

**MASTER AGREEMENT FOR PROFESSIONAL CONSULTANT SERVICES**

**Engineering and Related Services for Water Resources, Engineering Planning and Design,  
Construction Management, Supervisory Control and Data Acquisition (SCADA),  
Landscape Architectural Design, and Water Conservation Services  
for Various Water Projects**

**CDM SMITH, INC.**

THIS MASTER AGREEMENT FOR PROFESSIONAL CONSULTANT SERVICES (“Agreement”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2018 (“Effective Date”), by and between the CITY OF RIVERSIDE (“City”), a California charter city and municipal corporation and CDM SMITH, INC., a Massachusetts corporation authorized to do business in California (“Consultant”), referred to collectively as the “Parties.”

**RECITALS**

A. WHEREAS, City requires the services of a consultant to provide engineering and related services for water resources, engineering planning and design, construction management, supervisory control and data acquisition (“SCADA”), landscape architectural design, and water conservation services for various water projects; and

B. WHEREAS, City issued a Request for Qualifications (“RFQ”) for the purposes of establishing a panel of consultants experienced in providing engineering and related services for water resources, engineering planning and design, construction management, SCADA, landscape architectural design, and water conservation services for various water projects; and

C. WHEREAS, Consultant has the necessary experience in providing engineering and related services for water resources, engineering planning and design, construction management, SCADA, landscape architectural design, and water conservation services for various water projects; and

D. WHEREAS, Consultant has submitted its qualifications to the City and has affirmed its willingness and ability to provide such services.

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein by this reference, City and Consultant agree as follows:

3. **TERM.** The term of this Agreement shall become effective on the date first written above, and shall remain in effect through:

a. May 1, 2021; or

b. The required date for completion of an Assigned Project, provided that such project was assigned prior to May 1, 2021.

Upon expiration of this Agreement and mutual consent of the Parties, this Agreement may be extended for one additional one-year term.

4. **CONSULTANT'S COMPENSATION.**

4.1 Services. Consultant shall receive compensation for all services rendered under this Agreement at the rates negotiated for the Assigned Project, and set forth in the Supplemental Agreement for Assigned Project. The total amount to be paid to Consultant for all Assigned Projects, over the initial three-year term of this Agreement, shall not exceed Seven Hundred and Fifty-Thousand Dollars (\$750,000).

4.2 Extra Services. Payment for Extra Services shall be negotiated between City and Consultant on the basis of the Professional Hourly Rates schedule negotiated for the Assigned Project.

5. **PAYMENTS TO CONSULTANT.**

5.1 Basic Services.

a. Partial payments shall be made in accordance with the Compensation Schedule attached to the Supplemental Agreement for each Assigned Project. Payments shall be processed no more than once per month.

b. City shall pay Consultant all undisputed balances on invoices within sixty (60) days of receipt, and shall notify consultant of any disputed amounts within thirty (30) days of receipt.

5.2 Extra Services. Payments for approved Extra Services as provided herein shall be made monthly as Extra Services are rendered and expenses incurred.

5.3 Reimbursements. Reimbursement for costs incurred and other expenses shall be made to Consultant within sixty (60) days of City's receipt and approval of invoices.

5.4 Limitation. No payment for any work or services performed by Consultant shall exceed the limits established herein.

to the Project Manager of up-to-date monthly progress reports by Consultant shall be a condition precedent to receipt of any payments otherwise due from City.

9.3 Appearance at Hearings. If and when required by City, Consultant shall render assistance at public hearings or other meetings related to the review and approval of the Assigned Project, or as necessary to perform the services.

10. **INDEPENDENT CONTRACTOR.** At all times during the performance of the services, Consultant and Consultant's agents and employees shall act in an independent capacity and not as officers, employees or agents of City. Consultant's employees and agents shall under no circumstances be considered or held to be employees or agents of City, and City shall have no obligation to pay or withhold state or federal taxes or provide workers' compensation or unemployment insurance for or on behalf of them or Consultant. City retains Consultant on an independent contractor basis. Consultant is not an employee of City.

