthetics with the surrounding environment and minimized public visibility and noise impacts (i.e., ventilated sound enclosures, etc.)
- Impacts to the City distribution system and operations.
- Identification of overhead and underground utilities and restrictions (i.e., power, communication, water, and sewer utilities).
- Layout of the recommended booster pump station replacements on each well site.
- Engineer's estimate of probable construction, operations, and maintenance costs.
- Design and construction schedule, lead times for equipment and phasing options.
- Evaluation of associated and stakeholder permitting requirements.

Consultant will submit the draft TM for the City's review and comment. Consultant's project manager and project engineer will attend a draft TM review meeting with City staff to address comments and discuss the next steps in the project.

Consultant will incorporate comments received from the City into the Final TM and submit the final TM to the City.

Deliverables

- Draft Booster Pump Selection Acquisition TM (Five (5) loose-leaf hardcopies, electronic MS Word .DOC and Adobe .PDF files)
- Final Booster Pump Selection Acquisition TM (Three (3) bound hardcopies, electronic MS Word .DOC and Adobe .PDF files)

TASK 1.3 - TOPOGRAPHIC SURVEY

Consultant's surveying subconsultant, Yamabe and Horn, will provide a topographic survey for PS 89A, 133, and 150 (selection of final wellsite locations to be determined by City). The purpose of the survey will be to provide a base map to scale for the design of the on-site treatment systems. All survey coordinates shall be on NAD83 California Zone

4 state plane coordinate system. All survey elevations shall be based on the National Geodetic Vertical Datum of 1929 (NGVD29) using established City of Fresno benchmarks near the respective sites. Location of underground utilities between surface features (e.g., manholes) will rely on available record drawings from the City, FMFCD, FID, PG&E, AT&T, COMCAST, and other utility providers in the area.

Deliverables

- Topographic Surveys (electronic AutoCAD .DWG files)

TASK 1.4 - ENVIRONMENTAL PLANNING AND ENTITLEMENTS (OPTIONAL)

Consultant's environmental subconsultant, LSA, will provide complete CEQA services for the proposed project at PS 89A, 133, and 150 (selection of final wellsite locations to be determined by City). Based on the RFQ issued by the City for the proposed project, LSA believes that a Categorical Exemption would be the appropriate CEQA document for this project. LSA will prepare a Categorical Exemption consistent with CEQA Guidelines Section 15301.

Deliverables

- Final CEQA exemption documentation (Ten (10) hardcopies, electronic Adobe .PDF file)

TASK GROUP 2 – DESIGN DEVELOPMENT PHASE

TASK 2.1 - 90% PLANS, SPECIFICATIONS, AND COST ESTIMATE

Consultant will incorporate City draft and final TM review comments and develop the schematic design plans, specifications components, and estimates to the 90% design level. Consultant will prepare 90% construction plans; specifications components including bid proposal items and quantities, explanation of bid items, and technical specifications; and an engineer's cost opinion for the construction of booster pump stations at PS 89A, 133, and 150 (selection of final wellsite locations to be determined by City). Technical specifications will be developed in 2014 CSI format and plans will be prepared in AutoCAD. The City will review the contents of each submittal and provide comments for incorporation into subsequent submittals. The following design components are anticipated to be included in the plans and specifications for construction:

- Cover sheet, legends, notes
- Conditional Use Permit Site Plan, Landscape Plan, and Elevation Plan (Revision to currently approved Conditional Use Permit Plans to Incorporate Booster Pump Station Improvements. Additional site plan changes are excluded from this scope of services)
- Demolition plans
- Civil site improvement and grading plans
- Booster pump station foundations
- Process piping and valves
- Site electrical
- Pump control, monitoring, telemetry, and alarm systems

Design of any site improvements not directly related to the booster pump station (e.g. landscaping, lighting, structures) are excluded from this scope of services, but can be provided as additional work.

The City will assemble the bid specifications by incorporating the bid proposal items and quantities, explanation of bid items, and technical specifications into the City's standard front-end bidding documents.

Consultant will submit original signed and stamped 90% plans and structural calculations the City Building & Safety Department for plan check using the online FASTER system. The City will coordinate with Public Works' Construction Management Division for review and approval of the plans and specifications. Consultant will be responsible for coordinating with other agencies as may be required for review and approval (i.e., San Joaquin Valley Air Pollution Control District, etc.). The City will coordinate and pay for all permitting and plan check fees.

