City of FRESNO **REPORT TO THE CITY COUNCIL**

AGENDA ITEM NO.
COUNCIL MEETING
APPROVED BY
DEPARTMENT DIRECTOR
CITY MANAGER

March 11, 2008

FROM: RANDALL L. COOPER, Director
Parks, After School, Recreation, and Community Services Department

THROUGH: JERRY HAYNES, Assistant Director
Parks, After School, Recreation, and Community Services Department

BY: STEVEN SON, PE, Capital Projects Manager
Public Works Department, Capital Management Division

MARK M. JOHNSON, Project Manager
Public Works Department, Capital Management Division

SUBJECT: APPROVE AN AGREEMENT WITH SAN JOAQUIN RIVER CONSERVANCY IN THE AMOUNT OF $160,000 FOR PROJECT MANAGEMENT AND CONSULTING SERVICES FOR THE PREPARATION OF AN ENVIRONMENTAL ASSESSMENT AND PUBLIC PARTICIPATION FOR THE FUTURE EXTENSION OF THE LEWIS S. EATON TRAIL

KEY RESULT AREA

Customer Satisfaction

RECOMMENDATION

Staff recommends that the City Council approve the Agreement between the City of Fresno (City), Parks, After School, Recreation, and Community Services Department (PARCS) and the San Joaquin River Conservancy (Conservancy) in the amount of one hundred sixty thousand dollars ($160,000.00). The City will utilize these funds to provide project management and professional consulting services for the preparation of an Environmental Assessment (EA) related to the future extension of Lewis S. Eaton Trail. The EA will be in the area of the San Joaquin River-bottom from Spano Park north of Palm Avenue to Highway 41 (see attached Exhibit A).

EXECUTIVE SUMMARY

In partnership with the Conservancy and PARCS, a California Environmental Quality Act (CEQA) and National Environmental Policy Act (NEPA) EA is required for the future extension of Lewis S. Easton trail. The CEQA and NEPA studies and community outreach are required as part of a Grant application by the San Joaquin River Parkway and the Conservation Trust (Trust) with the Wildlife Conservation Board that is currently under consideration. The Conservancy has requested that the City take the lead in the CEQA and NEPA EA, in order for the recreation project to best meet City needs and objectives. The Conservancy has appropriated one hundred sixty thousand dollars ($160,000.00) for the City to solicit and hire an environmental consultant to provide professional consulting services to prepare an EA. The hired environmental consultant

will hold public meetings, compile comments and complete the CEQA and NEPA application. The City will manage the project and ensure that CEQA and NEPA are filed in a timely manor and all necessary processes are observed.

KEY OBJECTIVE BALANCE

This project best balances three Key Objectives: Customer Satisfaction, Employee Satisfaction and prudent Fiscal Management. This project will eventually provide additional trails for recreational opportunities to serve the customer citizens in the neighborhood and throughout the city. Employee satisfaction will result from developing a high-quality project that is desired by the community and accepted by the neighbors Fiscal Management is also included because the San Joaquin River Conservancy has provided the grant funding for the environmental compliance.

The project is located within the boundary of City Council District 2.

BACKGROUND

The City through PARCS and the Public Works Department has been an active partner in the development of the San Joaquin River Parkway – Lewis S. Eaton Trail and in preservation of the San Joaquin River-bottom. Construction of existing trail sections within and outside the Woodward Park area and the trail section adjacent to the Riverside Golf Course have occurred through collaboration with both the Conservancy and the Trust. Parkway trails are extremely popular in the community.

The Trust prepared a River Parkways Grant application requesting $2.3 million to construct an extension of the Eaton Trail in the San Joaquin River bottom from Spano Park north of Palm Avenue through the Spano property to Highway 41. The application was supported by the Conservancy and PARCS. The plan for the proposed project is illustrated on the attached Exhibit A. The proposed grant includes construction of a one-mile paved trail extension, an unpaved walking trail to the river, interpretive signage, and ancillary visitor facilities. The project includes two entrance areas and on-site parking areas, to eliminate vehicle parking impacts to the adjacent neighborhood. The project is designed to skirt the bluffs on River West—Fresno and thereby avoid any interference with or disturbance by future river restoration projects. California Resources Agency grant evaluators selected the project for further evaluation. The Environmental Assessment is required to complete the grant application for funding to design and construct the project. The City will work expeditiously to complete CEQA and NEPA EA to facilitate the environmental clearance as required by the grantor for consideration of the grant proposal. Additional funds for project construction may become available from the Conservancy's voter-authorized bond funds.

The Conservancy prepared an agreement with the City for project management and professional consulting services for preparing an EA. The EA will need to be completed for further consideration by the grantor for the proposed extension of the Lewis S. Eaton Trail. The agreement with the Conservancy was reviewed by the City Attorney's Office and Approved for Form. Upon the City Council's approval and the execution of the agreement, City staff will solicit

and hire an environmental consultant in accordance with Administrative Order for Contracts for Consultant Services Number: 6-19 to prepare the EA.

