

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

THIS AGREEMENT is made and entered into effective the day of May, 2016, by and between the CITY OF FRESNO, a California municipal corporation (hereinafter referred to as "CITY"), and Live Oak Associates, Inc, a California Corporation (hereinafter referred to as "CONSULTANT").

RECITALS

WHEREAS, CITY desires to obtain professional biological monitoring services for Friant-Kern Canal Pipeline , hereinafter referred to as the "Project;" and

WHEREAS, CONSULTANT is engaged in the business of furnishing services as a ecological consulting firm and hereby represents that it desires to and is professionally and legally capable of performing the services called for by this Agreement; and

WHEREAS, 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 CITY by its Director of Public Utilities (hereinafter referred to as "Director") or his/her 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. CONSULTANT shall perform to the satisfaction of 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 May 30, 2017, subject to any earlier termination in accordance with this Agreement. The services of CONSULTANT as described in **Exhibit A** are to commence upon 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 three hundred sixty-five (365) consecutive calendar days from such authorization to proceed.

3. Compensation.

(a) 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 Three Hundred Eighty-Four Thousand, Nine Hundred Fifty-Six Dollars (384,956), paid on a time and materials basis in accordance with the schedule of fees contained in **Exhibit A**.

(b) Detailed statements shall be rendered monthly and will be payable in the normal course of CITY business. 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 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. 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 CITY to CONSULTANT upon the earlier of: (i) CONSULTANT'S filing for protection under the federal bankruptcy laws, or any bankruptcy petition or petition for receiver commenced by a third party against CONSULTANT; (ii) 7 calendar days prior written notice with or without cause by CITY to CONSULTANT; (iii) 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, CONSULTANT shall (i) immediately stop all work hereunder; (ii) immediately cause any and all of its subcontractors to cease work; and (iii) return to CITY any and all unearned payments and all properties and materials in the possession of CONSULTANT that are owned by CITY. Subject to the terms of this Agreement, CONSULTANT shall be paid compensation for services satisfactorily performed prior to the effective date of termination. 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 CONSULTANT to satisfactorily perform in accordance with the terms of this Agreement, CITY may withhold an amount that would otherwise be payable as an offset to, but not in excess of, CITY'S damages caused by such failure. In no event shall any payment by CITY pursuant to this Agreement constitute a waiver by CITY of any breach of this Agreement which may then exist on the part of CONSULTANT, nor shall such payment impair or prejudice any remedy available to CITY with respect to the breach.

(d) Upon any breach of this Agreement by CONSULTANT, 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 CITY improperly terminated this Agreement for default, such termination shall be deemed a termination for convenience.

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

(f) CONSULTANT shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of CONSULTANT and without its fault or negligence such as, acts of God or the public enemy, acts of CITY in its contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. 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 CONSULTANT pursuant to this Agreement shall not be made available to any individual or organization by CONSULTANT without the prior written approval of CITY. During the term of this Agreement, and thereafter, CONSULTANT shall not, without the prior written consent of 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 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 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 CONSULTANT pursuant to this Agreement are the property of CITY at the time of preparation and shall be turned over to CITY upon expiration or termination of the Agreement or default by CONSULTANT. CONSULTANT grants CITY a copyright license to use such drawings and writings. CONSULTANT shall not permit the reproduction or use thereof by any other person except as otherwise expressly provided herein. CITY may modify the design including any drawings or writings. Any use by 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 CONSULTANT will be at CITY'S sole risk and without liability or legal exposure to CONSULTANT. CONSULTANT may keep a copy of all drawings and specifications for its sole and exclusive use.

(c) If CONSULTANT should subcontract all or any portion of the services to be performed under this Agreement, 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 CONSULTANT represents to CITY that 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, CITY relies upon the skill of CONSULTANT and any subcontractors to do and perform such services in a skillful manner and CONSULTANT agrees to thus perform the services and require the same of any subcontractors. Therefore, any acceptance of such services by CITY shall not operate as a release of CONSULTANT or any subcontractors from said professional standards.

7. Indemnification. To the furthest extent allowed by law, CONSULTANT shall indemnify, hold harmless and defend 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 CONSULTANT, its principals, officers, employees, agents or volunteers in the performance of this Agreement.

