

## SECOND AMENDMENT TO AGREEMENT

THIS SECOND AMENDMENT TO AGREEMENT ("Amendment") made and entered into effective the \_\_\_ day of \_\_\_\_\_, 2014 ("Effective Date") amends the Agreement heretofore entered into between the CITY OF FRESNO, a California municipal corporation ("CITY"), and LIVE OAK ASSOCIATES, a California corporation ("CONSULTANT").

### RECITALS

WHEREAS, CITY and CONSULTANT entered into an Agreement, dated April 11, 2013 to provide professional services for the environmental investigative studies services for the Raw Water Pipeline Project to CITY'S Northeast Surface Water Treatment Facility ("Project");

WHEREAS, CITY and CONSULTANT entered into the first amendment for \$4,400, dated January 23, 2014 increasing the total fee from \$45,500 to \$49,900;

WHEREAS, the coordination with the permitting agencies for the Project has been significantly more effort than anticipated, and the resulting permitting requirements from permitting agencies will require additional services from the CONSULTANT. CITY directed CONSULTANT to continue preparation of permits and coordinating with permitting agencies including the United States Fish & Wildlife ("USFW") and California Department of Fish & Wildlife ("CDFW");

WHEREAS, the in-lieu fee can only be used as mitigation for project impacts to waters of the United States and it cannot be used as mitigation for loss of aquatic habitat for the California tiger salamander ("CTS") or the vernal pool fairy shrimp;

WHEREAS, in discussions with CDFW, we understand they will require some compensatory mitigation for temporary impacts to upland habitat potentially used by CTS;

WHEREAS, mitigation lands to be preserved under conservation easement must be managed in ways appropriate for the perpetuation of the resources to be protected;

WHEREAS, at the time this scope of work was prepared, and it was not clear if the CITY or the land owner offering the land as mitigation would be responsible for the preparation of such a plan;

WHEREAS, the parties have negotiated an increase in compensation from \$49,900 to a total compensation not to exceed \$97,900 for completion of work by CONSULTANT under the Agreement as amended herein;

WHEREAS, CITY now desires to modify the order of the execution of contracted work and expand the scope of work by requiring additional services and to expand the completion date to June 30, 2015; and

WHEREAS, with entry into this Amendment, CONSULTANT agrees that CONSULTANT has no claim, demand, or dispute against CITY.

## AGREEMENT

NOW, THEREFORE, the parties agree that the Agreement be amended as follows:

The following is added to the Agreement:

### **Task 1.0 – Wetland Delineation**

#### **Subtask 1.5 - Field review of Wetland Types Impacted by Project**

CONSULTANT will visit the individual hydrologic features to be impacted for the purpose of determining which meet the habitat requirements of CTS breeding habitat. CONSULTANT will prepare a brief letter report illustrated with photos that identifies those hydrologic features that may serve as CTS breeding habitat. This report will be submitted to the CITY, CDFW, and USFW.

#### ***Deliverable:***

Letter report identifying hydrologic features with photos

#### ***Budget:***

\$7,500

### **Task 6.0 - Identification of Options for Compensatory Mitigation.**

CONSULTANT will take the lead in finding opportunities for compensatory mitigation for the loss of such habitat that for permitting purposes would satisfy CDFW and USFW. It is assumed that approximately 0.85 acre of compensatory wetland habitat must be created (as opposed to the preservation of existing habitat).

CONSULTANT will take the lead in finding existing upland habitat suitable for CTS that can be preserved under a conservation easement.

For both the creation and preservation of CTS and vernal pool fairy shrimp habitat, CONSULTANT will initiate a search for suitable mitigation lands in Fresno and Madera Counties. Currently, possible mitigation options worth pursuing would be: 1) the lands of Dr. Stephen Fogg located just south of that portion of the pipeline alignment located between the Big Dry Creek Diversion Channel and the Friant-Kern Canal, 2) the Becker property located immediately to the northwest of the Fogg property, 3) the Biglione family property located to the west of Auberry Road and south of Little Dry Creek, and 4) a potential mitigation bank in Madera County. CONSULTANT will also be prepared to pursue a maximum of two other options that may present themselves in the future.

CONSULTANT'S deliverable for this task is finding a suitable mitigation property that would satisfy the U.S. Army Corps of Engineers, the CDFW, and the USFW. The CITY would be responsible for negotiating a deal with the property owner and negotiating a deal with a land trust to hold a conservation easement. Both the deal with the landowner and the agreement with the land trust regarding the conservation easement are business and legal matters outside CONSULTANT'S field of expertise.

#### ***Deliverable:***

Letter summarizing results of investigation for suitable mitigation site. Letter will identify potential sites, provide landowners names, and summarize findings of field investigation for each site.

**Budget:**

\$17,000

**Task 7.0 - Preparation of Long-term Management Plan (optional)**

CONSULTANT may be required to prepare a management plan, collaborating with the CITY'S Project Team or the land owner (or both) on a long-term non-wasting endowment that would provide the funding for the monitoring and the management of the mitigation lands. This plan must be prepared in collaboration with the CDFW and USFW also, two agencies that must approve the plan and the endowment. Consultant will not begin this task unless authorized by the CITY in writing.

**Deliverable:**

Long-term management plan - draft and final.

**Budget:**

\$7,500

**Task 8.0 - Additional Revisions to the ITP Application, Biological Assessment, and Habitat Restoration Plan (optional)**

CONSULTANT will be prepared to make any additional modifications to these documents, should the resource agencies or the Project Team require additional modifications. CONSULTANT will not begin this task unless authorized by the CITY in writing.

**Deliverable:**

Revised ITP, BA, and habitat restoration plan.

**Budget:**

\$3,500

**Task 9.0 - Meetings, Phone Consultations, Memos, and Other Coordination.**

The four task categories above will likely require additional meetings, phone calls, the drafting of memos, etc. This task category covers those activities. Since it is unclear what level of effort is required for this task, it was assumed that 60 hours will be required.

**Budget:**

\$12,500

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

**CITY OF FRESNO,**  
a California municipal corporation

**LIVE OAK ASSOCIATES  
INCORPORATED,**  
a California corporation

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

By: David J. Hartesveldt  
Name: David J. Hartesveldt

ATTEST:  
YVONNE SPENCE, CMC  
City Clerk

Title: President  
[if corporation or LLC, Board  
Chair, Pres. or Vice Pres.]

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

By: \_\_\_\_\_  
Name: Rick Hopkins

APPROVED AS TO FORM:  
DOUGLAS T. SLOAN  
City Attorney

Title: Secretary  
[if corporation or LLC, CFO  
Treasurer, Secretary or Assistant  
Secretary]

By: Brandon M. Collet 12/1/14  
Date  
Deputy City Attorney