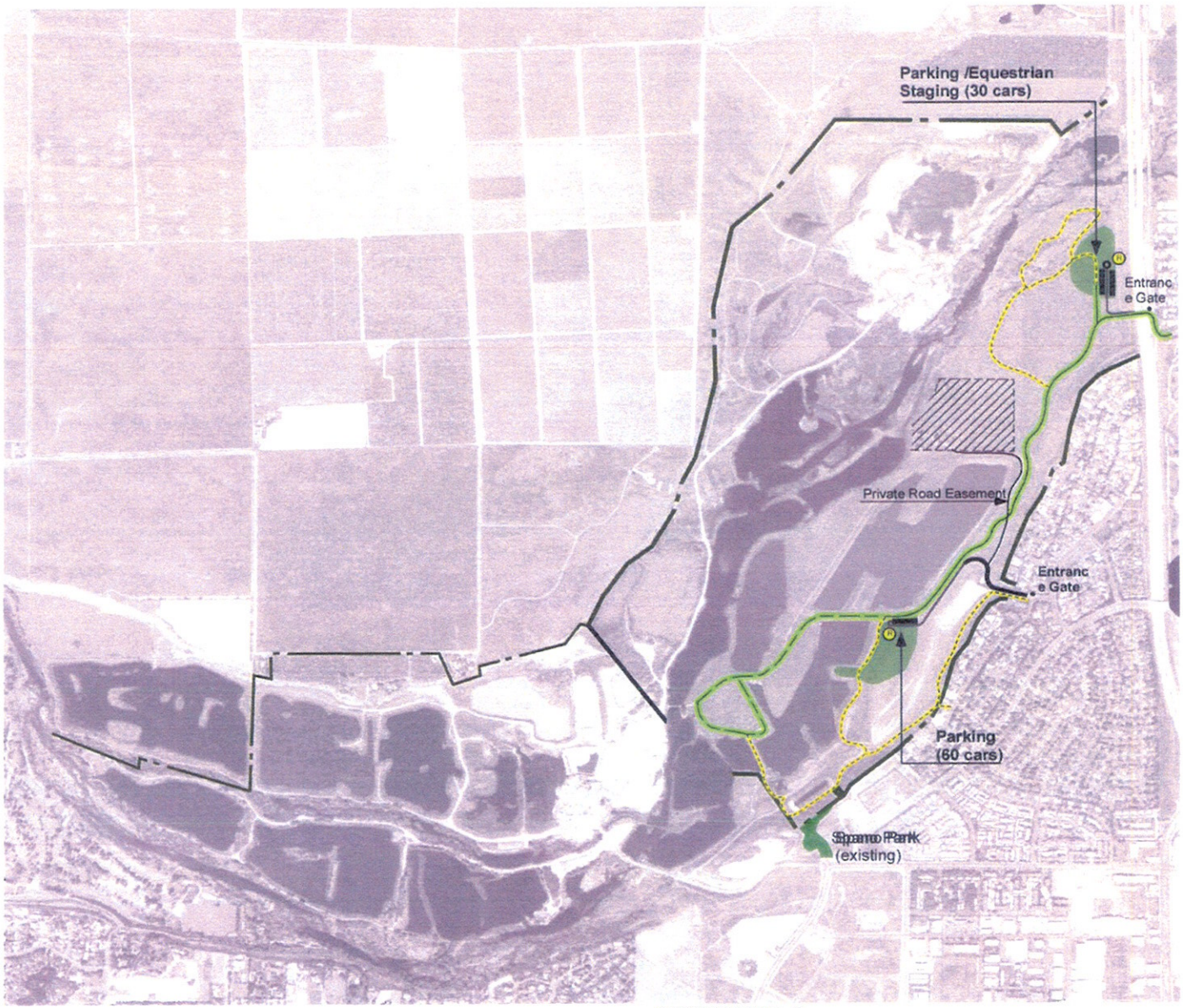
The budget of one hundred sixty thousand dollars ($160,000) is adequate for extensive community outreach and involvement for the project, and for the site-specific environmental studies. The project will be administered by the City as lead agency. Staff is requesting the approval of the agreement with the Conservancy for the City to provide professional consulting services for the preparation of an EA and allowing the Director of PARCS or his designee to sign the agreement on the City's behalf.

FISCAL IMPACT

The project will be fully funded by bond funds from the Conservancy and will not impact the General Fund. No matching funding is required.