If CONSULTANT should subcontract all or any portion of the services to be performed under this Agreement, CONSULTANT shall require each subcontractor to indemnify, hold harmless and defend 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, 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 CITY'S Risk Manager or his/her designee at any time and in his/her 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 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, 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 CONSULTANT shall be withheld until notice is received by 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 CITY. Any failure to maintain the required insurance shall be sufficient cause for CITY to terminate this Agreement. No action taken by CITY pursuant to this section shall in any way relieve CONSULTANT of its responsibilities under this Agreement. The phrase "fail to maintain any required insurance" shall include, without limitation, notification received by 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 CONSULTANT shall not be deemed to release or diminish the liability of CONSULTANT, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify 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 CONSULTANT. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of CONSULTANT, its principals, officers, agents, employees, persons under the supervision of CONSULTANT, vendors, suppliers, invitees, consultants, sub-consultants, subcontractors, or anyone employed directly or indirectly by any of them.

(d) If CONSULTANT should subcontract all or any portion of the services to be performed under this Agreement, 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 CONSULTANT and CITY prior to the commencement of any services by the subcontractor. CONSULTANT and any subcontractor/sub-consultant shall establish additional insured status for 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 CITY'S execution of this Agreement, 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, CONSULTANT shall have the obligation and duty to immediately notify CITY in writing of any change to the information provided by CONSULTANT in such statement.

(b) 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 CITY, CONSULTANT shall provide a written opinion of its legal counsel and that of any subcontractor that, after a due diligent inquiry, CONSULTANT and the respective subcontractor(s) are in full compliance with all laws and regulations. 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, CONSULTANT shall immediately notify CITY of these facts in writing.

(c) In performing the work or services to be provided hereunder, CONSULTANT shall not employ or retain the services of any person while such person either is employed by 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) 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 CONSULTANT, nor any of 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. 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 CONSULTANT should subcontract all or any portion of the work to be performed or services to be provided under this Agreement, 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 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, CONSULTANT at its sole cost and expense shall:

- (i) Immediately establish and maintain a viable and ongoing recycling program, approved by CITY'S Solid Waste Management Division, for each office and facility. Literature describing CITY recycling programs is available from CITY'S Solid Waste Management Division and by calling City of Fresno Recycling Hotline at (559) 621-1111.
- (ii) Immediately contact 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.
- (iii) Cooperate with and demonstrate to the satisfaction of 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 CITY within the body of this Agreement, and not otherwise specifically provided for, shall be effective only if signed by the Director or his/her designee.

(b) Records of CONSULTANT'S expenses pertaining to the Project shall be kept on a generally recognized accounting basis and shall be available to 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 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 CITY until such action is resolved, or until the end of said time period whichever shall later occur. If CONSULTANT should subcontract all or any portion of the services to be performed under this Agreement, 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 CITY, CONSULTANT shall have provided evidence to CITY that CONSULTANT is licensed to perform the services called for by this Agreement (or that no license is required). If CONSULTANT should subcontract all or any portion of the work or services to be performed under this Agreement, CONSULTANT shall require each subcontractor to provide evidence to 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, 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, CONSULTANT agrees as follows:

(a) 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) 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. 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 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. CONSULTANT agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provision of this nondiscrimination clause.

(c) CONSULTANT will, in all solicitations or advertisements for employees placed by or on behalf of 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) 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 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 CONSULTANT should subcontract all or any portion of the services to be performed under this Agreement, 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, CONSULTANT is acting solely as an independent contractor. Neither CONSULTANT, nor any of its officers, agents or employees shall be deemed an officer, agent, employee, joint venturer, partner or associate of CITY for any purpose. CITY shall have no right to control or supervise or direct the manner or method by which CONSULTANT shall perform its work and functions. However, CITY shall retain the right to administer this Agreement so as to verify that 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 CONSULTANT and CITY. CONSULTANT shall have no authority to bind CITY absent CITY'S express written consent. Except to the extent otherwise provided in this Agreement, CONSULTANT shall bear its own costs and expenses in pursuit thereof.

