

## **AGREEMENT FOR PROFESSIONAL SERVICES**

THIS AGREEMENT is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2018, by and between the City of Merced, a California Charter Municipal Corporation, whose address of record is 678 West 18<sup>th</sup> Street, Merced, California 95340, (hereinafter referred to as "City") and Galvin Preservation Associates, a California Corporation. doing business as GPA Consulting, whose address of record is 231 California Street, El Segundo, California 90245 (hereinafter referred to as "Consultant").

WHEREAS, City is undertaking a project to remove and replace the culvert under Cherokee Avenue at Black Rascal Creek; and,

WHEREAS, Consultant represents that it possesses the professional skills to provide environmental services in connection with said project.

NOW, THEREFORE, the parties hereto, in consideration of the mutual covenants hereinafter recited, hereby agree as follows:

1. **SCOPE OF SERVICES.** The Consultant shall furnish the following services: Consultant shall provide the environmental services described in Exhibit "A" attached hereto.

No additional services shall be performed by Consultant unless approved in advance in writing by the City, stating the dollar value of the services, the method of payment, and any adjustment in contract time. All such services are to be coordinated with City and the results of the work shall be monitored by the City Engineer or his designee. However, the means by which the work is accomplished shall be the sole responsibility of the Consultant.

2. **TIME OF PERFORMANCE.** All of the work outlined in the Scope of Services shall be completed in accordance with the Schedule outlined in Exhibit "B" attached hereto and incorporated herein by reference. By mutual agreement and written addendum to this Agreement, the City and the Consultant may change the requirements in said Schedule.

3. **RESERVED.**

4. **COMPENSATION.** Payment by the City to the Consultant for actual services rendered under this Agreement shall be made upon presentation of an

invoice detailing services performed under the Scope of Services, in accordance with the fee schedule set forth in Exhibit "C" attached hereto and incorporated herein by reference. The Consultant agrees to provide all services required under the Scope of Services in Exhibit "A" within the compensation amount set forth in Exhibit "C". For Consultant's services rendered under this Agreement, City shall pay Consultant the not to exceed sum of Sixty-Seven Thousand Four Hundred Sixty-Three Dollars and Eighty-Seven Cents (\$67,463.87).

5. **METHOD OF PAYMENT.** Compensation to Consultant shall be paid by the City after submission by Consultant of an invoice delineating the services performed.

6. **RECORDS.** It is understood and agreed that all plans, studies, specifications, data magnetically or otherwise recorded on computer or computer diskettes, records, files, reports, etc., in possession of the Consultant relating to the matters covered by this Agreement shall be the property of the City, and Consultant hereby agrees to deliver the same to the City upon termination of the Agreement. It is understood and agreed that the documents and other materials including but not limited to those set forth hereinabove, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use.

7. **CONSULTANT'S BOOKS AND RECORDS.** Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement. Any records or documents required to be maintained shall be made available for inspection, audit and/or copying at any time during regular business hours, upon oral or written request of the City.

8. **INDEPENDENT CONTRACTOR.** It is expressly understood that Consultant is an independent contractor and that its employees shall not be employees of or have any contractual relationship with the City. Consultant shall be responsible for the payment of all taxes, workers' compensation insurance and unemployment insurance. Should Consultant desire any insurance protection, the Consultant is to acquire same at its expense.

In the event Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement is determined by a court of



competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of the City, Consultant shall indemnify, protect, defend, and hold harmless the City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

9. INDEMNITY. Consultant shall indemnify, protect, defend (with legal counsel selected by the City), save and hold City, its officers, employees, and agents, harmless from any and all claims or causes of action for death or injury to persons, or damage to property resulting from intentional or negligent acts, errors, or omissions of Consultant or Consultant's officers, employees, volunteers, and agents during performance of this Agreement, or from any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct, negligent acts, or omissions of Consultant or its employees, subcontractors, or agents, or by the quality or character of Consultant's work, or resulting from the negligence of the City, its officers, employees, volunteers and agents, except for loss caused by the sole negligence or willful misconduct of the City or its officers, employees, volunteers or agents. It is understood that the duty of Consultant to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall survive the termination of this Agreement and shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

10. INSURANCE. During the term of this Agreement, Consultant shall maintain in full force and effect at its own cost and expense, the following insurance coverage:

a. Workers' Compensation Insurance. Full workers' compensation insurance shall be provided with a limit of at least One Hundred Thousand Dollars (\$100,000) for any one person and as required by law, including Employer's Liability limits of \$1,000,000.00 per accident. The policy shall be endorsed to waive the insurer's subrogation rights against the City.

b. General Liability.