K:/JosieK/Report to CC..2008
Eaton Trail Spano....FINAL 021908
3/7/08

Attachment: Exhibit A
Agreement



San Joaquin River Parkway
and Conservation Trust

RIVER WEST OPEN SPACE AREA
and
LEWIS S. EATON TRAIL

Conceptual Public Access Plan

Figure 3
ACCESS IMPROVEMENTS

Legend

- **Property Boundary**
- **Private Ownership / Conservation Easement**
- **Entrance Road**
  - Paved
  - Gravel
- **Future Use Area**
- **Lewis S. Eaton Trail (Multiple-Use)**
- **Multiple-Use Trail**
- **Hiking Trail**
- **Restroom**

Date: 9/30/06

Scale
0 1/8 1/4 1/2 mile
North

© This drawing is conceptual and for planning and permit-processing purposes only. Program information, scale, location of areas, and other information shown are subject to field evaluation and modification.

EXHIBIT A

STATE OF CALIFORNIA

STANDARD AGREEMENT

STD 213 (Rev 06/03)(CA ST PKS, EXCEL 10/20/2004)

AGREEMENT NUMBER
CSJR0716

REGISTRATION NUMBER

1. This Agreement is entered into between the State Agency and Contractor named below:

STATE AGENCY'S NAME
San Joaquin River Conservancy

CONTRACTOR'S NAME
City of Fresno

2. The term of this Agreement is: January 22, 2008 through March 31, 2009

3. The maximum amount of this Agreement is: $ 160,000.00

4. The parties agree to comply with the terms and conditions of the following exhibits which are by this reference made a part of the Agreement.

Agreement for San Joaquin River Parkway, River West, Fresno CEQA Review

Exhibit A--Purpose, Scope of Work, and Special Provisions	10 pages
Exhibit B--Budget Detail and Payment Provisions	4 pages
Exhibit C*--General Terms and Conditions, Contractor Certifications (GTC 307, CCC 307)	

Check mark one item below as Exhibit D:

☐ Exhibit - D Special Terms and Conditions (Attached hereto as part of this agreement) _____ page(s)

☐ Exhibit - D* Special Terms and Conditions

Exhibit E - Additional Provisions _____ pages

Items shown with an Asterisk (*), are hereby incorporated by reference and made part of this agreement as if attached hereto. These documents can be viewed at www.ols.dgs.ca.gov/Standard+Language

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

CONTRACTOR

CONTRACTOR'S NAME *(if other than an individual, state whether a corporation, partnership, etc.)*
City of Fresno

BY *(Authorized Signature)* [signature] DATE SIGNED *(Do not type)* 2-4-08

PRINTED NAME AND TITLE OF PERSON SIGNING
Randall Cooper, Director, Parks, Rec. & Community Serv.

ADDRESS
2326 Fresno Street
Fresno CA 93721

STATE OF CALIFORNIA

AGENCY NAME
San Joaquin River Conservancy

BY *(Authorized Signature)* [signature] DATE SIGNED *(Do not type)* 2-6-08

PRINTED NAME AND TITLE OF PERSON SIGNING
Melinda S. Marks, Executive Officer

ADDRESS
5469 E. Olive Avenue
Fresno, CA 93727

California Department of General Services Use Only

☐ Exempt per:

☐ CONTRACTOR ☐ STATE AGENCY ☐ DEPT. OF GEN.SER. ☐ CONTROLLER ☐ ACCOUNTING SVS. ☐

EXHIBITS A, B & C to

AGREEMENT

BETWEEN

SAN JOAQUIN RIVER CONSERVANCY (State Agency)

AND

CITY OF FRESNO (Contractor)

FOR SAN JOAQUIN RIVER PARKWAY, RIVER WEST, FRESNO

PUBLIC PARTICIPATION AND ENVIRONMENTAL REVIEW

Agreement Number CSJR0716

Subcontracting Wildlife Conservation Board Grant

WC-7029TC (Project ID 2007098)

to the City of Fresno

EXHIBIT A

PURPOSE, SCOPE OF WORK, AND SPECIAL PROVISIONS

This Agreement is generally for the purpose of performing public participation and complying with California Environmental Quality Act (CEQA) and National Environmental Policy Act (NEPA) requirements for the proposed River West, Fresno public access project.

Background

The River West Open Space Area Conceptual Plan—a proposed extension of the Lewis S. Eaton Trail, public access improvements, and habitat enhancements—has been accepted by the State Agency as a plan for future development of the San Joaquin River Parkway on the State Agency's properties located in Fresno and Madera Counties. That portion lying within Fresno County is hereinafter referred to as the "River West, Fresno Project."

State Agency and Contractor have identified an adjacent public river access on the Nees Avenue alignment that could provide public fishing and an alternative vehicle access into the River West, Fresno Project.

The River West, Fresno Project will be located within the jurisdiction and service area of the Contractor, and is planned to provide city residents public recreation through the Contractor's Parks, Recreation, and Community Services Department.

