

SPECIALIZED UTILITY SERVICES PROGRAM, INC.
PROFESSIONAL SERVICES AGREEMENT

This agreement is made and entered the _____ day of _____, 2024, by and between Specialized Utility Services Program, Inc., a California corporation and wholly-owned subsidiary of California Rural Water Association, with offices at 1234 North Market Boulevard, Sacramento, CA 95834, hereinafter referred to as “CONSULTANT”, and **City of Orland**, located at 815 Fourth Street, Orland, California, 95963, hereinafter referred to as “CLIENT.” CONSULTANT and CLIENT may be individually referred to herein as a “party” and jointly as the “parties.”

The parties do hereby mutually agree as follows:

1. Services.

On the terms and conditions hereinafter set forth, CLIENT retains CONSULTANT to perform technical water utility related and general engineering consulting services on an “On-Call” basis (the “Services”). The Services to be performed shall be described in individual specific scopes-of-work, hereinafter referred to as “Task Orders”, and are to be performed in accordance with agreed-upon schedules as set forth in the “Task Orders” issued by CLIENT to CONSULTANT. Each Task Order shall be construed as part of and be consistent with all other terms and conditions of this agreement.

2. Compensation for Services Performed.

An estimated budget for each Task Order shall be included in each Task Order form and agreed to by CLIENT and CONSULTANT prior to the commencement of work,

as set forth in the applicable Task Order. CLIENT shall pay CONSULTANT for performance of the services on a direct cost basis within the maximum budget of each Task Order. For purposes of this Section 2, "costs" shall include labor costs and other direct costs (including, but not limited to, reproduction, shipping, mileage, lodging, and reasonable per diem). Total Compensation shall be calculated as the total number of hours of service multiplied by the applicable hourly rate for the service rendered, plus the total reimbursable costs incurred during the applicable billing period.

3. Invoices and Payment.

Invoices shall be submitted to CLIENT on a monthly basis. CLIENT shall pay all undisputed invoice amounts within 30 days following receipt of an invoice. Payments shall be remitted to: 1234 North Market Boulevard, Sacramento, CA 95834.

4. Representations and Acknowledgments. Each party represents to the other that:

a. The execution, delivery, and performance of this Agreement is duly authorized by all necessary actions on the part of each obligated party and the agreement is binding on any such obligated party;

b. The execution, delivery, and performance of the duties under this Agreement by any such obligated party shall not, as of the date this Agreement is entered, violate any provision of law, nor will it conflict with or result in a breach of any of the terms or conditions of, or constitute a default under any indenture, mortgage, agreement, or other instrument to which the obligated party is also obligated, where such conflict, breach, or default would have a materially adverse effect on the business

operations or financial condition of such party or on its ability to perform its obligations under this Agreement;

c. To the best of each party's knowledge, as of the date this Agreement is entered, there are no actions, suits, or proceedings pending against or involving such party, and to the best of its knowledge, there are no actions, suits, or proceedings threatened against such party, which might have a materially adverse impact on the business operations or financial conditions of such party or on its ability to perform its obligations under this agreement; and

5. CLIENT'S Obligations.

a. CLIENT shall grant or cause to be granted to CONSULTANT access to all locations as necessary for performance of the Services under this Agreement;

b. CLIENT shall furnish or cause to be furnished to CONSULTANT all documents and information known to CLIENT that reasonably relate to the Services. CLIENT specifically represents to CONSULTANT that such information is accurate to the best of the CLIENT's knowledge;

c. Unless noted otherwise, CLIENT shall pay, or reimburse CONSULTANT the cost of all necessary approvals, permits, licenses, easements, and consents necessary for performance of the services.

d. CLIENT shall have sole ownership and responsibility for all hazardous or toxic substances found or identified at any location at which CONSULTANT performs services under this Agreement. CLIENT shall have the sole responsibility for the treatment, temporary storage, transport, and disposal of all hazardous or toxic

substances found or identified at any location at which CONSULTANT performs Services under this Agreement.

6. CONSULTANT's Obligations.

a. CONSULTANT shall perform the Services with the standard of care, skill, and diligence normally provided by a professional person or firm in the performance of services similar to the Services at the same time, under similar conditions, and in the same or a similar locality. This commitment is in lieu of all other warranties either express or implied.

b. CONSULTANT shall advise CLIENT about the status of the Services and will make reasonable efforts to coordinate its activities with CLIENT, the property owner, and any government agency having regulatory oversight over the underlying activities.

c. CONSULTANT shall accommodate other CLIENT activities at the site. CONSULTANT shall designate an authorized representative to be available for consultation, assistance, and coordination of activities.