Deliverables

- 90% stamped and signed plans (electronic Adobe .PDF files)
- Stamped and signed structural calculations (electronic Adobe .PDF files)
- Bid proposal items and quantities, explanation of bid items (electronic MS Word .DOC files)
- 90% technical specifications (electronic MS Word .DOC files)
- Engineer's opinion of probable construction cost

TASK GROUP 3 – CONSTRUCTION DOCUMENT PHASE

TASK 3.1 - FINAL PLANS, SPECIFICATIONS, AND COST ESTIMATE

Consultant will incorporate review comments from City, Building & Safety, Construction Management, and develop the final plans, specifications components, and estimates. Consultant will complete the back check process to obtain Building & Safety Department approval.

Deliverables

- Final Building & Safety approved plans (electronic Adobe .PDF files)
- Final stamped and signed structural calculations (electronic Adobe .PDF)
- Final bid specifications (electronic MS Word .DOC and Adobe .PDF files)
- Final estimates

TASK GROUP 4 – BIDDING SUPPORT SERVICES

TASK 4.1 - BID PHASE SUPPORT

The City will coordinate with appropriate departments to advertise the plans and bid

specifications. Consultant will attend a pre-bid meeting and provide to the City written responses to bidder questions through the bid period. Consultant will prepare and provide conformed plans and specifications incorporating any changes resulting from the bid period.

Deliverables

- Addenda, RFI responses, and clarifications as needed
- Conformed plans (electronic AutoCAD .DWG. and Adobe .PDF files)
- Conformed specifications (electronic MS Word .DOC and Adobe .PDF files)

TASK GROUP 5 – CONSTRUCTION PHASE SERVICES

TASK 5.1 - ENGINEERING SERVICES DURING CONSTRUCTION

Consultant proposes to perform the following tasks for the PS 89A, 133, 150 (selection of final wellsite locations to be determined by City) project during project construction:

- Attend one preconstruction meeting.
- Review shop drawings and submittals from the contractors in accordance with the construction contract documents (this scope of work includes up to 12 hours of engineering time for reviewing submittals).
- Respond to requests for information from the contractor (this scope of work includes up to 8 hours of engineering time for reviewing RFIs).
- Make up to three visits to the construction site to determine, in general, if the work is proceeding in accordance with the construction contract documents and notify the City accordingly. The construction contractor will be held entirely responsible for maintaining on-site safety during all phases of the work. Consultant will coordinate with the City's on-site field representative.
- Site walk-through with Construction Management Inspector to develop and provide Engineer's Punchlist for correction and/or completion.
- Conduct as-graded survey to verify surface drainage as required and prepare as-graded survey plan.
- Prepare and submit as-built drawings based on Contractor field record drawings.
- Deliverables
- As-graded plan (electronic AutoCAD .DWG. and Adobe .PDF files)
- As-built plans (electronic AutoCAD .DWG. and Adobe .PDF files)
- Corrective punchlist

TASK 5.2 – STARTUP AND TESTING SUPPORT

Consultant will serve as the start-up and commissioning liaison coordinating with the City and Contractor to develop and implement start-up, commissioning, and operations plans for the PS 89A, 133, and 150 Booster Pump Stations. Consultant will coordinate with and provide start-up and commissioning observation services to assist the City with the monitoring and acceptance of the operational testing of various components of the booster pump stations.

Consultant will be on-site during the system start-up and testing and prepare a punchlist based on unfinished work observed.

Deliverables

- Punchlist
- Operations plan (electronic Adobe .PDF files)

ADDITIONAL SERVICES

While not included in our initial Scope of Services, Consultant can perform the following additional services if requested by the City and following an amendment to the agreement for professional services.

- Utility potholing
- Value engineering studies
- Assistance with pre-purchasing equipment, including preparation of separate bid packages
- Design of site improvements not directly related to the booster pump station improvements (i.e. landscaping, lighting, structures)
- Boundary survey

At any point during the Project, the City may decide to cease the Design of a Booster Pump Replacement at one or more of the designated Pump Stations and direct the Consultant to work at an entirely new Pump Station. The scope of work at the new Pump Station would be identical to those services listed for Pump Stations 89A, 133, and 150. The Consultant will be remunerated for any services rendered for work previously completed prior to the City's direction to cease the design.

SCHEDULE OF FEES

ENGINEERS AND TECHNICAL SUPPORT STAFF

Engineering Technician	\$65/HR
Administrative Assistant	\$85/HR
CAD Technician I	\$115/HR
CAD Design Technician II	\$140/HR
Senior Designer	\$150/HR
Assistant Engineer I	\$125/HR
Assistant Engineer II	\$145/HR
GIS Specialist	\$150/HR
Planner	\$170/HR
Senior Planner	\$190/HR
Project Engineer I/ Senior Scientist	\$170/HR
Project Engineer II	\$180/HR
Senior Project Engineer I	\$190/HR
Senior Project Engineer II	\$195/HR
Project Manager	\$200/HR
Principal Engineer	\$205/HR
Project Director	\$235/HR