State Agency on May 10, 2007, and the California Wildlife Conservation Board on August 23, 2007, authorized one-hundred sixty-thousand dollars ($160,000) funding from the California Clean Water, Clean Air, Safe Neighborhood Parks and Coastal Protection Fund (Proposition 40, 2002) to plan and provide for environmental review of the River West, Fresno Project.

State Agency and the California Wildlife Conservation Board authorized Contractor to perform all required work and serve as lead agency for the River West, Fresno Project.

State Agency and the California Wildlife Conservation Board entered into Grant Agreement WC-7029TC for State Agency to perform the required work, either directly, through consultants, or through a subcontractor.

On January 15, 2007, Contractor's governing body authorized participation in this Agreement, performance of the work, and acceptance of the grant funding.

Contractor and State Agency hereby agree to comply with the following:

A.1. Purpose

This Agreement provides for the environmental review and public participation required by CEQA and NEPA for the River West, Fresno Project, consisting of extension of the Lewis S. Eaton Trail, public access facilities, and habitat enhancement on the State Agency's Spano property and adjacent public lands. The Scope of Work to be performed by Contractor under this Agreement will be funded by the State Agency's Proposition 40 funding appropriated through the California Wildlife Conservation Board's budget to implement capital improvements for the San Joaquin River Parkway, subject to the terms and conditions of this Agreement.

A.2. Contractor Responsibilities

a. Contractor shall complete its obligations as specified herein and in the following Scope of Work under **A.8**. The location of the River West, Fresno Project is shown on Attachment A-1, Project Location Map, and the conceptual site plan is shown on Attachment A-2, River West Public Access Plan.

b. Contractor shall complete the Scope of Work and meet all requirements of this Agreement by March 31, 2009, unless such date is extended in writing by amendment of this Agreement.

c. Contractor is responsible for recognizing the cooperative nature of the River West, Fresno Project and shall provide credit to the State Agency, California Wildlife Conservation Board, Resources Bond of 2002, and California Department of Fish and Game and any other contributor on signs, demonstrations, promotional materials, advertisements, publications, workshop notices, and exhibits prepared by Contractor referencing the work performed under this Agreement. Any signs installed on the project site in accomplishing the Scope of Work and during the term of this Agreement shall be subject to the mutual agreement of Contractor and State Agency regarding the text, design, and location, and shall display the logos of the Resources Bond, California Wildlife Conservation Board, and State Agency.

d. Contractor shall obtain all necessary permissions and approvals, and comply with all regulations, ordinances, and statutes that apply to any work performed pursuant to this Agreement.

e. Within thirty (30) days following completion of the Scope of Work, Contractor shall submit to State Agency two (2) hard copies and one (1) digital copy of a final report of accomplishments and all final notices, meeting notes, reports, figures, maps, distribution lists, and certifications prepared in performing the work and achieving compliance with CEQA.

f. In the event Contractor substantially defaults on the conditions of this Agreement, State Agency shall give notice describing such default and describing a cure or remedy. If Contractor does not cure the default or fails to commence such cure within ninety (90) days, then Contractor shall be substantially in default of this Agreement.

A.3. Project Managers

All communications and notices associated with this Agreement shall be directed to the following project managers:

State Agency:
Melinda S. Marks, Executive Officer
San Joaquin River Conservancy
5469 E. Olive Avenue
Fresno, California 93727
(559) 253-7324
Melinda.Marks@sjrc.ca.gov

Contractor:
Mark M. Johnson, Project Manager
City of Fresno Public Works Department
2600 Fresno Street
Fresno, CA 93721
(559) 621-8706
Mark.Johnson@fresno.gov

A.4 Use of Subcontractors

Contractor is fully responsible for all work performed under this Agreement, including subcontracted work.

A.5. Cancellation of Grant Agreement

Either party to this Agreement may terminate the Agreement for any reason by providing the other party with 30 days written notice. If State Agency elects or agrees to terminate this Agreement as provided herein, Contractor shall take all reasonable measures to prevent further costs to State Agency. State Agency shall be responsible for non-refundable obligations and expenses incurred by Contractor in the performance of this Agreement prior to the date of the notice to terminate, but only to the amount of the unpaid balance of funding authorized by this Agreement.

A.6. California Labor Code Regulations

The state grant implemented through this Agreement may be subject to California Labor Code requirements, which include prevailing wage provisions. Certain state grants administered by the California Wildlife Conservation Board and the California Department of Fish and Game are not subject to Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code. For more details, refer to California Fish and Game Code Section 1501.5 and to the California Department of Industrial Relations website at www.dir.ca.gov .

A.7. Data Storage

All information products (e.g., data, studies, findings, management plans, manuals, photos, etc.) relating to California's natural environment and produced with the use of public funds shall be cataloged by State Agency in the California Environmental Information Catalog (http:/gis.ca.gov/catalog) maintained by the California Environmental Resources Evaluation System (www.ceres.ca.gov).