(c) Because of its status as an independent contractor, CONSULTANT and its officers, agents and employees shall have absolutely no right to employment rights and benefits available to CITY employees. 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, CONSULTANT shall be solely responsible, indemnify, defend and save CITY harmless from all matters relating to employment and tax withholding for and payment of 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 CITY employment benefits, entitlements, programs and/or funds offered employees of 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, CONSULTANT may be providing services to others unrelated to 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 CONSULTANT and there shall be no assignment by CONSULTANT of its rights or obligations under this Agreement without the prior written approval of the City Manager or his/her designee. Any attempted assignment by

CONSULTANT, its successors or assigns, shall be null and void unless approved in writing by the City Manager or his/her designee.

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

17. Compliance With Law. In providing the services required under this Agreement, CONSULTANT shall at all times comply with all applicable laws of the United States, the State of California and 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 CITY and CONSULTANT.

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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: _____
Thomas C. Esqueda,
Director
Department of Public Utilities

ATTEST:
YVONNE SPENCE, CMC
City Clerk

By: _____
Deputy

No signature of City Attorney required.
Standard Document #DPU-S 8.2 has been
used without modification, as certified by
the undersigned.

By: Michael Carbajal
Michael Carbajal
Division Manager
Department of Public Utilities

REVIEWED BY:
Michael Carbajal
Michael Carbajal, Division Manager
Department of Public Utilities

Addresses:
CITY:
City of Fresno
Attention: Michael Carbajal,
Division Manager
2101 G St, Building A
Fresno, CA 93706
Phone: (559) 621-1622
FAX: (559) 498-4126

Attachments:

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

Live Oak Associates, Inc.,
a California Corporation

By: Dave Hartesveldt

Name: : Dave Hartesveldt

Title: 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:
Live Oak Associates, Inc.
Attention: Austin Pearson,
Director of Ecological Operations
39930 Sierra Way, Suite B
Oakhurst, CA 93644
Phone: (559) 642-4880
FAX: (559) 642-4883

Exhibit A

SCOPE OF SERVICES

**Consultant Service Agreement between City of Fresno ("City")
and Live Oak Associates, Inc. ("Consultant")
Friant-Kern Canal Pipeline Biological Monitoring
PROJECT TITLE**

SCOPE OF WORK

As directed by the City, Live Oak Associates shall implement biological mitigation measures for the City of Fresno Friant-Kern Canal Raw Water Pipeline Project, per conditions of the Incidental Take Permit (ITP), Biological Opinion (BO), Mitigation and Monitoring Reporting Program (MMRP) dated May 29, 2012, and Streambed Alteration Agreement No. 1600-2012-0156-R4 (SAA). It should be noted, however, that this scope of work does not address any construction monitoring requirements of the Department of the Army (DA) Clean Water Act permit issued by the U.S. Army Corps of Engineers, because it had not been issued at the time this scope of work was prepared.

Discrete biological tasks required by the ITP, BO, MMRP, and SAA include the following:

Task 1.0 Designated Biologist Approvals (ITP 6.2; BO 2.0): LOA will submit to CDFW and USFWS the Qualifications of at least two biologists for approval as Designated Biologists. The biologists will be knowledgeable and experienced in the biology, natural history, collecting, and handling of California tiger salamander (CTS), the covered species. The approval request will be submitted in writing at least 30 days prior to the project starting covered activities. To accomplish this LOA will need at least 45 days' notice prior to starting covered activities.

LOA does not propose to be the Field Contact Representative required by MMRP BIO 1b, as it would require the biologist to be on site for the entire project, or the Designated Representative required by the ITP (6.1) and BO (1.0). It would likely be more cost effective for the project foreman, or other lead construction personnel that must be on site daily, regardless of the activity, to fill these roles.

Task 2.0 Education Program (ITP 6.4 and 6.5; BO 4.0 and 5.0; MMRP BIO-1b; and SAA 1.10): The designated biologist shall conduct an education program for all persons employed or otherwise working in the Project Area before performing either construction or O&M activities. The program shall consist of a presentation that includes a discussion of the biology and general behavior of the covered species, information about the distribution and habitat needs of the covered species, sensitivity of the covered species to human activities, their status pursuant to the state and federal Endangered Species Acts, including legal protection, recovery efforts, penalties for violations and project-specific protective measures described in the ITP, BO, and SAA. LOA will provide interpretation for non-English speaking workers as needed, and the same instruction shall be provided to any new workers before they are authorized to perform work in the Project Area. LOA will prepare and distribute a fact sheet handout containing this information

for workers to carry in the Project Area. Upon completion of the program, employees shall sign a form stating they attended the program and understand all protection measures.