- (i) Consultant shall obtain and keep in full force and effect general liability coverage at least as broad as ISO commercial general liability coverage occurrence Form CG 0001.
- (ii) Consultant shall maintain limits of no less than One Million Dollars (\$1,000,000) per occurrence for bodily injury, personal injury and property damage.
- (iii) The City, its officers, employees, volunteers and agents are to be named as additional insureds under the policy, as respects liability arising out of work or operations performed by or on behalf of the Consultant.
- (iv) The policy shall stipulate that this insurance will operate as primary insurance for work performed by Consultant and its sub-contractors, and that any other insurance or self insurance maintained by City or other named insureds shall be excess and non-contributory.
- (v) Consultant shall maintain its commercial general liability coverage for three (3) years after completion of the work and shall add an additional insured endorsement form acceptable to the City naming the City of Merced, its officers, employees, agents and volunteers for each year thereafter for at least three (3) years after completion of the work. Copies of the annual renewal and additional insured endorsement form shall be sent to the City within thirty (30) days of the annual renewal.

c. Automobile Insurance.

- (i) Consultant shall obtain and keep in full force and effect an automobile policy of at least One Million Dollars (\$1,000,000) per accident for bodily injury and property damage.
- (ii) The City, its officers, employees, volunteers and agents are to be named as additional insureds under the policy, as respects automobiles owned, leased, hired or borrowed by the Consultant.



- (iii) The policy shall stipulate that this insurance will operate as primary insurance for work performed by Consultant and its sub-contractors, and that any other insurance or self insurance maintained by City or other named insureds shall be excess and non-contributory.

d. Professional Liability Insurance. Consultant shall carry professional liability insurance appropriate to Consultant's profession in the minimum amount of One Million Dollars (\$1,000,000). Architects and engineers' coverage is to be endorsed to include contractual liability.

e. Qualifications of Insurer. The insurance shall be provided by an acceptable insurance provider, as determined by City, which satisfies all of the following minimum requirements:

- (i) An insurance carrier admitted to do business in California and maintaining an agent for service of process within this State; and,
- (ii) An insurance carrier with a current A.M. Best Rating of A:VII or better (except for workers' compensation provided through the California State Compensation Fund).

f. Certificate of Insurance. Consultant shall complete and file with the City prior to engaging in any operation or activity set forth in this Agreement, certificates of insurance evidencing coverage as set forth above and which shall provide that no cancellation or expiration by the insurance company will be made during the term of this Agreement, without thirty (30) days written notice to City prior to the effective date of such cancellation—including cancellation for nonpayment of premium.

g. Notwithstanding any language in this Agreement to the contrary, Consultant shall be entitled to be paid pursuant to the terms of this Agreement until Consultant has obtained the insurance required by this Section 10 and provided documentation of said insurance to the City. In addition to any other remedies City may have, City reserves the right to withhold payment if Consultant's insurance policies are not current.

11. ASSIGNABILITY OF AGREEMENT. It is understood and agreed that this Agreement contemplates personal performance by the Consultant and is

based upon a determination of its unique personal competence and experience and upon its specialized personal knowledge. Assignments of any or all rights, duties or obligations of the Consultant under this Agreement will be permitted only with the express written consent of the City.

12. **TERMINATION FOR CONVENIENCE OF CITY.** The City may terminate this Agreement any time by mailing a notice in writing to Consultant that the Agreement is terminated. Said Agreement shall then be deemed terminated, and no further work shall be performed by Consultant. If the Agreement is so terminated, the Consultant shall be paid for that percentage of the phase of work actually completed, based on a pro rata portion of the compensation for said phase satisfactorily completed at the time the notice of termination is received.

13. **CONFORMANCE TO APPLICABLE LAWS.** Consultant shall comply with its standard of care regarding all applicable Federal, State, and municipal laws, rules and ordinances. No discrimination shall be made by Consultant in the employment of persons to work under this contract because of race, color, national origin, ancestry, disability, sex or religion of such person.

Consultant hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act (8 U.S.C.A. 1101 *et seq.*), as amended; and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Consultant so employ such unauthorized aliens for the performance of work and/or services covered by this Agreement, and should any agency or instrumentality of the federal or state government, including the courts, impose sanctions against the City for such use of unauthorized aliens, Consultant hereby agrees to, and shall, reimburse City for the cost of all such sanctions imposed, together with any and all costs, including attorneys' fees, incurred by the City in connection therewith.

