

**AGREEMENT FOR
CONSULTANTING SERVICES**

**HANGTOWN CREEK WATER RECLAMATION FACILITY ENGINEERING SUPPORT SERVICES
(January 1, 2019 through June 30, 2019)**

THIS IS AN AGREEMENT made on _____ between City of Placerville (hereinafter "CITY") and Robertson-Bryan, Inc. (hereinafter "CONSULTANT") for the PROJECT that consists of providing for professional engineering services to assist CITY with compliance with regulatory requirements related to the City's Hangtown Creek Water Reclamation Facility (WRF).

CITY and CONSULTANT in consideration of their mutual covenants herein agree in respect of the performance of professional engineering services by CONSULTANT and the payment for those services by CITY as set forth below.

SECTION 1 - BASIC SERVICES OF CONSULTANT

1.1 - GENERAL

CONSULTANT shall perform professional engineering services as hereinafter stated which include customary environmental and civil engineering services.

The CONSULTANT agrees to a mutual exchange of pertinent documents for the PROJECT with CITY.

The CONSULTANT shall meet with the CITY and staff as necessary to answer questions and keep City staff informed of the PROJECT status.

1.2 - SPECIFIC SERVICES

In addition to the general engineering services, the CONSULTANT shall provide the services described in Exhibit A.

SECTION 2 - ADDITIONAL SERVICES OF CONSULTANT

2.1 - Normal and customary engineering services do not include services in respect of the following categories which are usually referred to as Additional Services. If CITY wishes CONSULTANT to perform any Additional Services, CITY shall so instruct CONSULTANT in writing, and CONSULTANT will be paid therefore upon such terms as the parties may agree. CONSULTANT shall not receive compensation for any additional services unless he first gives CITY notice that he considers the services to be Additional Services or otherwise beyond the scope of this AGREEMENT, and CITY authorizes performance of the services as Additional Services. Additional Services include:

- 2.1.1 Services in connection with substantive change in scope of the PROJECT; and
- 2.1.2 Services related to litigation that may arise out of conduct of the PROJECT.

SECTION 3 - PERIOD OF SERVICE

3.1 - The provisions of this Section 3 and the various rates of compensation for CONSULTANT'S services provided for in Section 4 of this AGREEMENT have been agreed to in anticipation of the orderly and continuous progress of the PROJECT through completion. CONSULTANT'S obligation to render services hereunder will extend for a period which may reasonably be required to complete the PROJECT in accordance with the PROJECT schedule set forth in paragraph 3.2 below.

3.2 - The PROJECT Schedule is anticipated to be substantially as follows:

Task 1	Reissued NPDES Permit	NOI: 12/31/18
		NOA issuance
Task 2	13267 Study for Development of Ammonia Criteria	Ongoing
Task 3	2018-19 Industrial General Permit Compliance	Ongoing
Task 4	General Support Services	As Required

SECTION 4 - PAYMENTS TO CONSULTANT

4.1 - Compensation shall be on a time and materials basis using the sum of hourly labor costs for CONSULTANT's employees and other direct costs. The CONSULTANT agrees not to exceed the total limit of this AGREEMENT without written approval from the CITY. The estimated expenditures for each task are as follows.

Task 1	Reissued NPDES Permit	\$13,500
Task 2	13267 Study for Development of Ammonia Criteria	\$3,500
Task 3	2018-19 Industrial General Permit Compliance	\$1,500
Task 4	General Support Services	\$6,500
TOTAL		\$25,000

4.2 - Hourly labor billing rate for CONSULTANT'S employee shall be in accordance with the Fee Schedule in Attachment 1 of Exhibit A.

*Note: The above rate includes corporate overhead and profit, as well as general administrative office services. The hourly billing rate covers direct labor, indirect costs, computer time, and professional fees in a total amount to be billed per hour worked for each category of labor. This rate is firm for this project through June 30, 2019.

4.3 - Fees for subconsultants shall be billed at actual cost paid by CONSULTANT times a factor of 1.00.

4.4 - Other direct costs, which shall be billed at the actual purchase price and on the basis of usual and reasonable commercial charges for items provided by the CONSULTANT, include the following:

- 4.4.1 Printing and binding, and similar costs that are not applicable to general indirect costs.
- 4.4.2 Identifiable reproduction costs applicable to the work such as printing of drawings, photostating, multilithing and printing. Photo reproduction shall be billed at \$0.20 per page.
- 4.4.3 Identifiable communication expenses, such as long-distance telephone, and postage other than for general PROJECT correspondence.
- 4.4.4 Reasonable traveling expenses of employees for business directly connected with the services, including automobile travel at current Federal mileage rates.