7. Confidentiality.

a. To the extent permitted by law (particularly including the California Public Records Act, codified at Government Code Sections 6250 et seq.), each party shall keep confidential all business and technical information identified as "Confidential" and obtained from the other party in connection with the performance of the Services. Any such information shall be labeled "Confidential" and shall be retained in a separate part of the materials comprising this agreement. Neither party shall disclose such information without the other party's consent except to the extent required by (1) the performance of

the Services; (2) compliance with the professional conduct standards for preservation of the public safety, health, or welfare; or (3) compliance with any court order or other governmental directive, including requests from government agency having regulatory oversight over the underlying activities. In the event that there is a request for materials that are identified as “Confidential”, the party receiving such request shall promptly notify the party claiming confidentiality, so that the party claiming confidentiality may take appropriate action to protect the claimed confidentiality. The party receiving the request shall not be obligated to take any action to protect the claimed confidentiality, other than notifying the party claiming the confidentiality.

b. Notwithstanding the immediately preceding paragraph, with CLIENT consent, CONSULTANT may include CLIENT’s name and a general description of the Services to be provided, including narrative and photographic representations of the Services, in general informational presentations made by CONSULTANT for the promotion of its expertise and experience.

c. The obligations created by this Section 7 shall survive the termination or expiration of this agreement.

8. Ownership of Documents.

All reports, drawings, specifications, and other work products produced under this Agreement, and any materials or documents purchased by CONSULTANT, the cost of which is charged to this Agreement, shall become the property of the CLIENT. The obligations created by this Section 8 shall survive the termination or expiration of this agreement.

9. Insurance.

CONSULTANT now carries and will continue to carry during the term of this agreement the following insurance types and minimum coverages:

- a. Worker's compensation and Occupational Disease Insurance to comply with the laws of the State of California.
- b. Comprehensive General Liability Insurance covering activities performed under this agreement, including coverage of liability assumed in this Agreement, with minimum limits of \$1,000,000 (ONE MILLION DOLLARS) for bodily injury for each occurrence and \$1,000,000 (ONE MILLION DOLLARS) for property damage for each occurrence.
- c. Automobile Liability Insurance covering all non-owned and hired motor vehicles used in connection with the Engagement Services with \$2,000,000 (TWO MILLION DOLLARS) combined single limit for bodily injury and property damage liability.
- d. Professional Errors & Omissions/Pollution Liability Insurance with minimum limits of \$1,000,000 (ONE MILLION DOLLARS) for each claim and \$2,000,000 (TWO MILLION DOLLARS) aggregate.
- e. CLIENT shall be named as an additional insured on all of the insurance policies required by this Section 9. At CLIENT's request, CONSULTANT shall furnish CLIENT certificates evidencing the required coverages and identifying CLIENT as an additional insured.

10. Indemnification.

a. Except as otherwise provided in this Section 10, CONSULTANT shall indemnify and hold harmless CLIENT from and against any and all liability for bodily injury (including death) or third-party property damage to the extent such injury or damage results from CONSULTANT's negligence in connection with and during its performance of the Services, except to the extent such liability results from CLIENT's negligence or intentional misconduct.

b. CLIENT shall indemnify and hold harmless CONSULTANT from and against any and all claims, demands, losses, penalties, fines, and causes of action (including reasonable attorney fees and court costs) arising from or relating to CLIENT's negligence or contractual breach including any noncompliance with the obligations as set forth in Section 5 herein, except to the extent such liability results from CONSULTANT's negligence or intentional misconduct.

c. Each Party shall hold harmless the other Party from and against any and all liability, costs, expenses, damages, claims, suits, or demands for which the Party is solely or may become solely liable on account of bodily injury, disease, or death suffered by any employee of the other Party in connection with the performance of the Services under this Agreement. Each Party shall bear the risk of loss or damage to its own equipment, materials, supplies, structures, or property.