14. **WAIVER.** In the event that either City or Consultant shall at any time or times waive any breach of this Agreement by the other, such waiver shall not constitute a waiver of any other or succeeding breach of this Agreement, whether of the same or any other covenant, condition or obligation. Waiver shall not be deemed effective until and unless signed by the waiving party.

15. **INCONSISTENT OR CONFLICTING TERMS IN AGREEMENT AND EXHIBITS.** In the event of any contradiction or inconsistency between any attached document(s) or exhibit(s) incorporated by reference herein and the provisions of the Agreement itself, the terms of the Agreement shall control.



Any exhibit that is attached and incorporated by reference shall be limited to the purposes for which it is attached, as specified in this Agreement. Any contractual terms or conditions contained in such exhibit imposing additional obligations on the City are not binding upon the City unless specifically agreed to in writing, and initialed by the authorized City representative, as to each additional contractual term or condition.

16. **AMBIGUITIES.** This Agreement has been negotiated at arms' length between persons knowledgeable in the matters dealt with herein. Accordingly, any rule of law, including, but not limited to, Section 1654 of the Civil Code of California, or any other statutes, legal decisions, or common-law principles of similar effect, that would require interpretation of any ambiguities in this Agreement against the party that drafted this Agreement is of no application and is hereby expressly waived.

17. **VENUE.** This Agreement and all matters relating to it shall be governed by the laws of the State of California and any action brought relating to this agreement shall be held exclusively in a state court in the County of Merced.

18. **AMENDMENT.** This Agreement shall not be amended, modified, or otherwise changed unless in writing and signed by both parties hereto.

19. **INTEGRATION.** This Agreement constitutes the entire understanding and agreement of the parties and supersedes all previous and/or contemporaneous understanding or agreement between the parties with respect to all or any part of the subject matter hereof.

20. **AUTHORITY TO EXECUTE.** The person or persons executing this Agreement on behalf of the parties hereto warrants and represents that he/she/they has/have the authority to execute this Agreement on behalf of their entity and has/have the authority to bind their party to the performance of its obligations hereunder.

21. **COUNTERPARTS.** This Agreement may be executed in one or more counterparts with each counterpart being deemed an original. No counterpart shall be deemed to be an original or presumed delivered unless and until the counterparts executed by the other parties hereto are in the physical possession of the party or parties seeking enforcement thereof.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date first above written.

CITY OF MERCED  
A California Charter Municipal  
Corporation

BY: \_\_\_\_\_  
City Manager

ATTEST:  
STEVE CARRIGAN, CITY CLERK

BY: \_\_\_\_\_  
Assistant/Deputy City Clerk

APPROVED AS TO FORM:

BY: Kelly Fincher 10-30-18  
City Attorney Date

ACCOUNT DATA:

BY: \_\_\_\_\_  
Verified by Finance Officer



CONSULTANT  
GALVIN PRESERVATION  
ASSOCIATES, INC.,  
A California Corporation,  
Doing Business as GPA Consulting

BY: \_\_\_\_\_

(Signature)

Richard Galvin

(Typed Name)

Its: \_\_\_\_\_

VP, CFO

(Title)

BY: \_\_\_\_\_

(Signature)

Andrea Galvin

(Typed Name)

Its: \_\_\_\_\_

President

(Title)

Taxpayer I.D. No. 20-322886

ADDRESS: 231 California Street  
El Segundo, CA 90245

TELEPHONE: 310-792-2690

FAX: 310-792-2696

E-MAIL: andrea@gpaconsulting-us.com

CONSULTING



July 20, 2018

Joel D. Svendsen, P.E.  
Associate Engineer  
City of Merced  
678 West 18<sup>th</sup> Street  
Merced, CA 95340

**Subject: Cherokee Avenue Culvert Replacement Project –Environmental Services**

Dear Mr. Svendsen:

GPA Consulting (GPA) is pleased to submit this proposal to provide environmental services for the above-referenced project. The attached scope of work and budget have been prepared based on our discussions and the requirements and recommendations of the regulatory agency permits and notifications required for the project.

Sincerely,

A handwritten signature in blue ink, reading 'Richard Galvin'.