4.5 - Payment by the CITY shall be made monthly within 30 days of receipt of an invoice which itemizes the hourly labor costs, subconsultant fees, and other direct costs.

4.6 - Special Services - Additional Services, as defined in Section 2 of this AGREEMENT, shall be billed in accordance with billing rates defined in Section 4.3 of this AGREEMENT or as may be otherwise agreed by the parties. Costs for said Additional Services are over and above expenditures set forth in Section 4.1 of this AGREEMENT.

SECTION 5 - CITY'S RESPONSIBILITIES

5.1 - CITY shall provide any general criteria and CITY'S requirements for the PROJECT beyond those requirements indicated; designate a person to act with authority on CITY'S behalf in respect of all aspects of the PROJECT; examine and respond promptly to CONSULTANT'S submissions; and give prompt written notice to CONSULTANT whenever he observes or otherwise becomes aware of any defect in the services (although CITY has no duty to observe or investigate the sufficiency or progress of the services).

5.2 - CITY shall also do the following and pay all costs incident thereto:

- 5.2.1 Furnish to CONSULTANT studies and reports, reproducible record drawings of existing facilities, laboratory tests and inspections of samples and similar data, operations and maintenance records, all of which CONSULTANT may rely upon in performing his services.
- 5.2.2 Guarantee access to and make all provisions for CONSULTANT to enter upon public and private property.
- 5.2.3 Provide such legal, accounting, independent cost estimating, financial management, and insurance counseling service as may be required for the PROJECT.
- 5.2.4 The CITY shall provide all legal notices, advertisements, public meeting notifications, permit fees, approval fees, licenses, and patents.

5.3 - The CITY shall notify the CONSULTANT promptly of any claims, litigations, deficiencies, or other problems related to the CONSULTANT or any of its subconsultants.

5.4 - The CITY shall acknowledge to the extent possible the professional services provided by the CONSULTANT in all appropriate press releases, magazine articles, advertisements, and other public relations activities.

SECTION 6 - GENERAL PROVISIONS

6.1 - DEFINITION OF TERMS

As used herein the term "AGREEMENT" refers to Sections 1 through 7 inclusive.

6.2 - LATE PAYMENT

If CITY fails without cause to make any payment due CONSULTANT for services and expense within thirty days after receipt of CONSULTANT'S bill therefore, the amounts due CONSULTANT may, at the CONSULTANT'S discretion, include a charge at the rate of 1.25% per month from said thirtieth day, and in addition, CONSULTANT may, after giving seven (7) days written notice to CITY, suspend services under this AGREEMENT until he has been paid in full all amounts due him for services and expenses.

6.3 - TERMINATION

6.3.1 The obligation to provide further services under this AGREEMENT may be terminated by either party upon 10 days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party. It is understood that any such failure or breach of contract is subject to all available legal remedies in addition to any contractual remedies expressly provided herein.

6.3.2 This AGREEMENT may be terminated by the CITY on seven (7) days written notice to the CONSULTANT in the event that the PROJECT is abandoned. At the CONSULTANT'S discretion, this AGREEMENT shall be deemed terminated by the CITY if the PROJECT, or any subcomponent thereof, is postponed by CITY beyond 90 days.

6.3.3 This AGREEMENT may be terminated in whole or in part by agreement of the CITY and CONSULTANT under such terms and conditions as they may agree upon.

6.3.4 In the event of termination for any reason other than breach by CONSULTANT or otherwise not the fault of the CONSULTANT, the CONSULTANT shall be compensated for all services performed to date of termination, together with all reimbursable expenses then due and owing and termination expenses.

6.3.5 Termination expenses, payable upon termination by CITY for any reason other than breach or default by CONSULTANT, are an amount computed as a percentage of the total anticipated engineering cost for the PROJECT, as follows:

6.3.5.1 Ten percent (10%) if termination occurs within the first 4 months of the AGREEMENT; or

6.3.5.2 Five percent (5%) if termination occurs during any subsequent time frame.

6.4 - SUCCESSORS AND ASSIGNS

- 6.4.1 CITY and CONSULTANT each binds himself and his successors, executors, administrators, assigns and legal representatives to the other party of this AGREEMENT and to the successors, executors, administrators, assigns, and legal representatives of such other party, in respect to all covenants, agreements and obligations of this AGREEMENT.
- 6.4.2 Neither CITY nor CONSULTANT shall assign, sublet or transfer any rights under or interest in (including, but without limitation, moneys that may become due or moneys that are due) this AGREEMENT without the written consent of the other, except as stated in paragraph 6.4.1 and except to the extent that the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this AGREEMENT. Nothing contained in this paragraph shall prevent CONSULTANT from employing, with the consent of CITY, such independent consultants, associates and subcontractors as he may deem necessary and appropriate to assist him in the performance of services hereunder.
- 6.4.3 Nothing herein shall be construed to give any rights or benefits hereunder to anyone other than CITY and CONSULTANT.