A. 8. Scope of Work

The River West Public Access Plan on State Agency's Spano property (Attachment A-2) and proposed uses on adjacent public lands and easements on the river at the terminus of the Nees Avenue alignment comprise the proposed project to be reviewed under this Agreement. The Scope of Work shall consist of environmental review and public participation pursuant to CEQA and NEPA (subject to budget limitations as described herein) of the River West Public Access Plan (Attachment A-2) for the River West, Fresno Project (Attachment A-1), which includes: extension of the multiple-purpose, ADA-compliant Lewis S. Eaton Trail south from its terminus near Contractor's Woodward Park through River West, Fresno; unpaved hiking trails for river access; native tree and shrub planting for habitat restoration adjacent to the trail and a gravel mine pond; limited irrigation system construction and shade tree planting; two gated and controlled entrance roads, associated on-site trailhead parking areas, and entrance kiosks and pay stations; vault toilet restrooms; interpretive signage; a pedestrian trail connection to an

adjacent park; potential vehicle access on a existing unimproved road; and public parking and river access at the terminus Nees Avenue.

The River West, Fresno Project shall be refined, and may be modified, as a result of the public participation, stakeholder involvement, environmental compliance, and mitigation developed in performance of the Scope of Work. The River West, Fresno Project will be designed to avoid interference with future river restoration performed by state and federal agencies and their partners.

Public Participation

Contractor shall schedule meetings, site visits, and public workshops to secure stakeholder and public input on the River West, Fresno Project. Contractor shall meet with State Agency's Interagency Project Development Committee, made up of representatives of the State Agency's member agencies, other involved agencies, and nonprofit partners active within the Parkway. Contractor shall provide outreach to ensure that neighborhood representatives and potential user groups and community interests participate in public meetings and/or workshops.

Project Description

Contractor shall develop a refined description of the River West, Fresno Project, including a site plan, illustrations and descriptions of physical improvements, preliminary capital outlay budget, site constraints, and a projected operations budget and management strategy.

CEQA, NEPA, and Environmental Compliance

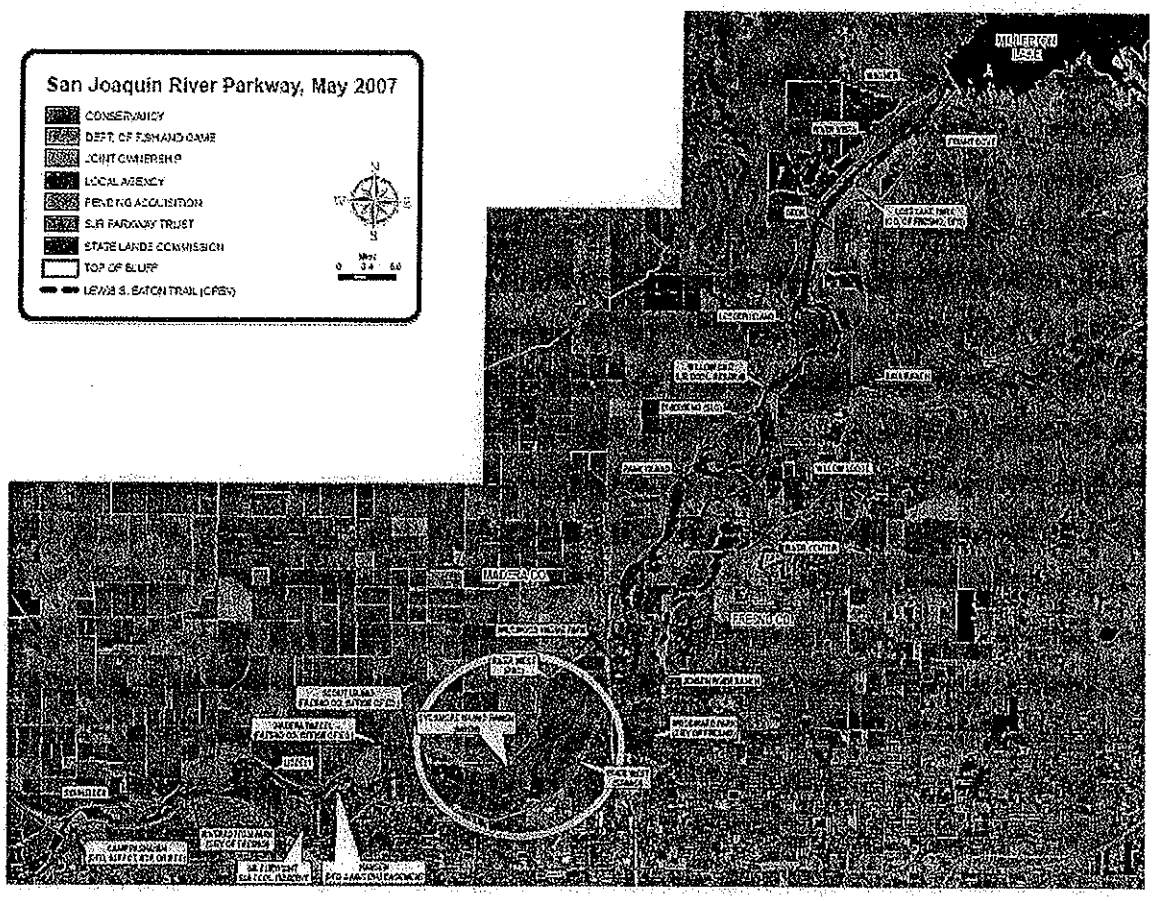
In compliance with CEQA, Contractor shall prepare a legally defensible Initial Study and Mitigated Negative Declaration (if appropriate), and prepare, distribute, and properly file all associated notices and certifications, necessary to analyze the environmental impacts of the River West, Fresno Project, define environmental commitments, and describe mitigation and monitoring responsibilities. Due to the potential for future federal funding for the River West, Fresno Project, Contractor may concurrently complete a NEPA Environmental Assessment, if feasible within the budget of this Agreement. Contractor shall establish and maintain an accurate administrative record.