Richard Galvin, Vice President  
GPA Consulting



## **I. Project Understanding and Methodology**

The City of Merced (City) proposes to replace approximately 195 feet of an existing 48-inch poured-in-place pipe culvert, which is aging and deteriorating, within Black Rascal Creek at Cherokee Avenue in the City of Merced. Currently, two existing 30-inch storm drainpipes and an irrigation drain connect to the east end of the culvert. The new culvert would be constructed in the same location. A new headwall structure, surrounded by concrete riprap would be installed at the east end of the new culvert, to which the two storm drainpipes and irrigation line would be reconnected. A flared concrete pipe section would also be placed in the creek at the west end of the new culvert. The flared end section would be surrounded by concrete riprap to prevent the erosion of the bank.

The City is the lead agency for the California Environmental Quality Act (CEQA), and has completed the CEQA process. The City of Merced has also received a Federally Funded Grant, from the Federal Emergency Management Agency (FEMA), to help mitigate disasters. As part of the grant approval process, FEMA must to comply with federal environmental laws and regulations; therefore, the project is subject to National Environmental Policy Act (NEPA) review. Based on the nature of the project, the expected level of NEPA documentation is a Categorical Exclusion, pursuant to 44 Code of Federal Regulations (CFR) Part 10.8 (d) for “repair, reconstruction, restoration, elevation, retrofitting, upgrading to current codes and standards, or replacement of any facility in a manner that substantially conforms to the preexisting design, function, and location.”

The project area is within a residential development in the City of Merced (Merced). Black Rascal Creek is a relatively long waterway that flows from east of the project, joins Black Rascal Creek to the southwest, and eventually flows to the San Joaquin River. This segment of Black Rascal Creek meanders between residential properties and through a park, and is lined with a mixture of relatively dense native and ornamental species. A portion of the creek is underground within the existing culvert to be replaced.

## **II. Scope of Work**

### **Task 1. Project Management and Meetings**

GPA will maintain a clear line of communication with the City, and will conduct regular status checks to ensure all tasks are on schedule and within budget. GPA will prepare a monthly progress report for each task that includes the progress of each task, new and ongoing issues, proposed resolutions, and estimated impact on the schedule. GPA will attend a preliminary field visit with the City and FEMA representatives to review the project and confirm the scope required for NEPA evaluation.

*Deliverables: Up to six monthly progress reports*

### **Task 2. Biological Resources Assessment**

#### **Background Research**

GPA will review available data on biological resources recorded within and near the project area, including all plant and animal species with the potential to be in the project area. This review will include conducting searches in databases such as the California Natural Diversity Database (CNDDB) and the National Wetlands Inventory (NWI). Additionally, a list of protected species with the potential to be in the project

area will be requested from the U.S. Fish and Wildlife Service (USFWS), and other resources on local flora and fauna will be referenced. Existing studies completed near the project area will also be referenced, including applicable planning documents. GPA will utilize the background data and project design plans to delineate the Biological Study Area (BSA), which will be used as the boundary for field surveys and project analysis.

#### Field Surveys

GPA will survey the BSA for potential wildlife, their signs, and/or potential habitat. GPA will inventory all botanical, aquatic, and wildlife resources observed in the BSA. GPA will identify and record all existing vegetation communities in the area. Botanical surveys will be conducted during the blooming period for special-status plants with potential to be in the project area, if feasible. The limits of potentially jurisdictional areas, including waters of the U.S. and waters of the state, will be identified based on appropriate criteria including the ordinary high water mark (OHWM), edge of channel banks, and riparian boundaries. GPA will also identify the species of trees that to be removed within the project area.

As part of the development of this work plan, GPA completed a preliminary CNDDDB and USFWS database search for protected and special-status species recorded within the vicinity of the project area (Merced United States Geological Survey 7.5 Minute Quadrangle (quad) and surrounding quads). Based on the existing habitat in the project area, it appears that there may be suitable habitat for some wildlife species, including bird and bat species; however, federally threatened and endangered species are not expected to be in the BSA. The potential for wildlife species to be in the BSA will be confirmed during project-level surveys.

#### Biological Resources Assessment

Following completion of background research and field surveys, GPA will summarize the results of these studies in a Biological Resources Assessment report. The report will include a discussion of the existing biological resources in the BSA, potential project impacts on those resources, and proposed avoidance, minimization, and mitigation measures to minimize impacts. The report will include an assessment on the project's compliance with federal regulations, including the federal Endangered Species Act, Fish and Wildlife Coordination Act, Clean Water Act, Rivers and Harbors Act, Migratory Bird Treaty Act, Bald and Golden Eagle Protection Act, Magnuson-Stevens Fishery Conservation and Management Act, Executive Order 11988 (Protection of Floodplains), and Executive Order 11990 (Protection of Wetlands), and Executive Order 13112 (Invasive Species). The report will also will outline any future protected species consultations that may be required with regulatory agencies to obtain project approvals and environmental permits. GPA will submit the draft report and will coordinate with the City as needed for review and approval of the report.