The designated biologist will also maintain a construction-monitoring notebook on-Site throughout the construction phase of the Project. It will include a copy of the ITP, BO, and SAA and a list of signatures of all personnel who have successfully completed the education program. The construction-monitoring notebook will be kept on site and available for review at the Project Area upon request by CDFW. If there is no trailer on site to keep the notebook the designated biologist will keep it in his/her vehicle. For days when the designated biologist is not needed on site, a copy of the notebook will be provided to the construction foreman.

Because LOA will not know when new construction personnel will be on site, it will be the contractor's responsibility to let LOA know at least three days in advance of new construction employees arriving, to allow LOA time for scheduling. It is most efficient to have as many construction staff as possible at the initial training to minimize the number of required trainings. The estimate includes time to prepare the program and conduct five separate trainings, as needed. Any trainings that may be needed while the biologist is already onsite conducting compliance monitoring will be completed as part of Task 6.0 below. Live Oak will record one (or more) of the initial training sessions, for presentation to workers when the Biologist is unavailable.

Task 3.0 Pre-Construction Surveys: A number of pre-construction surveys are required as conditions of the project. Some of these surveys could overlap, resulting in an overall reduction in cost. How much overlap between the surveys can be accomplished will be somewhat dependent on schedule timing and weather conditions at that time. Where possible, the estimate has assumed overlap of the surveys. Any additional overlapping of surveys would be dependent on schedule timing and weather conditions at that time. Following is a detailed description of each pre-construction survey.

Task 3.1 CTS Surveys (ITP 8.1 and 8.2; BO 17.0 and 18.0; MMRP BIO-5, BIO-6 and BIO-14; SAA 2.3e). LOA will survey for CTS within suitable habitats of the project area (each of the two vernal pools which will be intercepted by the Project, and upland refugia within 1.3 miles of these and other potential breeding pools east of Auberry Road) no more than 14 days prior to starting the construction phase Covered Activities. These surveys will provide 100 percent visual coverage of the potential habitat in the Work Area and a 50-foot buffer zone around each Work Area, where accessible. If any life stages (adults, eggs, or larvae) of CTS are found, the Designated Biologist(s) will relocate them from the Work Area in accordance with the approved Salvage and Relocation Plan. The survey results will be summarized in a letter for submittal to CDFW prior to beginning Covered Activities within that part of the Project Area.

While conducting the survey, the designated biologist will flag all potentially suitable small mammal burrows within the survey area.

This effort includes three days for two biologists to complete this task. Depending on the number of burrows (there could be a couple of hundred or more gopher burrows that need to be flagged), the actual time for this task could be somewhat more or less than 3 days. If construction occurs between October 1 and May 31, the BO (17.0) requires a CTS survey, in addition to CTS surveys

that may have been completed outside of that time frame. This survey would likely be completed while conducting compliance monitoring. If compliance monitoring is not being conducted at that time, the CTS survey would be completed in addition to the fee estimate, at the agreed rate.

Task 3.2 San Joaquin kit fox survey (MMRP BIO-13, BIO-15, BIO-16, and SAA 2.3(d)):

This survey is to consist of a den survey within the entire project area (i.e. areas both east and west of Auberry road), to occur within 14-30 days prior to the onset of Covered Activities (consistent with 1999 kit fox guidelines). If kit foxes are found during preconstruction surveys, then the biologist would provide guidance regarding avoidance and minimization measures as described in the 2011 U.S. Fish and Wildlife Service (USFWS) kit fox guidelines. If a potentially suitable burrow is found then the burrow would need to be monitored for 3 additional days with a camera station and/or tracking plates to determine occupancy.

Task 3.3 Burrowing owl survey (MMRP BIO-15; SAA 2.3(g)): This survey is to consist of a 4 phased survey within the entire project area (i.e. areas both east and west of Auberry road), consistent with the 1993 Burrowing Owl Consortium Guidelines (BIO-15). The first day consists of inspecting each suitable burrow for signs of burrowing owls, followed by three days of monitoring to determine if owls are present. If burrowing owls are found nesting on site during the nesting season (Feb. 1-Aug. 31), then the nest burrows must be avoided with a minimum 250-foot buffer until the end of the nesting season, or until they are done nesting. If owls are found on site outside of the nesting season (Sept. 1-Jan. 31), then the owls can be passively relocated. The cost estimate below does not include passive relocation. We don't typically provide an estimate for this effort until we have an idea of how many burrowing owls must be relocated.