10.1 Control and Payment of Subordinates. The personnel performing the services under this Agreement, or any Supplemental Agreement, on behalf of Consultant shall at all times be under Consultant's exclusive direction and control. Consultant shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of services under this Agreement, or any Supplemental Agreement, and as required by law. Consultant shall be responsible for all reports and obligations respecting such personnel, including, but not limited to social security taxes, income tax withholding, unemployment insurance, and workers' compensation insurance.

10.2 Subordinates and Subconsultants. Consultant shall employ, at Consultant's own expense, technicians and professionals properly skilled in the various aspects of the design, engineering and construction administration of facilities required. If subconsultants are engaged for any portions of the services, Consultant shall advise the Project Manager in writing of their selection prior to their performance of work. The Project Manager shall have the authority to approve or reject the use of any subconsultant for any of the services.

## 11. **LICENSES**

11.1 State Professional Licenses. Consultant represents and warrants to City that Consultant and all subconsultants have all licenses, permits, qualifications and approvals of whatever nature which are legally required to practice its profession. Consultant further represents, that Consultant shall maintain all such licenses and approvals in full effect during the term of this Agreement.

11.2 Local Licenses. Consultant and all subconsultants shall secure a local business license (Business Tax Registration) to operate in the City of Riverside.

12. **EXTRA SERVICES OF CONSULTANT.** At any time during the term of this Agreement, City may request that Consultant perform Extra Services. Consultant shall not perform Extra Services until receiving written authorization from the Project Manager. Any work which is determined by City to be necessary for the proper completion of the Assigned Project, but which neither Consultant nor City reasonably anticipated would be necessary when the scope

other construction bid documents prepared under this Agreement, or any Supplemental Agreement, by Consultant without additional compensation to Consultant.

16. **PROJECT SCHEDULE.** Consultant shall prepare and submit a final time schedule for all major phases of each Assigned Project to the City within five (5) calendar days following City's issuance of a Notice to Proceed for said project. This schedule shall reflect the project completion time allowed and the overall schedule included in the Consultant's proposal. The schedule will be subject to revision for delays caused by conditions beyond the control of Consultant, and delays which Consultant cannot reasonably foresee. The Project Manager shall be promptly notified of all delays. Should Consultant determine that a schedule modification is necessary, Consultant shall promptly submit a revised Project Schedule for Project Manager's review and approval of the anticipated delay.

17. **ACCOUNTING RECORDS OF CONSULTANT.** Records of Consultant's direct personnel, reimbursable expenses pertaining to any Extra Services, and records of accounts between City and Consultant shall be made and kept by Consultant on a generally recognized accounting basis and shall be made available to City or its authorized representatives at all reasonable times for inspection and copying.

18. **INDEMNIFICATION.**

18.1 Design Professional Defined. For purposes of this Agreement, "Design Professional" includes the following:

A. An individual licensed as an architect pursuant to Chapter 3 (commencing with Section 5500) of Division 3 of the Business and Professions Code, and a business entity offering architectural services in accordance with that chapter.

B. An individual licensed as a landscape architect pursuant to Chapter 3.5 (commencing with Section 5615) of Division 3 of the Business and Professions Code, and a business entity offering landscape architectural services in accordance with that chapter.

C. An individual registered as a professional engineer pursuant to Chapter 7 (commencing with Section 6700) of Division 3 of the Business and Professions Code, and a business entity offering professional engineering services in accordance with that chapter.

D. An individual licensed as a professional land surveyor pursuant to Chapter 15 (commencing with Section 8700) of Division 3 of the Business and Professions Code, and a business entity offering professional land surveying services in accordance with that chapter.

18.2 Defense Obligation for Design Professional Liability. Consultant agrees, at its cost and expense, to promptly defend the City, and the City's employees, officers, managers, agents and council members (collectively the "Parties to be Defended") from and against any and all claims, allegations, lawsuits, arbitration proceedings, administrative proceedings, regulatory proceedings, or other legal proceedings to the extent the same arise out of, pertain to, or relate to the negligence,

any Supplemental Agreement hereto, notwithstanding that the City may have benefited from its work or services. This indemnification provision shall apply to any acts, omissions, negligence, recklessness, or willful misconduct, whether active or passive, on the part of the Consultant or anyone employed or working under the Consultant.