*Deliverables: Biological Resources Assessment*

### **Task 3. Aquatic Resources Delineation**

#### Field Delineation

GPA will delineate jurisdictional wetlands and other waters of the U.S., as defined by the USACE. To



identify the boundaries of the waters of the U.S., the OHWM will be identified for the waterways within the BSA. The actual presence or absence of wetlands in the BSA will be verified through an analysis of hydrologic conditions, hydrophytic vegetation, and hydric soils pursuant to the U.S. USACE's 2008 Regional Supplement to the *Corps of Engineers Wetland Delineation Manual: Arid West Region* and its 1987 *Corps of Engineers Wetlands Manual*. The spatial limits of all wetlands and/or other waters of the U.S. and state will be mapped according to USACE minimum mapping standards.

#### Aquatic Resource Delineation

GPA will summarize existing site conditions and analysis of the permanent and temporary impacts on waters of the U.S. and waters of the state in an Aquatic Resource Delineation. The report will summarize the location of wetlands and other waters under jurisdiction of the USACE within and immediately adjacent to the project area. The report will be used to assist the design team in avoiding impacts on jurisdictional areas; provide the jurisdictional information necessary for the supporting NEPA approvals; and support the applications for regulatory permit authorizations. GPA will submit the draft report and will coordinate with the City as needed for review and approval of the report.

*Deliverables: Aquatic Resources Delineation*

#### **Task 4. Cultural Resources Assessment**

##### Research and Literature Review

Research will be conducted to determine if previous investigations have been conducted within the project area and the types of resources likely to be encountered. The research will begin with a records search at the Central California Information Center (CCIC) located at Stanislaus State University. The records search will include a search of previous studies and identified cultural resources within the project area and a 1-mile radius. Additional resources available online or within InContext's cultural resources library will be reviewed to determine the types of resources and the likelihood for their presence within the project area.

##### Assistance with Native American Outreach

If requested by FEMA, InContext will prepare and submit a request to the Native American Heritage Commission (NAHC) to check their Sacred Lands File for Native American resources that may be affected by the project. The request will also ask for a list of tribes that may want to consult with the City and FEMA in regard to Section 106 of the National Historic Preservation Act (NHPA).

Upon receipt of the requested information from the NAHC, InContext will prepare a draft letter for review by the City and FEMA. After approval, InContext will send the letter to all individuals and entities on the NAHC list and other individuals or entities that may be provided by the City or FEMA. The letter will notify each of the tribes on the list of the project. The letter will include a written summary of the project, a map illustrating the location and general features of the project, a summary of research conducted to date, and a request for information or concerns.

Two weeks after the letters are sent, InContext will follow up with phone calls to ensure the addresses received and understood the content of the letters and to inquire regarding any concerns or information.



InContext will review all responses received from tribal representatives and will recommend an appropriate approach for any follow-up actions that may be warranted for further consultation with tribes expressing an interest in the project.

#### Delineate Survey Area for Archaeological and Built Environment Resources

InContext will use the data gathered to assist in determining the area that could be impacted by project activities either directly or indirectly. This area would serve as the Area of Potential Effects (APE) to comply with Section 106 of the NHPA is required.

#### Field Survey

InContext will conduct a pedestrian survey of the study area to identify and document cultural resources (architectural resources and archaeological resources) that are visible above ground. Cultural resources will be recorded, photographed, and mapped.

#### Technical Reports

InContext will prepare a Cultural Resources Inventory Report that documents the methods and results of the cultural resources investigation. This report, in addition to a summary of AB52 consultation efforts, may be used by the City and FEMA in compliance with Section 106 of the NHPA.

*Deliverables: Cultural Resources and Historic Properties Inventory Reports*

### **Task 5. Regulatory Permitting**

#### Section 404 of the Clean Water Act Nationwide Permit

Section 404 of the Clean Water Act regulates, and authorizes the USACE to issue permits for the discharge of dredged or fill materials into waters of the U.S. Black Rascal Creek a natural waterway with perennial flow, and is expected to fall under the jurisdiction of the USACE as waters of the U.S. Because the project is expected to have temporary and permanent impacts on waters of the U.S., a Section 404 Permit will be required. It is expected that the project will fall within the scope of the 2017 USACE Nationwide Permits. If a PCN is required, GPA will prepare the PCN package for submittal to the USACE. The application will include a brief description of the project; identify best management practices that would be employed to minimize incidental construction-related discharge to waters of the U.S., and other pertinent project information, as required by the USACE.