The initial survey will be conducted in conjunction with the kit fox survey (Task 3.2). The three follow-up surveys would be conducted in conjunction with the CTS surveys (Task 3.1), if possible.

The MMRP calls for burrowing owl surveys prior to the start of the breeding season (BIO-17), which is February 1 through August 31. The intent of this measure is to allow for relocation of owls prior to the start of the breeding season, in the event they are found on site. Because the breeding season has already started, it isn't possible to comply with this measure, unless construction doesn't start until 2017. However, BIO-15 will still ensure that burrowing owls are protected.

Task 3.4 Surveys for other nesting birds (MMRP BIO-15; SAA 2.4(c)): LOA will conduct pre-construction surveys for breeding birds, within the entire project area (i.e. areas both east and west of Auberry road), when construction is occurring between February 16 and August 31 within 7 days of vegetation removal. LOA will recommend nest avoidance buffers as needed, to be implemented until the end of the breeding season or until we've determined that the young have fledged. If possible, this survey would be conducted in conjunction with Task 3.3.

Task 3.5 Surveys for breeding Swainson's hawks (MMRP BIO-18; SAA 2.3(d)): Surveys for breeding Swainson's hawks will be conducted for the entire project area (i.e. areas both east and west of Auberry road), in the early spring prior to construction according to CDFW's protocol (2000). Surveys for nesting hawks are conducted within ½ mile radius of all components of the project within at least two of the five survey windows, spanning the spring and summer

months. Three surveys are conducted within each period for a total of six surveys. If found within ½ mile of the project area, the biologist would establish an avoidance buffer in consultation with CDFW. CDFW typically starts by requesting a 0.5 mile buffer, however there is room to negotiate the buffer distance down, depending on the circumstances (e.g. if there is already a fair amount of regular disturbance at or near the nest). This Task assumes that LOA is notified by March of the year construction is to begin.

Task 4.0 Small Mammal Burrow Excavation (ITP 8.3; BO 25.0): Within the Work Area, those small mammal burrows, identified during the CTS survey (Task 3.1) which exist within 0.25-mile of potential Covered Species breeding habitat and which cannot be fully avoided by at least 50 feet shall be fully excavated under direct supervision of the Designated Biologist(s). Any live CTS discovered during burrow excavation will be relocated in accordance with the approved Salvage and Relocation Plan. Excavation shall occur no more than 14 days after the completion of the CTS surveys described in Task 4.1 above. The estimate assumes that the number of burrows and soil conditions are such that two teams of three can complete the burrow excavation within 10 days.

This scope assumes the contractor will have a porta-potty on site 14 days prior to the start of construction to meet OSHA requirements for burrow excavation laborers.

Task 5.0 Covered Species Exclusion Fencing (ITP 8.4 and 8.5; BO 26.0 and 27.0; MMRP BIO-11): If Covered Activities are initiated, conducted during, or extend into the CTS breeding season (October 1 through May 31), the BO and ITP require exclusion fencing to be installed to prevent breeding adults from moving into the active Work Areas. The exclusion fencing design needs to be approved by CDFW and USFWS, and installed around the perimeter of the cleared Work Area (i.e areas where pre-activity surveys and burrow excavations have been completed). The fencing must avoid small mammal burrows to the maximum extent possible during the installation of the exclusion fencing, and when small mammal burrows within the construction easement cannot be avoided, they must be excavated as described in Task 4.0 above prior to commencing fence installation. The ITP also requires the designated biologist to be present during fence construction.

In the event exclusion fencing is needed; 1) time has been included in this task for obtaining CDFW approval of fencing design; 2) time is included in Task 4.0 for two days of burrow excavation along the fencing alignment, for two biologists; and 3) fence installation monitoring is covered under Task 6.0 below.

All Covered Activities shall cease when a 70 percent or greater chance of rainfall is predicted within 72 hours by the National Weather Service, unless the designated biologist surveys the construction footprint before construction begins each day.