Contractor shall conduct all necessary assessments, including but not limited to evaluations of biological resources, cultural resources, floodplain and floodway constraints, vehicle access, public services, and scenic resources and viewsheds. Contractor shall conduct public participation and consult with Responsible and Trustee agencies as required. Contractor shall identify regulatory approvals, agreements, and permits required to construct the River West, Fresno Project. Possible environmental regulatory processes include but may not be limited to a Biological Opinion by the U.S. Fish and Wildlife Service if an endangered species is present, a streambed alteration agreement with the Department of Fish and Game, and regulation of the designated floodway by the California Reclamation Board. Contractor shall modify the River West Public Access Plan upon review with regulatory agencies, stakeholders, and the public, especially as may be necessary to avoid significant environmental effects.

Contractor shall provide noticing and conduct one or more formal hearings as necessary to secure the approval of Contractor's governing body (i.e., the City Council) as lead agency for the River West, Fresno Project. If it is determined that an Environmental Impact Report is required, the Scope of Work and budget shall be amended or the Agreement terminated. If an Environmental Impact Statement is determined to be required to meet NEPA requirements, Contractor shall not be obligated to pursue NEPA compliance under this Agreement.

Attachment A-1, Project Location Map

River West, Fresno (Spano)



Attachment A-2, River West Public Access Plan

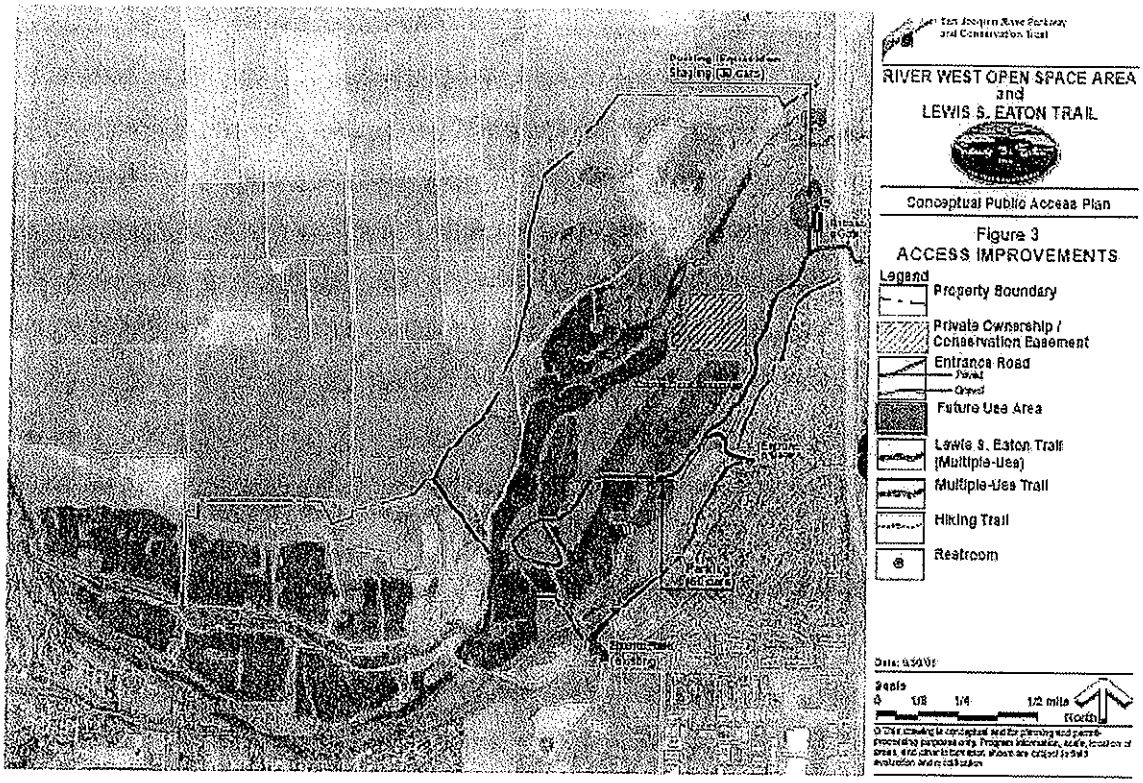


EXHIBIT B

BUDGET DETAIL AND PAYMENT PROVISIONS

B.1. Budget

a. The Budget Detail, Attachment B-1, incorporated herein and made a part hereof by reference, is an estimate of Contractor's anticipated costs of performance for various categories of work. When actual costs (including consultant contracts) indicate that the costs of certain budget categories are higher than estimated, and these higher costs can be offset by lower actual costs in other budget categories, Contractor shall submit a written request to shift allocations among the categories. Contingencies shall only be used upon written request of Contractor. State Agency shall approve or deny the requested budget revision or use of contingencies in writing within ten (10) days of receipt of Contractor's written request. The total reimbursement to Contractor shall not exceed the total contracted amount without securing formal additional funding authorization and written amendment of this Agreement.

b. Prior to execution of this Agreement, Contractor shall disclose all funding sources for the work to be conducted and shall include all amounts applied for or obtained for the work. These amounts shall be reflected in the final attached Attachment B-1, in appropriate budget categories. If Contractor determines during the term of this Agreement that budgeted funds from other sources cannot be obtained or will not be used, or identifies that additional sources of funds will become available, Contractor shall notify State Agency immediately and the budget shall be revised.