## 19. **INSURANCE.**

19.1 General Provisions. Prior to the City's execution of this Agreement, Consultant shall provide satisfactory evidence of, and shall thereafter maintain during the term of this Agreement, such insurance policies and coverages in the types, limits, forms and ratings required herein. The rating and required insurance policies and coverages may be modified in writing by the City's Risk Manager, or his designee, unless such modification is prohibited by law.

19.1.1 Limitations. These minimum amounts of coverage shall not constitute any limitation or cap on Consultant's indemnification obligations herein.

19.1.2 Ratings. Any insurance policy or coverage provided by Consultant or subcontractors as required by this Agreement shall be deemed inadequate and a material breach of this Agreement, unless such policy or coverage is issued by insurance companies authorized to transact insurance business in the State of California with a policy holder's rating of A or higher and a Financial Class of VII or higher.

19.1.3 Cancellation. The policies shall not be canceled unless thirty (30) days' prior written notification of intended cancellation has been given to City by certified or registered mail, postage prepaid.

19.1.4 Adequacy. The City, its officers, employees and agents make no representation that the types or limits of insurance specified to be carried by Consultant pursuant to this Agreement are adequate to protect Consultant. If Consultant believes that any required insurance coverage is inadequate, Consultant will obtain such additional insurance coverage as Consultant deems adequate, at Consultant's sole expense.

19.2 Workers' Compensation Insurance. By executing this Agreement, Consultant certifies that Consultant is aware of and will comply with Section 3700 of the Labor Code of the State of California requiring every employer to be insured against liability for workers' compensation, or to undertake self-insurance before commencing any of the work. Consultant shall carry the insurance or provide for self-insurance required by California law to protect said Consultant from claims under the Workers' Compensation Act. Prior to City's execution of this Agreement, Consultant shall file with City either 1) a certificate of insurance showing that such insurance is in effect, or that Consultant is self-insured for such coverage, or 2) a certified statement that Consultant has no employees, and acknowledging that if Consultant does employ any person, the necessary certificate of insurance will immediately be filed with City. Any certificate filed with City shall provide that City will be given ten (10) days' prior written notice before modification or cancellation thereof.

19.4 Errors and Omissions Insurance. Prior to City's execution of this Agreement, Consultant shall obtain, and shall thereafter maintain in force during the term of this Agreement, professional liability or errors and omissions liability insurance in the minimum amount of \$1,000,000, unless otherwise waived by the City's Risk Manager. Coverage as required in this Section shall apply to liability for a professional error, act, or omission arising out of the scope of Consultant's services as defined in this Agreement or any Supplemental Agreement.

20. **SUBCONTRACTORS' INSURANCE.** Consultant shall require all of its subcontractors to carry insurance, in an amount sufficient to cover the risk of injury, damage or loss, that may be caused by the subcontractors' scope of services and activities provided in furtherance of this Agreement or any Supplemental Agreement hereto, including, but without limitation, the following coverages: Workers Compensation, Commercial General Liability, Errors and Omissions, and Automobile liability. Upon City's request, Consultant shall provide City with satisfactory evidence that subcontractors have obtained insurance policies and coverages required by this section.

21. **REPRODUCTION OF DOCUMENTS.**

21.1 Review Documents. Consultant shall provide City, in the number reasonably required by City, Consultant's proposed final construction bid documents for the review and approval by the public agencies having jurisdiction over the Assigned Project.

21.2 Final Approved Construction Documents. Consultant shall furnish the City the number of reproductions of the final approved construction bid documents necessary for use by City in obtaining construction bids and completing construction of the Assigned Project.

22. **OWNERSHIP OF DOCUMENTS AND COPYRIGHTS.**

22.1 Ownership of Documents. All work and contract deliverables prepared pursuant to this Agreement or any Supplemental Agreement hereto, by Consultant, including, but not limited to, drawings, specifications, sketches, calculations, estimates, data, charts, models, reports, maps, computer programs, software or other contract deliverables, whether in written form, electronic, digital or otherwise ("Project Documents"), shall be and remain the property of City and shall be delivered to City whenever requested. Consultant shall not release to others information furnished by City without prior express written approval of City.