CONSTRUCTION MANAGEMENT SERVICES

Construction Inspector	\$162/HR
Assistant Resident Engineer	\$169/HR
Resident Engineer	\$184/HR
Construction Inspector	\$197/HR
Construction Manager	\$201/HR
Principal Construction Manager	\$236/HR

DIRECT PROJECT EXPENSES

Outside Reproduction	Cost + 10%
Subcontracted or Subconsultant Services	Cost + 10%
Travel & Subsistence (other than mileage)	Cost
Auto Mileage	Current IRS Rate

EXHIBIT B

INSURANCE REQUIREMENTS

Consultant Service Agreement between City of Fresno (City) and Michael K. Nunley & Associates, Inc. (Consultant)

Design of Booster Pump Replacements at Pump Stations 89A, 133, and 150

MINIMUM SCOPE OF INSURANCE

Coverage shall be at least as broad as:

1. The most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01, providing liability coverage arising out of your business operations. The Commercial General Liability policy shall be written on an occurrence form and shall provide coverage for “bodily injury,” “property damage” and “personal and advertising injury” with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, and contractual liability (including, without limitation, indemnity obligations under the Agreement) with limits of liability not less than those set forth under “Minimum Limits of Insurance.”
2. The most current version of ISO *Commercial Auto Coverage Form CA 00 01, providing liability coverage arising out of the ownership, maintenance or use of automobiles in the course of your business operations. The Automobile Policy shall be written on an occurrence form and shall provide coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1- Any Auto).
3. Workers’ Compensation insurance as required by the State of California and Employer’s Liability Insurance.
4. Professional Liability (Errors and Omissions) insurance appropriate to the Consultant’s profession.

MINIMUM LIMITS OF INSURANCE

The Consultant, or any party the Consultant subcontracts with, shall maintain limits of liability of not less than those set forth below. However, insurance limits available to the City, its officers, officials, employees, agents, and volunteers as additional insureds, shall be the greater of the minimum limits specified herein or the full limit of any insurance proceeds available to the named insured:

1. **COMMERCIAL GENERAL LIABILITY:**
 - (i) \$1,000,000 per occurrence for bodily injury and property damage;
 - (ii) \$1,000,000 per occurrence for personal and advertising injury;
 - (iii) \$2,000,000 aggregate for products and completed operations; and,
 - (iv) \$2,000,000 general aggregate applying separately to the work performed under the Agreement.

2. **COMMERCIAL AUTOMOBILE LIABILITY:**
\$1,000,000 per accident for bodily injury and property damage.
3. **WORKERS' COMPENSATION INSURANCE** as required by the State of California with statutory limits.
4. **EMPLOYER'S LIABILITY:**
 - (i) \$1,000,000 each accident for bodily injury;
 - (ii) \$1,000,000 disease each employee; and,
 - (iii) \$1,000,000 disease policy limit.
5. **PROFESSIONAL LIABILITY** (Errors and Omissions):
 - (i) \$1,000,000 per claim/occurrence; and,
 - (ii) \$2,000,000 policy aggregate.

UMBRELLA OR EXCESS INSURANCE

In the event the Consultant purchases an Umbrella or Excess insurance policy(ies) to meet the "Minimum Limits of Insurance," this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies). In addition, such Umbrella or Excess insurance policy(ies) shall also apply on a primary and non-contributory basis for the benefit of the City, its officers, officials, employees, agents, and volunteers.

DEDUCTIBLES AND SELF-INSURED RETENTIONS

The Consultant shall be responsible for payment of any deductibles contained in any insurance policy(ies) required herein and the Consultant shall also be responsible for payment of any self-insured retentions. Any deductibles or self-insured retentions must be declared to on the Certificate of Insurance, and approved by, the City's Risk Manager or designee. At the option of the City's Risk Manager or designee, either:

- (i) The insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees, agents, and volunteers; or
- (ii) The Consultant shall provide a financial guarantee, satisfactory to the City's Risk Manager or designee, guaranteeing payment of losses and related investigations, claim administration and defense expenses. At no time shall the City be responsible for the payment of any deductibles or self-insured retentions.

OTHER INSURANCE PROVISIONS/ENDORSEMENTS

The General Liability and Automobile Liability insurance policies are to contain, or be endorsed to contain, the following provisions:

1. The City, its officers, officials, employees, agents, and volunteers are to be covered as additional insureds. The Consultant shall establish additional insured status for the City and for all ongoing and completed operations under the Commercial General Liability policy by use of ISO Forms or an executed manuscript insurance company endorsement providing additional insured status. The Commercial General endorsements must be as broad

as that contained in ISO Forms: GC 20 10 11 85 or both CG 20 10 & CG 20 37.

2. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees, agents, and volunteers. Any available insurance proceeds in excess of the specified minimum limits and coverage shall be available to the Additional Insured.
3. For any claims relating to this Agreement, the Consultant's insurance coverage shall be primary insurance with respect to the City, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, agents, and volunteers shall be excess of the Consultant's insurance and shall not contribute with it. The Consultant shall establish primary and non-contributory status by using ISO Form CG 20 01 04 13 or by an executed manuscript insurance company endorsement that provides primary and non-contributory status as broad as that contained in ISO Form CG 20 01 04 13.

The Workers' Compensation insurance policy is to contain, or be endorsed to contain, the following provision: the Consultant and its insurer shall waive any right of subrogation against the City, its officers, officials, employees, agents, and volunteers.

If the Professional Liability (Errors and Omissions) insurance policy is written on a claims-made form:

1. The retroactive date must be shown, and must be before the effective date of the Agreement or the commencement of work by the Consultant.
2. Insurance must be maintained and evidence of insurance must be provided for at least five years after completion of the Agreement work or termination of the Agreement, whichever occurs first, or, in the alternative, the policy shall be endorsed to provide not less than a five-year discovery period.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the effective date of the Agreement or the commencement of work by the Consultant, the Consultant must purchase "extended reporting" coverage for a minimum of five years completion of the Agreement work or termination of the Agreement, whichever occurs first.
4. A copy of the claims reporting requirements must be submitted to the City for review.
5. These requirements shall survive expiration or termination of the Agreement.

All policies of insurance required herein shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after thirty calendar days' written notice by certified mail, return receipt requested, has been given to the City. The Consultant is also responsible for providing written notice to the City under the same terms and conditions. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, the Consultant shall

furnish the City with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the work to be performed for the City, the Consultant shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than fifteen calendar days prior to the expiration date of the expiring policy.

Should any of the required policies provide that the defense costs are paid within the Limits of Liability, thereby reducing the available limits by any defense costs, then the requirement for the Limits of Liability of these policies will be twice the above stated limits.

The fact that insurance is obtained by the Consultant shall not be deemed to release or diminish the liability of the Consultant, including, without limitation, liability under the indemnity provisions of this Agreement. The policy limits do not act as a limitation upon the amount of indemnification to be provided by the Consultant. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of the Consultant, its principals, officers, agents, employees, persons under the supervision of the Consultant, vendors, suppliers, invitees, consultants, sub-consultants, subcontractors, or anyone employed directly or indirectly by any of them.

SUBCONTRACTORS - If the Consultant subcontracts any or all of the services to be performed under this Agreement, the Consultant shall require, at the discretion of the City's Risk Manager or designee, subcontractor(s) to enter into a separate Side Agreement with the City to provide required indemnification and insurance protection. Any required Side Agreement(s) and associated insurance documents for the subcontractor must be reviewed and preapproved by the City Risk Manager or designee. If no Side Agreement is required, the Consultant will be solely responsible for ensuring that its subcontractors maintain insurance coverage at levels no less than those required by applicable law and is customary in the relevant industry.

VERIFICATION OF COVERAGE

The Consultant shall furnish the City with all certificate(s) and **applicable endorsements** effecting coverage required hereunder. All certificates and **applicable endorsements** are to be received and approved by the City's Risk Manager or its designee prior to the City's execution of the Agreement and before work commences. All non-ISO endorsements amending policy coverage shall be executed by a licensed and authorized agent or broker. Upon request of the City, the Consultant shall immediately furnish the City with a complete copy of any insurance policy required under this Agreement, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement.

**EXHIBIT C
DISCLOSURE OF CONFLICT OF INTEREST**


Design of Booster Pump Replacements at Pump Stations 89A, 133, and 150

		YES*	NO
1	Are you currently in litigation with the City of Fresno or any of its agents?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
2	Do you represent any firm, organization, or person who is in litigation with the City of Fresno?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
3	Do you currently represent or perform work for any clients who do business with the City of Fresno?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
4	Are you or any of your principals, managers, or professionals, owners or investors in a business which does business with the City of Fresno, or in a business which is in litigation with the City of Fresno?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
5	Are you or any of your principals, managers, or professionals, related by blood or marriage to any City of Fresno employee who has any significant role in the subject matter of this service?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
6	Do you or any of your subcontractors have, or expect to have, any interest, direct or indirect, in any other contract in connection with this Project?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
* If the answer to any question is yes, please explain in full below.			

Explanation: _____

N/A

Additional page(s) attached.

DocuSigned by:

AA31DD9079FB4D7...

Signature

5/9/2022

Date

Michael K. Nunley

(Name)

Michael K. Nunley & Associates, Inc.

(Company)

PO Box 1604

(Address)

Arroyo Grande, CA 93421

(City, State Zip)