Contractor shall not use the funds granted through this Agreement as matching funds for other grants, or to secure loans or other monetary awards without the written approval of the Executive Director of the California Wildlife Conservation Board. Such approval shall not be unreasonably withheld as long as the purpose of this Agreement is maintained.

Should State Agency become aware through any means that Contractor did not disclose and secure approval for all funding sources for the work, this Agreement shall be suspended and referred to the California Department of Finance for a project audit.

B.2. Payment Procedures

a. In consideration for the satisfactory completion of the Scope of Work and other obligations described herein, State Agency agrees to pay Contractor upon receipt of an invoice in triplicate for services rendered under this Agreement. The amount payable shall be for approved budgeted items and shall not exceed one-hundred sixty-thousand dollars ($160,000.00). Payments shall be made not more frequently than monthly in arrears. Payments shall be contingent on receipt of an invoice received and approved by State Agency's authorized representative.

b. The invoices must be submitted on Contractor's letterhead signed by the authorized representative, and include: the agreement number, the time period covered, work completed (a detailed statement of services), subcontractor services, the beginning balance and remaining balance for this Agreement, and whether the request is for partial (progress) or final payment. The invoices shall itemize actual and direct expenditures (e.g., salaries, wages, materials, taxes, permits, reproduction, etc.), and shall include backup documentation such as subcontractor invoices.

c. Invoiced costs must be categorized and following the format of the Budget, Attachment B-1.

d. State Agency shall withhold ten percent (10%) from each payment until State Agency has approved acceptance of the River West, Fresno Project. Upon completion of the Scope of Workand all responsibilities of this Agreement, and

upon approval of all work by State Agency's authorized representative, Contractor may submit an invoice requesting payment of the retained amount.

e. Invoices shall be sent to:

San Joaquin River Conservancy
5469 E. Olive
Fresno CA 93727

f. Contractor shall submit all final billings within thirty (30) days after completion of the River West, Fresno Project.

Attachment B-1, Budget Detail

Line Item	*Estimated Cost*
Resources Assessment	$37,000
Public Participation	$37,000
CEQA Initial Study/Mitigated Neg. Dec. and any NEPA Environmental Assessment	$50,000
Project Management	$20,000
Contingencies	$16,000
Total	**$160,000**

EXHIBIT C

GENERAL TERMS AND CONDITIONS,

CONTRACTOR CERTIFICATIONS

C.1. General Terms and Conditions

The General Terms and Conditions contained in GTC 307 are hereby incorporated by reference and made a part of this Agreement as if attached hereto (4 pages).

C.2. Contractor Certification

The Contractor Certification Clauses contained in CCC 307 are hereby incorporated by reference and made a part of this Agreement as if attached hereto (4 pages). The contractor's authorized representative shall execute the required certification concurrent with execution of this Agreement.

GTC 307

EXHIBIT C

GENERAL TERMS AND CONDITIONS

1. APPROVAL: This Agreement is of no force or effect until signed by both parties and approved by the Department of General Services, if required. Contractor may not commence performance until such approval has been obtained.