d. CLIENT acknowledges that CONSULTANT has not created, generated, or contributed to the generation or existence of any hazardous or toxic material, or any

other type of environmental hazard, contamination or pollution, whether latent or patent, or the release thereof, or the violation of any law or regulation relating thereto, prior to the date on which the performance of services is commenced hereunder (collectively referred to as "Preexisting Conditions"). Accordingly, except to the extent covered by the "Scope of Work" herein, or where the injury is solely caused by a failure of CONSULTANT's obligations under Section 6 of this Agreement, CLIENT shall defend (with counsel approved by CONSULTANT) protect, indemnify, and hold harmless CONSULTANT and its employees against all claims, demands, losses, penalties, fines, and causes of action of every kind and character, whether based on contract, tort (including negligence), statute, or regulation (including reasonable attorneys and court costs) arising from or relating to preexisting conditions. CONSULTANT shall have the right, at its sole expense, to join in the defense of any action in which it is made a defendant.

e. The obligations created under this Section 10 shall survive the termination or expiration of this Agreement,

11. Non-Discrimination Clause.

a. During the performance of this Agreement, CONSULTANT and its contractors and subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, sexual orientation, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, denial of family care leave, or genetic information, gender, gender

identity, gender expression, military and veteran status, or any other protected class under state or federal law.

b. The CONSULTANT, its contractors, and subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.

c. The CONSULTANT, its contractors, and subcontractors shall comply with the provisions of the Fair Employment and Housing Act and the applicable regulations promulgated thereunder. (Gov. Code, §12990, subs. (a)-(f) et seq.; Cal. Code Regs., tit. 2, § 7285 et seq.) Such regulations are incorporated into this Agreement by reference and made a part hereof as if set forth in full.

d. The CONSULTANT, its contractors, and subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

e. The CONSULTANT shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

12. Limitation of Liability.

a. Neither party hereto, nor any of its affiliates, subcontractors, or vendors at any tier, shall be liable to the other party or its affiliates, subcontractors, or vendors for any loss of profit, loss of product, loss of use, or for any other indirect, consequential, or special damages, even if the claimed injury is caused by the sole or concurrent negligence of such party and even if advised of the possibility thereof.

b. CLIENT agrees that in consideration of this Agreement and the comparative levels of risk taken, all claims for indemnification or contribution shall be limited to the amounts and coverages listed in the insurance provisions in Section 9 herein. All claims against CONSULTANT shall be deemed waived unless made by CLIENT in writing and received by CONSULTANT within six months after CONSULTANT has completed that portion of the Engagement Services with respect to which the claim is made.

c. Any limitation on or exculpation from liability afforded CONSULTANT by this Agreement shall be applicable regardless of whether the action or claim is based on contract, tort (including negligence), statute, strict liability or otherwise and shall likewise limit the liability of CONSULTANT, its affiliates, subcontractors, and vendors of any tier and their respective officers, agents, and employees.

d. There are no third-party beneficiaries of this Agreement and no third party may rely upon obligations or representations herein or on the findings of any report produced hereunder.

e. The obligations created under this Section 12 shall survive the termination or expiration of this Agreement.

13. Changes in Performance.

a. CLIENT may at any time, by written order, make changes within the general scope of the Services contemplated by this Agreement and any Task Order issued hereunder, in any one of the following areas:

- (1) Specific services to be performed;
- (2) Specific deliverables;

(3) Schedule for completion and delivery of product.

b. If any changes requested pursuant to paragraph a. of this Section 13, or otherwise pursuant to any other provision of this Agreement, results in an increase or decrease in the costs of providing those services or in the time required to perform those services, an equitable adjustment shall be made in the (1) Price; (2) Schedule; and, (3) in such other provisions of this agreement as may be appropriate, and this Agreement shall be modified in writing accordingly.

c. It is further understood that field conditions may dictate changes in the Services to be performed, and those services may be required to be performed by written change order from CLIENT prior to an agreement on price, schedule or other relevant provisions of this Agreement. Reimbursement for such activities shall be on a time and materials basis in accordance with the hourly rates and cost-plus provisions included in Attachment 2, and extensions to the Schedule shall be based on the actual delays and ramifications caused by said changes in field conditions.

14. Independent Contractor.

The Services shall be performed by CONSULTANT under the sole supervision, management, and control of CONSULTANT. CLIENT shall look to CONSULTANT for results only and shall have no right at any time to direct or supervise CONSULTANT or CONSULTANT's agents or employees in the performance of the Services or as to the manner, means, or methods by which the Services are performed. CONSULTANT shall be an independent contractor of CLIENT and not an employee, and no such employment relationship is intended to be created by this Agreement.