Task 6.0 Compliance Monitoring (ITP 7.3; BO 16.0; MMRP BIO-7): The designated biologist(s) will be onsite daily to conduct compliance inspections during all initial disturbance activities within CTS and vernal pool fairy shrimp habitat, including exclusion fence installation if necessary. The designated biologist will prepare daily monitoring and reporting logs documenting: oversight activities and compliance inspections, observations of Covered Species and their sign, survey

results, any pertinent conclusions, worker awareness training conducted and all other required monitoring activities.

This estimate assumes the Designated Biologist would need to be onsite daily for up to eight months, while construction occurs from Auberry Road to the Friant-Kern Canal (including construction of the turnout at the canal). This estimate also assumes construction crews would be working regular 40 hour weeks. If, during construction, it is determined that on some days activities will not occur that trigger the need for the presence of the Designated Biologist, then the full compliance monitoring budget would not be used. If additional days are required, they would be charged at the established rate, in addition to the fee estimate.

Task 7.0 Project Activity Reporting

Task 7.1 SAA Reports and Submittals (SAA 3.2(a) and 4.2): The SAA requires that the pre-activity survey results for kit fox, burrowing owl, plants (these have already been completed), nesting birds, and Swainson's hawk be submitted to the CDFW at least five days prior to project initiation at the Big Dry Creek Diversion Channel. The SAA also requires a construction schedule be submitted prior to beginning work in the channel and a seed mixture for erosion control within the diversion channel be submitted to CDFW for approval, prior to application. Once work is complete within the diversion channel, a final project report is required to be submitted within 30 days of completion, summarizing the project, with before and after photos.

LOA will complete each of the reports required by CDFW, submit the construction schedule and submit the seed mix for approval, within the required time slots. To accomplish this, LOA will need a detailed construction schedule for the diversion channel crossing, and notification at least one month in advance of starting this work.

Task 7.2 Quarterly Compliance Reports (ITP 7.5): During construction the designated biologist will compile the daily written observation and inspection records described in Task 6.0 above into a Quarterly Compliance Report and submit it to CDFW along with a copy of the MMRP table with notes showing the current implementation status of each mitigation measure. Preparation of the Quarterly Compliance Report will be part of the biologists routine monitoring and reporting activities. Both hard and electronic copies will be submitted to CDFW's Regional Representative.

Task 7.3 Annual Status Report (ITP 7.6): During construction the designated biologist will provide CDFW an Annual Status Report (ASR) no later than January 31 of every year beginning with issuance of the ITP. Each ASR shall include, at a minimum: 1) a summary of all Quarterly Compliance Reports for that year; 2) a general description of the status of the Project and Covered Activities, including actual or projected completion dates, if known; 3) a copy of the table in the MMRP with notes showing the current implementation status of each mitigation measure; 4) an assessment of the effectiveness of each completed or partially completed mitigation measure in avoiding, minimizing and mitigating Project impacts; 5) all available information about Project-related incidental take of the Covered Species; and 6) information about

other Project impacts on the Covered Species. Preparation of the Annual Status Report will be part of the biologists routine monitoring and reporting activities.

Task 7.4 CTS Observations, Relocations and Notifications (ITP 7.7, 7.9, 8.7, 8.12, 8.17; BO 20.0, 22.0, 31.0, and 32.0; MMRP BIO-3 and BIO-4): All CTS captures, relocations, and observations by the Designated Biologist(s) are required to be documented with the following information: the date, time, and location of each occurrence using Global Positioning System (GPS) technology; the name of the party that actually identified the Covered Species; circumstances of the incident; the general condition and health of each individual; any diagnostic markings, sex, age (juvenile or adult); actions undertaken; and habitat description. While handling CTS, the fieldwork code of practice developed by the Declining Amphibian Populations Task Force Fieldwork Code of Practice will be followed at all times.

If a CTS is injured during the construction phase or the O&M period, the designated biologist shall immediately take it to the veterinary facility approved under the Salvage and Relocation Plan. LOA will notify CDFW and USFWS of the injury to the Covered Species immediately unless the incident occurs outside of normal business hours. In that event, agencies will be notified no later than the next business day. Notification to the agencies will be via telephone or e-mail, followed by a written incident report within two calendar days.

During both the construction phase and the O&M period, the Designated Biologist will submit all observations of the Covered Species to CDFW's California Natural Diversity Database (CNDDB) within 60 calendar days of the observation and the Designated Biologist will include copies of the submitted forms with the next Quarterly Compliance Report or ASR, whichever is submitted first after the observation. Notifications, submittals, and reporting will be part of the biologists routine monitoring and reporting activities.