#### Section 401 of the Clean Water Act Certification

The Clean Water Act provides the Regional Water Quality Control Board (RWQCB) with jurisdiction over waters of the state. Section 401 of the Clean Water Act requires applicants acquiring permits from the USACE under Section 404 obtain a Water Quality Certification from the RWQCB for the state in which the discharge originates. The RWQCB typically takes jurisdiction over the same areas as the USACE; therefore, Black Rascal Creek is also waters of the state. GPA will prepare an application for a Section 401 Water Quality Certification for submittal to the RWQCB. The application will include a brief description of the project; an assessment of impacts on waters of the state, best management practices that would be employed to minimize incidental construction-related discharge to waters of the state, and other

pertinent project information, as required by the RWQCB.

#### 1602 Streambed Alteration Agreement

Section 1602 of the Fish and Game Code requires submittal of a Streambed Alteration Notification to the CDFW for any activity that may substantially divert or obstruct the natural flow or substantially change the bed, channel, or bank of any river, stream, or lake. The CDFW reviews the proposed actions and, if necessary, submits to the applicant a proposal for measures to protect affected fish and wildlife resources. The final proposal that is mutually agreed upon by CDFW and the applicant is the Streambed Alteration Agreement.

Streams (and rivers) are defined by the presence of a channel bed and banks and at least an intermittent flow of water; therefore, Black Rascal Creek is expected to fall under the jurisdiction of the CDFW as waters of the state. GPA will prepare a Streambed Alteration Notification package for submittal to the CDFW. The application will include a brief description of the project; identify best management practices that will be employed to minimize incidental construction-related discharge to waters of the state, and other pertinent project information, as required by the CDFW.

#### Central Valley Flood Protection Board Minor Alteration Authorization Letter

An encroachment permit from the Central Valley Flood Protection Board (CVFPB) is generally required for projects where there would be placement of a structure within a CVFPB Regulated Stream, and/or removal of vegetation within 30 feet from the banks of a CVFPB Regulated Stream, per CCR 23, Section 112, Table 1.8. Black Rascal Creek is a CVFPB Regulated Stream; however, because the culvert is not associated with Federal Corps Project Levees or Channel and is being replaced in kind, it is anticipated that a Minor Alteration Authorization letter from the CVFPB would be required for the project.

GPA will compile and submit the CVFPB Minor Alteration request letter. GPA will provide the environmental portions of the CVFPB Minor Alteration request letter, and hydraulic information prepared by Avila and Associates will be included to address the hydraulic information requirements. GPA will also coordinate with the CVFPB as necessary to respond to requests for additional information and support their issuance of the Minor Alteration Authorization letter.

*Deliverables: 404, 401, and 1602 permit application packages, and CVFPB Minor Alteration Authorization Letter*

### **Task 6. Construction Compliance Monitoring**

#### Pre-construction Surveys

GPA will conduct pre-construction surveys no more than three days prior to the start of construction to ensure that no sensitive wildlife species, including nesting birds, are in the construction area. If any special-status or otherwise protected species are found in or adjacent to the construction area, GPA will coordinate the City to develop and implement appropriate avoidance measures. GPA will summarize the results of the surveys and any subsequent coordination in a memo format for the project file.

#### Construction Personnel Education



GPA will prepare an educational brochure with pictures and descriptions of all sensitive plant and animal species with potential to be in work areas. The brochure will be distributed to all contractors, subcontractors, project supervisors, and other staff working on the project prior to construction. GPA will attend up to one pre-construction meeting to summarize the information in the brochure, and to identify the required procedures and chain of communication during construction so that any sightings of species described in the brochure can be brought to the attention of the biological monitor in a timely manner. GPA will also summarize permit conditions and best management practices required by project permits during project construction.

#### Construction Compliance Monitoring

GPA will assist the City with ensuring that construction-related impact avoidance, minimization, and mitigation measures are successfully implemented. Prior to construction, GPA will compile CEQA, NEPA, and regulatory permit requirements and prepare a mitigation-monitoring checklist that will be used to ensure compliance throughout construction, and to provide documentation to regulatory agencies.