6.5 - EXTENT OF AGREEMENT

This AGREEMENT represents the entire and integrated agreement between the CITY and the CONSULTANT and supersedes all prior negotiations, representations or agreements, either written or oral. This AGREEMENT may be amended only by written instrument signed by both the CITY and the CONSULTANT.

6.6 - CONTROLLING LAW

This AGREEMENT is to be governed by the laws of the State of California.

6.7 - DISPUTES

Any controversy or claim arising out of or relating to this contract, or breach thereof, shall be settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

6.8 - GENERAL

- 6.8.1 Should litigation occur between the two parties relating to the provisions of this AGREEMENT, or arising from performance or breach thereof, all litigation expenses, collection expenses, witness fees, court costs and attorney fees incurred by the prevailing party shall be paid by the non-prevailing party to the prevailing party.
- 6.8.2 Neither party shall hold the other responsible for damages or delay in performance caused by the acts of God, strikes, lockouts, accidents not the fault of the other party, or other events beyond the control of the other or the other's employees or agents.

- 6.8.3 In the event any provisions of this AGREEMENT shall be held to be invalid and unenforceable, the remaining provisions shall be valid and binding upon the parties. One or more waivers by either party of any provisions, term condition or covenant shall not be construed by the other party as a waiver of a subsequent breach of the same by the other party.
- 6.8.4 The CONSULTANT agrees to render his services under this AGREEMENT in accordance with generally accepted professional practices and the degree of skill and care exercised by professional design engineers with respect to project which are the same or similar to the intended use of this PROJECT, but CONSULTANT makes no warranty either express or implied beyond the contractual commitments set forth in this AGREEMENT.
- 6.8.5 The CONSULTANT shall not be responsible for failure to provide or for delays in providing services hereunder due to circumstances beyond its control, including delays in administrative approval, failure of the CITY to provide information or records, work stoppages or strikes, or delay of action occasioned by personnel who are not under the direct control of CONSULTANT.

6.9 - NOTICES

Whenever any provision of this AGREEMENT requires the giving of notice, it will be deemed to have been validly given if delivered at or sent by registered or certified mail, postage prepaid, to the following addresses:

CITY:

Cleve M. Morris, City Manager
City of Placerville
3101 Center Street
Placerville, CA 95667

CONSULTANT:

Michael D. Bryan, PhD
Robertson-Bryan, Inc.
9888 Kent Street
Elk Grove, CA 95624

SECTION 7 - SPECIAL PROVISIONS

7.1 - INSURANCE

7.1.1 CONSULTANT'S Insurance - the CONSULTANT shall at his own cost acquire and maintain statutory worker's compensation insurance coverage, employer's liability, and comprehensive general liability insurance coverage. This insurance shall be maintained throughout the life of the Contract and will not be canceled except upon thirty (30) days prior written notice to the CITY. The CITY shall be named as an additional insured on the comprehensive general liability policy.

7.1.2 Limits of Liability - The CONSULTANT shall maintain the following limits of liability with respect to the type of insurance more fully described in paragraph 7.1.1.

Worker's Compensation as required by law.

General Public Liability - \$1,000,000

Personal Injury Liability - \$1,000,000

Auto - \$1,000,000

Professional Liability - \$1,000,000

7.2 - INDEMNITY & LIMITATIONS OF LIABILITY

7.2.1 Should litigation occur between only the CITY and other parties, except that which occurs as the result of negligence of the CONSULTANT, CITY agrees to save and hold harmless CONSULTANT for all litigation expenses, collection expenses, witness fees, court costs and attorney fees incurred by CONSULTANT related to CITY's defense against such claim.

7.2.2 CONSULTANT's specific liability in the performance of this AGREEMENT is limited to the following:

7.2.2.1 CONSULTANT disclaims any responsibility for consequential damages (such as loss of use of facilities, loss of sales, interest, etc.).

7.2.2.2 CONSULTANT's responsibility is limited to the firm of Robertson-Bryan Inc., explicitly prohibiting legal action and suits against the Corporate Officers, Directors, employees, and Shareholders.

This AGREEMENT executed the day and year first above written.

CITY

By: _____

Date: _____

Typed (or Handwritten): _____

ATTEST:

By: _____

CONSULTANT:

By: _____

Date: _____

Partner/Principal Scientist