This scope does not include any veterinary costs associated with the care or treatment of injured CTS. If veterinary care costs are incurred, those costs will be billed directly to the City. This scope includes time for up to three CTS sightings and associated reporting.

Task 7.5 Final Mitigation Report (ITP 7.8; SAA 4.2): The ITP requires the Final Mitigation Report, prepared by the designated biologist, be submitted to CDFW no later than 45 days after completion of all mitigation measures. LOA's designated biologist will prepare the final report for the City's review. The Designated Biologist shall submit a draft of the report to the City within 30 days after completion of all mitigation measures, allowing 15 days for review and comment prior to the final submittal to CDFW. The report will include, at a minimum: 1) a summary of all Quarterly Compliance Reports and all ASRs; 2) a copy of the table in the MMRP with notes showing when each of the mitigation measures was implemented; 3) all available information about Project-related incidental take of the Covered Species; 4) information about other Project impacts on the Covered Species, if any; 5) beginning and ending dates of Covered Activities; 6) an assessment of the effectiveness of this ITP's Conditions of Approval in minimizing and fully mitigating Project impacts of the taking on Covered Species; 7) recommendations on how mitigation measures might be changed to more effectively minimize take and mitigate the impacts of future projects on the Covered Species; and 8) any other pertinent information.

The daily monitoring and reporting logs, Quarterly Compliance Reports, and Annual Status Reports will be organized and prepared in such a way as to facilitate inclusion in the Final Mitigation Report, and minimize the effort needed to prepare it.

Task 8.0 Project Administration: The administration of projects such as this one can entail time in supervising and scheduling staff, ensuring that replacement staff is available should a staff member be ill or otherwise unable to perform his or her work on the project, coordinating schedules with the City and construction personnel, meeting attendance, accompanying agency personnel on-site should this be requested, invoicing and accounting, etc. Five days for a senior biologist has been provided for such activities should they be necessary for the completion of the tasks identified above.

Task 9.0 Streambed Restoration Plan (WQC #13): Live Oak shall prepare a plan for restoration of temporary impact areas within waters of the United States, for submittal to the Central Valley Water Board, prior to the initiation of any construction activities. This plan will be based on previous submittals and information compiled from earlier Project efforts associated with permitting.

Task 10.0 – Optional Supplemental Services: Throughout the project, Live Oak will provide as-needed services upon approval by the City. This scope of services includes up to \$36,000 (10% of the project budget for Tasks 1.0 through 9.0) to perform this task on a T&M basis, as determined and approved by the City.

Assumptions

This scope and budget assumes the following:

- LOA will be provided a detailed construction schedule and construction start date, at least 30 days prior to starting covered activities.
- LOA will be notified at least three days in advance of new construction employees arriving that require environmental training, and not more than three standalone trainings will be required. Trainings required/conducted during regular monitoring activities are covered by the construction monitoring budget.
- Construction will start as initially scheduled such that pre-activity surveys will not need to be redone due to missing the required timing schedule (Task 4.0).
- LOA will be notified at least one month prior to beginning work in the Big Dry Creek Diversion Channel, to allow time for pre-activity surveys required by the SAA.
- The number of burrows requiring flagging under Task 3.1 can be completed by two biologists in three days.
- Passive Relocation of Burrowing owls will not be required (Task 3.3).
- LOA is notified by March of the year construction is to begin, to allow for Swainson's hawk survey timing requirements (Task 3.5).
- The number of burrows and soil conditions are such that two teams of three can complete the burrow excavation within 10 days (Task 4.0).
- If exclusion fencing is needed, two days of burrow excavation for two biologists will be adequate to cover this task (Task 5.0).

- Biologists will need to be onsite daily for eight months to conduct construction monitoring (Task 6.0). This estimate assumes construction crews will be working regular 40 hour weeks.
- All preconstruction surveys and wildlife relocations required by the SAA, immediately prior to **impacting** the Big Dry Creek Diversion Channel (i.e. the area covered by the SAA), can be completed during regular compliance monitoring activities under Task 6.0.
- Project boundaries will be clearly staked or marked in the field, prior to initiating pre-activity surveys.
- Contractor will have porta-potty on site 14 days prior to the start of construction to meet OSHA requirements for burrow excavation laborers.
- LOA will assist the contractor in delineating CTS and vernal pool fairy shrimp habitat within the project area, however the contractor will be responsible for installing the fencing, stakes, flags, and/or rope as described in BO measure 11.0.
- Not more than three CTS incidents requiring reporting will occur.
- The City will reimburse all veterinary expenses in addition to the budget above.

