

## **SECOND AMENDMENT TO AGREEMENT**

THIS SECOND AMENDMENT TO AGREEMENT ("Amendment") made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 2014, amends the Agreement entered into between the CITY OF FRESNO, a municipal corporation, ("CITY"), and CAROLLO ENGINEERS, INC., a Delaware corporation ("CONSULTANT").

### **RECITALS**

WHEREAS, CITY and CONSULTANT entered into a professional services Agreement, dated June 24, 2013 (Agreement) for the design of plans, generation of construction contract documents, and construction support services for the 80 million gallon per day Southeast Surface Water Treatment Facility (SESWTF) which was first amended July 21, 2014 (First Amendment). The First Amendment utilized \$225,000 of the original project contingencies for additional services related to the design of the facility electrical sub-station resulting in an adjusted CONSULTANT fee of \$9,374,600 and a remaining contingency of \$616,400;

WHEREAS, CONSULTANT has completed, and CITY has accepted, Part One, Schematic Design Phase (30 percent design submittal);

WHEREAS, CONSULTANT has made significant progress toward completion of Part Two, Design Development Phase (60 percent design submittal);

WHEREAS, CITY directed CONSULTANT to implement cost saving measures for the treatment facility design that materially and significantly changed 30 percent design submittal, and also CONSULTANT's level of effort and progression toward completion on 60 percent design submittal;

WHEREAS, this Amendment consists of design and scope changes for services related to the SESWTF;

WHEREAS, field investigations have identified significant challenges related to the use of irrigation canals for raw water conveyance;

WHEREAS, CITY desires CONSULTANT provide additional professional engineering services for the design of plans and generation of construction contract documents for a source water pipeline from the Fresno Irrigation District diversion off the Kings River to the treatment facility;

WHEREAS, Part Five of CONSULTANT's services for facility design have been deferred and defunded until such time as project construction funding becomes available;

WHEREAS, the parties have negotiated an increase in CONSULTANT's compensation within the approved Project budget to perform the work for Parts



One through Four under the Agreement, for both the Surface Water Treatment Facility and Raw Water Diversion and Conveyance Pipeline;

WHEREAS, CONSULTANT is requesting an additional 189 calendar day extension for a total of 707 calendar days to complete any and all original and amended Part One, Part Two, and Part Three, design components for the Treatment Portion of the Project; and

WHEREAS, additionally the parties have negotiated a no cost change in scope to delete development of a basis of design for an administration and corporation yard while adding a scope of work to provide value engineering support services;

WHEREAS, CITY now desires to amend the CONSULTANT's scope of work to account for changes in the above stated recitals; and

WHEREAS, with entry into this Amendment, CONSULTANT agrees CONSULTANT has no claim, demands or disputes against CITY.

### **AGREEMENT**

NOW, THEREFORE, in consideration of the above recitals, which recitals are contractual in nature, the mutual promises herein conditioned, and for other good and valuable consideration hereby acknowledge, the parties agree that the aforesaid Agreement be amended as follows:

1. Section 1 of the Agreement, first paragraph, is amended in its entirety to read as follows:

Scope of Services and Completion Schedule. CONSULTANT shall perform the services described herein and in Exhibit A, Exhibit A-1, **Exhibit A-2T**, and **Exhibit A-2P** to complete the Project more fully described in Exhibit A, Exhibit A-1, **Exhibit A-2T**, and **Exhibit A-2P**, and this shall include all work incidental to, or necessary to perform, such services even though not specifically described in Exhibit A, Exhibit A-1, **Exhibit A-2T**, and **Exhibit A-2P**. For the purposes of defining the scope of services for the projects covered by the Agreement: Exhibits A, A-1 and A-2T are specific to the Southeast Surface Water Treatment Facility project (Treatment Portion); Exhibit A-2P is specific to the Raw Water Diversion and Conveyance Pipeline project (Pipeline Portion). The combined portions hereinafter are referred to as the "Project". The services of CONSULTANT shall consist of five Parts as described below. A separate Notice to Proceed will be issued for each of the aforementioned Parts. By entry into this Agreement and upon CITY's issuance of a written "Notice to Proceed", CITY contracts for the services in Part One. CONSULTANT shall not perform any other Part of the Agreement, and this Agreement shall not be a contract for any other Part, until further performance is authorized by CITY's issuance of a written



"Notice to Proceed". It shall, however, remain CONSULTANT's offer to perform all remaining parts described herein. In the event CONSULTANT performs services without CITY's prior written authorization, CONSULTANT will not be entitled to compensation for such services.

2. Subsection (a)(1) of Section 1 Scope of Services and Completion Schedule is amended in its entirety to read as follows:

CONSULTANT shall review the description of the Project set forth in Exhibit A, Exhibit A-1, **Exhibit A-2T**, and **Exhibit A-2P** and consult with designated representatives of CITY to ascertain the requirements of the Project.