22.2 Work-For-Hire; Ownership of Copyrights. Consultant agrees that any work prepared for City that is eligible for copyright protection in the United States or elsewhere shall be a "work made for hire" as that term is used in the laws of the United States regarding copyrights. Consultant understands that the City shall be deemed the author of any and all such work, the City may register copyrights in the City's name, and the work made for hire is the exclusive property of the City. Consultant agrees to sign upon request any documents affirming that work created by Consultant at the direction of the City is work made for hire and belongs exclusively to the City. If any such work is deemed for any reason not to be a work made for hire, Consultant assigns all right, title and interest in the copyright in such work, and all extensions and renewals thereof, to City, and agrees to

this section shall be in addition to and not in lieu of those remedies otherwise specified in this Agreement.

29. **GENERAL COMPLIANCE WITH LAWS.** Consultant shall keep fully informed of federal, state and local laws and ordinances and regulations which in any manner affect those employed by Consultant, or in any way affect the performance of services by Consultant pursuant to this Agreement or any Supplemental Agreement hereto. Consultant shall at all times observe and comply with all such laws, ordinances and regulations, and shall be solely responsible for any failure to comply with all applicable laws, ordinances and regulations. Consultant represents and warrants that Consultant has obtained all necessary licenses to perform the services herein and that such licenses are in good standing. Consultant further represents and warrants that the services provided herein shall conform to all ordinances, policies and practices of the City of Riverside. This includes compliance with prevailing wage rates and their payment in accordance with the California Labor Code.

30. **OFFSETS.** Consultant acknowledges and agrees that with respect to any business tax or penalties thereon, utility charges, invoiced fee or other debt which Consultant owes or may owe to the City, City reserves the right to withhold and offset said amounts from payments or refunds or reimbursements owed by City to Consultant. Notice of such withholding and offset, shall promptly be given to Consultant by City in writing. In the event of a dispute as to the amount owed or whether such amount is owed to the City, City will hold such disputed amount until either the appropriate appeal process has been completed or until the dispute has been resolved.

31. **VENUE AND ATTORNEYS' FEES.** Any action at law or in equity brought by either of the Parties hereto for the purpose of enforcing a right or rights provided for by this Agreement or any Supplemental Agreement hereto shall be tried in a court of competent jurisdiction in the County of Riverside, State of California, and the Parties hereby waive all provisions of law providing for a change of venue in such proceedings to any other county. In the event either party hereto shall bring suit to enforce any term of this Agreement, any Supplemental Agreement hereto, or to recover any damages for and on account of the breach of any term or condition of this Agreement or any Supplemental Agreement hereto, it is mutually agreed that each party shall bear their own attorneys' fees.

32. **PREVAILING WAGE.** If applicable, Consultant and all subcontractors are required to pay the general prevailing wage rates of per diem wages and overtime and holiday wages determined by the Director of the Department of Industrial Relations under Section 1720 et seq. of the California Labor Code and implemented by Resolution No. 13346 of the City Council of the City of Riverside. The Director's determination is available on-line at [www.dir.ca.gov/dlsr/DPreWageDetermination.htm](http://www.dir.ca.gov/dlsr/DPreWageDetermination.htm) and is referred to and made a part hereof; the wage rates therein ascertained, determined, and specified are referred to and made a part hereof as though fully set forth herein.

IN WITNESS WHEREOF, City and Consultant have caused this Agreement to be duly executed the day and year first above written.

CITY OF RIVERSIDE, a California  
charter city and municipal corporation

CDM SMITH, INC.,  
a Massachusetts corporation authorized to do  
business in California

By: \_\_\_\_\_  
City Manager

By: David Jensen  
David Jensen, Vice President

Attest: \_\_\_\_\_  
City Clerk

By: Jason P. Makofsky  
Jason P. Makofsky, Assistant Secretary

CERTIFIED AS TO AVAILABILITY OF FUNDS:

By: [Signature]  
Director of Finance



APPROVED AS TO FORM:

By: Susan Allen  
Assistant City Attorney

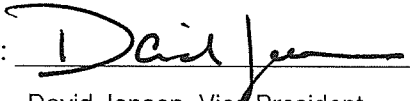


**WORKERS' COMPENSATION CERTIFICATION**

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.

DATED: 4/10/18

CDM SMITH, INC.,  
a Massachusetts corporation authorized to do  
business in California

By:   
David Jensen, Vice President  
\_\_\_\_\_  
[Printed Name and Title]