SCHEDULE OF FEES

Live Oak Associates, Inc. Standard Current Fee Schedule

| | 2016 |
|--|-----------------|
| Principal and Senior Botanist/Wetland Scientist | \$215.00 |
| Director of Ecological Services Central Valley/Sierra | \$160.00 |
| Senior Project Manager/Staff Ecologist | \$130.00 |
| Project Manager/Plant Ecologist | \$130.00 |
| Senior Project Manager/Senior Ecologist Truckee | \$130.00 |
| Director of Cartography/GIS | \$130.00 |
| Project Manager/Staff Ecologist | \$130.00 |
| Support Staff | \$70.00 |

***Expert testimony is twice the hourly rate**

Exhibit B

INSURANCE REQUIREMENTS

**Consultant Service Agreement between City of Fresno ("CITY")
and Live Oak Associates, Inc ("CONSULTANT")
Friant-Kern Canal Pipeline Biological Monitoring
PROJECT TITLE**

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). If personal automobile coverage is used, the CITY, its officers, officials, employees, agents and volunteers are to be listed as additional insureds.
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 CONSULTANT'S profession. Architect's and engineer's coverage is to be endorsed to include contractual liability.

MINIMUM LIMITS OF INSURANCE

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 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;

OR*

PERSONAL AUTOMOBILE LIABILITY insurance with limits of liability not less than:

- (i) \$100,000 per person;
- (ii) \$300,000 per accident for bodily injury; and,
- (iii) \$50,000 per accident for 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 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

CONSULTANT shall be responsible for payment of any deductibles contained in any insurance policy(ies) required herein and CONSULTANT shall also be responsible for payment of any self-insured retentions. Any deductibles or self-insured retentions must be declared on the Certificate of Insurance, and approved by, the CITY'S Risk Manager or his/her designee. At the option of the CITY'S Risk Manager or his/her designee, either:

- (i) The insurer shall reduce or eliminate such deductibles or self-insured retentions as respects CITY, its officers, officials, employees, agents and volunteers; or

- (ii) (ii) CONSULTANT shall provide a financial guarantee, satisfactory to CITY'S Risk Manager or his/her designee, guaranteeing payment of losses and related investigations, claim administration and defense expenses. At no time shall 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. CITY, its officers, officials, employees, agents and volunteers are to be covered as additional insureds. CONSULTANT shall establish additional insured status for the City and for all ongoing and completed operations by use of 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 insurance company endorsement providing additional insured status as broad as that contained in ISO Form CG 20 10 11 85.
2. The coverage shall contain no special limitations on the scope of protection afforded to 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 related to this Agreement, 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 CONSULTANT'S insurance and shall not contribute with it. 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: CONSULTANT and its insurer shall waive any right of subrogation against 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 CONSULTANT.
2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) 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 (5) 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 CONSULTANT, CONSULTANT must purchase

"extended reporting" coverage for a minimum of five (5) years after 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 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 (30) calendar days written notice by certified mail, return receipt requested, has been given to CITY. 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, CONSULTANT shall furnish 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 CITY, CONSULTANT shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than fifteen (15) calendar days prior to the expiration date of the expiring policy.

VERIFICATION OF COVERAGE

CONSULTANT shall furnish 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 his/her designee prior to 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 CITY, CONSULTANT shall immediately furnish 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

Friant-Kern Canal Pipeline Biological Monitoring
PROJECT TITLE

| | | 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 checked="" type="checkbox"/> | <input 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: Live Oak Associates is currently working
for Provost & Protchard Consulting Group, as a biological
sub-consultant on a number of projects. As I understand
it, Provost & Pritchard does do business with the City of
Fresno.

☐ Additional page(s) attached.

Dave Hartesveldt
Signature

April 6, 2016

Date

Dave Hartesveldt

(name)

Live Oak Associates, Inc.

(company)

39930 Sierra Way, Suite B

(address)

Oakhurst, CA 93644

(city state zip)