GPA will monitor specific activities requiring biological monitoring, including oversight of flagging and staking of environmentally sensitive areas, clearing and grubbing, and invasive species removal. GPA will also conduct up to eight monitoring visits for the duration of construction to ensure that required measures are adequately implemented in the field. GPA will be on call to conduct additional monitoring visit if any situations arise in which additional coordination is required, such as discovery of unanticipated resources, or other situations that could potentially result in non-compliance.

GPA will summarize the monitoring visits into monthly memos for the project file. GPA will coordinate with the City's Resident Engineer as needed to correct any conditions that are out of compliance during monitoring visits.

*Deliverables: Pre-construction Survey Report; Educational Brochure; up to three monthly Mitigation Monitoring Memorandums; Post-construction Report*



### III. Assumptions

- The project will be categorically exempted under the California Environmental Quality Act, and the City will file the Notice of Exemption for CEQA. If the project description changes, or if currently unknown circumstances arise in a manner that would result in greater environmental impacts, this environmental scope may need to be revised.
- The project will be categorically excluded pursuant to NEPA. If the project description changes, or if currently unknown circumstances arise in a manner that would result in greater environmental impacts, this environmental scope may need to be revised. The City will be responsible for coordinating and obtaining NEPA approvals.
- Thirty-five percent plans will be provided prior to initiating studies, and necessary access will be provided to allow surveys to be conducted within the entire BSA.
- There is no Essential Fish Habitat (EFH) within the project area; therefore, an EFH assessment and consultation with the National Marine Fisheries Service is not required.
- There is no potential for threatened or endangered species or their critical habitat to be in the project area, and consultation with the USFWS is not required.
- The culvert is an existing facility within a residential area, and Phase I Environmental Site Assessment is not required to assess potential for hazardous materials.
- The existing culvert is not a historic property, and the project would not result in impacts on any properties over 45 years of age.
- InContext assumes FEMA will consult directly with consulting parties. If the City or FEMA requests additional assistance beyond that described above, InContext will prepare an additional scope of work and cost as appropriate.
- No new cultural resources or previously identified cultural resources area present with the APE, precluding the need for documentation of any new resources.
- No historic-period resources will be identified that may be indirectly affected by the project, precluding the need for expansion of the APE beyond the footprint of ground-disturbing impacts.
- No hydrology assessment will be required by the regulatory agencies. If a hydrological assessment is required, GPA will coordinate with the City of Merced and provide a scope of work and cost for a hydrological assessment.
- Existing reports on the culvert design and maintenance records are readily available.
- There will be no change to the water surface elevations from the proposed culvert replacement; therefore, no FEMA coordination is required.
- The culvert will not cause a significant encroachment into the floodplain.
- Survey information for adjacent buildings will be provided to determine the potential impact of the

culvert replacement on the adjacent insurable structures.

- There will be no significant change to the Base Flood Elevations.
- No Conditional Letter of Map Revision will be required.
- A complete project description and 65 percent plans plan will be provided prior to initiating the regulatory permitting applications.
- The City will provide engineering information required to support the CVFPB Minor Alteration Authorization request.
- City will apply for any required encroachment permit from the Merced Irrigation District, and will pay applications fees for all regulatory permits.
- If a new CVFPB encroachment permit is required, GPA assumes that any compliance with Section 106 of the National Historic Preservation Act and Section 7 of the federal Endangered Species Act that is completed by FEMA will also be sufficient to support United States Army Corps of Engineers Section 408 Division's compliance with these federal regulations, and that no additional investigations or documentation would be required by USACE Section 408 Division for them to issue the 408 permit that will be required for CVFPB to be able to issue an encroachment permit.
- All pertinent information, including project design information and any existing background and/or technical information will be provided to GPA as needed to complete the technical analysis.
- A stand-alone revegetation/mitigation plan will not be required, and is not included as part of this scope of work. If a plan is required by regulatory agencies, the environmental scope may need to be revised.
- Eight site visits will be sufficient for the construction monitoring phase, including one pre-construction survey, six bi-monthly monitoring visits, and one post-construction visit. If additional visits are needed, the environmental scope may need to be revised.