3. Subsection (a)(9) of Section 1 Scope of Services and Completion Schedule is amended in its entirety as follows:

Services shall be undertaken and completed in a sequence assuring expeditious completion. All Part One services for the Treatment Portion of the Project shall be rendered and deliverables submitted within 314 calendar days from the issuance of a Notice to Proceed for this Part, unless an extension in time is approved in writing by the Director. All Part One services for the Pipeline Portion of the Project shall be rendered and deliverables submitted within 177 calendar days from the issuance of a Notice to Proceed for this Part, unless an extension in time is approved in writing by the Director. Re-submittals, as necessary to obtain the acceptance of the CITY, shall be submitted to the CITY within 30 calendar days from receipt of CITY'S comments unless an extension of time is approved in writing by the Director.

4. Subsection (b)(5) of Section 1 Scope of Services and Completion Schedule is amended in its entirety as follows:

Services shall be undertaken and completed in a sequence assuring expeditious completion. All Part Two services for the Treatment Portion of the Project shall be rendered and deliverables submitted within 253 calendar days from the issuance of a Notice to proceed for this Part unless an extension in time is approved in writing by the Director. All Part Two services for the Pipeline Portion of the Project shall be rendered and deliverables submitted within 133 calendar days from the issuance of a Notice to proceed for this Part unless an extension in time is approved in writing by the Director. Re-submittals, as necessary to obtain the acceptance of the CITY, shall be submitted to the CITY within 30 calendar days from receipt of CITY'S comments, unless an extension of time is approved in writing by the Director.

5. Subsection (c)(8) of Section 1 Scope of Services and Completion Schedule is amended in its entirety as follows:



Services shall be undertaken and completed in a sequence assuring expeditious completion. All Part Three services for the Treatment Portion of the Project shall be rendered and deliverables submitted within 140 calendar days from the issuance of a Notice to Proceed for this Part, unless an extension in time is approved in writing by the Director. All Part Three services for the Pipeline Portion of the Project shall be rendered and deliverables submitted within 110 calendar days from the issuance of a Notice to Proceed for this Part, unless an extension in time is approved in writing by the Director. Re-submittals, as necessary to obtain the acceptance of the CITY shall be submitted to the CITY within 30 calendar days from receipt of CITY'S comments, unless an extension of time is approved in writing by the Director.

6. Subsection (e) of Section 1 Scope of Services and Completion Schedule is hereby deferred and defunded until such time as funding is again made available to complete this work.

7. Subsection (a) of Section 3 Compensation of the Agreement is amended in its entirety to read as follows:

CONSULTANT'S sole compensation for satisfactory performance of all services required or rendered for the Project pursuant to this Amendment shall be a total fee of \$9,427,467 and a total "not-to-exceed" contingency amount of \$563,533 for any additional work rendered pursuant to Subsection (d) below and authorized in writing by the Director. Such fees include all expenses incurred by CONSULTANT in performance of such services. The total Project and contingency cost pursuant to this Amendment is \$9,991,000, and is comprised of the Treatment Portion and Pipeline Portion costs and associated contingencies as are more fully described in **Exhibit B**.

8. Subsection (c) of Section 3 Compensation of the Agreement is amended in its entirety to read as follows:

CONSULTANT'S sole compensation for satisfactory performance of all services required or rendered pursuant to Section 1 of this Amendment for the Project shall be allocated to the remaining Parts of CONSULTANT'S performance as shown in **Exhibit B**.

9. Exhibit A of the Agreement is amended to delete Subtask 1.B.10 Administration Building and Corporation Yard Basis of Design in its entirety.

10. Work related to the Agreement and this Amendment shall be undertaken and completed in such sequence as to assure expeditious completion, but in any event, work shall be completed on or before the expiration of the respective limits as set forth in the Agreement as amended herein.

11. Except as otherwise provided herein, the Agreement and First Amendment entered into by CITY and CONSULTANT on June 24, 2013, and July 21, 2014, respectively, remain in full force and effect.

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

CITY OF FRESNO,  
a municipal corporation

By: \_\_\_\_\_  
Thomas C. Esqueda, PE, Director  
Department of Public Utilities

ATTEST:

YVONNE SPENCE, CMC  
City Clerk

By: \_\_\_\_\_  
Deputy Date

APPROVED AS TO FORM:  
DOUGLAS T. SLOAN  
City Attorney

By: BD \_\_\_\_\_  
Brandon M. Collet Date  
Deputy

CAROLLO ENGINEERS, INC.,  
a Delaware corporation

By: Ken Wilkin  
Name: Ken Wilkin  
Title: Sr. Vice President  
(if corporation or LLC, Board  
Chair, Pres. Or Vice Pres.)

By: Alewsa  
Name: ASH WASON  
Title: Treasurer  
(if corporation or LLC, Treasurer,  
Secretary or Assistant Secretary)