15. Force Majeure.

It is agreed that in the event CONSULTANT is rendered unable wholly or in part by force majeure to carry out its obligations hereunder, the obligation of CONSULTANT shall be suspended during the pendency of any inability, and such inability shall as far as possible be remedied with all reasonable dispatch. The term “force majeure” as used herein shall mean strikes, lockouts or other industrial and labor disturbances, pandemics, acts of public enemies, wars, insurrections, civil disturbances, explosions, earthquakes, fires, severe storms, floods, or orders, restraints, or prohibitions by any regulatory agency, board, department, commission, or court having jurisdiction over CONSULTANT, or any other cause not within CONSULTANT’s control.

16. Termination for Default.

If either party:

- (a) Breaches any material obligation under this Agreement;
- (b) Becomes insolvent or otherwise unable to meet its financial obligations; or,
- (c) Is adjudicated as bankrupt, or has an involuntary petition in bankruptcy

filed against it;

the other party may terminate this Agreement without any further liability. If this Agreement is terminated pursuant to the provisions of this paragraph, CLIENT shall be obligated to pay for those Services performed and goods received as of the date of the termination, along with the reasonable costs of settling outstanding commitments, including the cost of terminating any subcontracts.

17. Termination for Convenience.

Either party may terminate this Agreement for its own convenience by providing the other party thirty (30) days' prior written notice. Should CLIENT terminate this Agreement pursuant to the terms of this Section 17, CLIENT shall be obligated to pay for those Services performed and goods received as of the date of the termination, along with the reasonable costs of settling outstanding commitments, including the cost of terminating any subcontracts.

18. Certain Litigation Expenses.

CLIENT acknowledges that, due to unforeseen future circumstances, litigation may result concerning the subject matter of the Services, to which CONSULTANT may not be named as a party, but for which CONSULTANT, as a consultant to CLIENT, may be compelled by court order or subpoena to retrieve and produce documents in its possession, or to provide testimony related to the Services, and that such document production or testimony entails significant costs, for which CONSULTANT may not be wholly reimbursed under the applicable rules of civil or criminal procedure. Therefore, except where CONSULTANT is also named as a party to the underlying action, and where CONSULTANT is found to be partially or wholly liable in the underlying action, CLIENT agrees to reimburse CONSULTANT for any costs incurred as a result of such compelled document production or testimony that are not reimbursed by others, within 60 days after CLIENT receives an invoice for such costs. For purposes of this Section 18, "costs" shall include labor costs and other direct costs (including, but not limited to, reproduction, shipping, mileage, lodging, and reasonable per diem) plus 15% charge on direct expenses. The

obligations created by this Section 18 survive the termination or expiration of this Agreement.

19. Waiver.

Any waiver by either party of any provision or condition of this Agreement shall not be construed or deemed to be a waiver of any other provision or condition of this Agreement, nor a waiver of a subsequent breach of the same provision or condition, unless such waiver is expressed in writing by the party to be bound.

20. Severability.

If any provision or portion of this Agreement is finally determined to be invalid or unenforceable in whole or in part, the remaining provisions hereof shall remain in full force and effect and shall be binding on the parties hereto.

21. Notice.

Any notice to be given under this Agreement shall be in writing and shall be deemed to have been given when personally delivered, or sent by overnight courier service, the receipt of which is confirmed by telephone, or mailed by certified mail, return receipt requested and postage prepaid, to the address specified on page 1 of this Agreement.

22. Governing Law; Venue.

This Agreement shall be governed by and in accordance with the laws of the State of California.

23. Entire Agreement.

This Agreement is the entire understanding and agreement between the parties and supersedes any previous communications, representations, or agreements by either party, whether oral or written. This Agreement may be changed only by a written instrument signed by both parties.

24. No Assignment. This Agreement shall not be assigned by CONSULTANT without CLIENT's written consent.

25. Counterparts; Electronic Signatures. This Agreement may be signed in counterparts and shall be deemed to be fully executed when so signed. This Agreement may be signed by electronic signatures or signatures transmitted by e-mail, DocuSign or other electronic means and such electronic signatures shall be deemed as valid as an original "wet" signature.

SPECIALIZED UTILITY SERVICES

CITY OF ORLAND

PROGRAM REPRESENTATIVE

REPRESENTATIVE

Signature:_____

Signature:_____

Print Name:_____

Print Name:_____

Title:_____

Title:_____

Date:_____

Date:_____