## PROJECT CALENDAR-EXHIBIT B

PROJECT NOS.: 117054  
PROJECT NAME: Cherokee Culvert Replacement  
PROJECT ENGINEER: Joel D Svendsen, PE  
PROJECT CHAMPION: Richard Chaparro

<u>DATE</u>	<u>ACTION</u>	
9/27/2017	Environmental Permit Applications Submitted	30 Days
10/27/2017	Environmental Permit App. Comments Received	90 Days
1/24/2018	Biologist Selected from SOQ	150 Days
6/29/2018	Biologist RFP Reviewed and Negotiated	150 Days
11/26/2018	Biologist Contract Executed	60 Days
1/25/2019	Environmental Permit App. Response Submitted	60 Days
3/26/2019	Environmental Permit Application Approved	14 Days
4/9/2019	Plans & Specs Reviewed and Approved	5 Days
4/14/2019	1st Advertisement	

**EXHIBIT B**



<u>4/21/2019</u>	2nd Advertisement	7 Days
<u>4/26/2019</u>	Prebid Meeting @ 10:00 AM	5 Days
<u>5/10/2019</u>	Bid Opening @ 2:00 PM	14 Days
<u>5/24/2019</u>	Admin Report for Award due to City Manager	14 Days
<u>6/7/2019</u>	Council Award Contract	14 Days
<u>6/21/2019</u>	Preconstruction Meeting	14 Days
<u>6/22/2019</u>	Notice to Proceed Construction	1 Days
<u>9/14/2019</u>	Completion Date using 60 working days	60 Days

EXHIBIT C

**Project Budget:**  
**Cherokee Culvert Replacement**  
 July 19, 2018

Activity ID	Employee	Hours/Units	Rate	Amount	Task Subtotal
<b>Task 1. Project Management and Meetings</b>					
	Dawn Cunningham - Associate Biologist	32.00	\$125.00	\$4,000.00	
	Marieka Schrader - Senior Associate	8.00	\$151.84	\$1,214.72	
	<b>Task Subtotal</b>	<b>40.00</b>			<b>\$5,214.72</b>
<b>Task 2. Biological Resource Assessment</b>					
	Anastasia Shippey - Biologist	80.00	\$68.33	\$5,466.40	
	Angela Scudiere - Senior Biologist	24.00	\$98.54	\$2,364.96	
	Dawn Cunningham - Associate Biologist	42.00	\$125.00	\$5,250.00	
	Marieka Schrader - Senior Associate	16.00	\$151.84	\$2,429.44	
	<b>Task Subtotal</b>	<b>162.00</b>			<b>\$15,510.80</b>
<b>Task 3. Aquatic Resources Delineation</b>					
	Anastasia Shippey - Biologist	40.00	\$68.33	\$2,733.20	
	Dawn Cunningham - Associate Biologist	40.00	\$91.26	\$3,650.40	
	Angela Scudiere - Senior Biologist	24.00	\$98.54	\$2,364.96	
	Marieka Schrader - Senior Associate	12.00	\$151.84	\$1,822.08	
	<b>Task Subtotal</b>	<b>116.00</b>			<b>\$10,570.64</b>
<b>Task 5. Regulatory Permitting</b>					
	Anastasia Shippey - Biologist	96.00	\$68.33	\$6,559.68	
	Dawn Cunningham - Associate Biologist	24.00	\$91.26	\$2,190.24	
	Angela Scudiere - Senior Biologist	16.00	\$98.54	\$1,576.64	
	Marieka Schrader - Senior Associate	8.00	\$151.84	\$1,214.72	
	<b>Task Subtotal</b>	<b>144.00</b>			<b>\$11,541.28</b>
<b>Task 6. Construction Compliance Monitoring</b>					
	Anastasia Shippey - Biologist	64.00	\$68.33	\$4,373.12	
	Dawn Cunningham - Associate Biologist	64.00	\$91.26	\$5,840.64	
	Angela Scudiere - Senior Biologist	16.00	\$98.54	\$1,576.64	
	Marieka Schrader - Senior Associate	12.00	\$151.84	\$1,822.08	
	<b>Task Subtotal</b>	<b>156.00</b>			<b>\$13,612.48</b>
<b>Total Services</b>		<b>618.00</b>			<b>\$56,449.92</b>
<b>Expense Budget:</b>					
		Units	Amt	Mkup	
	Task 4. Cultural Resources (InContext)	1.00	\$9,286.75		\$9,286.75
	Copies - project expense	50.00	\$2.00		\$100.00
	Mileage - Billable expense (240 miles RT)	2,880.00	\$0.57		\$1,627.20
<b>Total Expenses</b>					<b>\$11,013.95</b>
<b>Total Service:</b>				<b>\$56,449.92</b>	
<b>Total Expense:</b>				<b>\$11,013.95</b>	
<b>Grand Total:</b>				<b>\$67,463.87</b>	

EXHIBIT C