2. AMENDMENT: No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or Agreement not incorporated in the Agreement is binding on any of the parties.

3. ASSIGNMENT: This Agreement is not assignable by the Contractor, either in whole or in part, without the consent of the State in the form of a formal written amendment.

4. AUDIT: Contractor agrees that the awarding department, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (Gov. Code §8546.7, Pub. Contract Code §10115 et seq., CCR Title 2, Section 1896).

5. INDEMNIFICATION: Contractor agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by Contractor in the performance of this Agreement.

6. DISPUTES: Contractor shall continue with the responsibilities under this Agreement during any dispute.

7. TERMINATION FOR CAUSE: The State may terminate this Agreement and be relieved of any payments should the Contractor fail to perform the requirements of this Agreement at the time and in the manner herein provided. In the event of such termination the State may proceed with the work in any manner deemed proper by the State. All costs to the State shall be deducted from any sum due the Contractor under this Agreement and the balance, if any, shall be paid to the Contractor upon demand.

8. INDEPENDENT CONTRACTOR: Contractor, and the agents and employees of Contractor, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the State.

9. RECYCLING CERTIFICATION: The Contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of post consumer material as defined in the Public Contract Code Section 12200, in products, materials, goods, or supplies offered or sold to the State regardless of whether the product meets the requirements of Public Contract Code Section 12209. With respect to printer or duplication cartridges that comply with the requirements of Section 12156(e), the certification required by this subdivision shall specify that the cartridges so comply (Pub. Contract Code §12205).

10. NON-DISCRIMINATION CLAUSE: During the performance of this Agreement, Contractor and its 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, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave. Contractor and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

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

11. CERTIFICATION CLAUSES: The CONTRACTOR CERTIFICATION CLAUSES contained in the document CCC 307 are hereby incorporated by reference and made a part of this Agreement by this reference as if attached hereto.

12. TIMELINESS: Time is of the essence in this Agreement.

13. COMPENSATION: The consideration to be paid Contractor, as provided herein, shall be in compensation for all of Contractor's expenses incurred in the performance hereof, including travel, per diem, and taxes, unless otherwise expressly so provided.

14. GOVERNING LAW: This contract is governed by and shall be interpreted in accordance with the laws of the State of California.

15. ANTITRUST CLAIMS: The Contractor by signing this agreement hereby certifies that if these services or goods are obtained by means of a competitive bid, the Contractor shall comply with the requirements of the Government Codes Sections set out below.
a. The Government Code Chapter on Antitrust claims contains the following definitions:
1). "Public purchase" means a purchase by means of competitive bids of goods, services, or materials by the State or any of its political subdivisions or public agencies on whose behalf the Attorney General may bring an action pursuant to subdivision (c) of Section 16750 of the Business and Professions Code.
2). "Public purchasing body" means the State or the subdivision or agency making a public purchase. Government Code Section 4550.

b. In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder. Government Code Section 4552.

c. If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. Government Code Section 4553.

d. Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action. See Government Code Section 4554.

16. CHILD SUPPORT COMPLIANCE ACT: "For any Agreement in excess of $100,000, the contractor acknowledges in accordance with Public Contract Code 7110, that:

a). The contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and

b) The contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department."

17. UNENFORCEABLE PROVISION: In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby.

18. PRIORITY HIRING CONSIDERATIONS: If this Contract includes services in excess of $200,000, the Contractor shall give priority consideration in filling vacancies in positions funded by the Contract to qualified recipients of aid under Welfare and Institutions Code Section 11200 in accordance with Pub. Contract Code §10353.

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CERTIFICATION

I, the official named below, CERTIFY UNDER PENALTY OF PERJURY that I am duly authorized to legally bind the prospective Contractor to the clause(s) listed below. This certification is made under the laws of the State of California.

Contractor/Bidder Firm Name (Printed)	*Federal ID Number*
By (Authorized Signature)	
Printed Name and Title of Person Signing	
Date Executed	*Executed in the County of*

CONTRACTOR CERTIFICATION CLAUSES

1. STATEMENT OF COMPLIANCE: Contractor has, unless exempted, complied with the nondiscrimination program requirements. (Gov. Code §12990 (a-f) and CCR, Title 2, Section 8103) (Not applicable to public entities.)

2. DRUG-FREE WORKPLACE REQUIREMENTS: Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 and will provide a drug-free workplace by taking the following actions:

a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.

b. Establish a Drug-Free Awareness Program to inform employees about:

1) the dangers of drug abuse in the workplace;
2) the person's or organization's policy of maintaining a drug-free workplace;
3) any available counseling, rehabilitation and employee assistance programs; and,
4) penalties that may be imposed upon employees for drug abuse violations.

c. Every employee who works on the proposed Agreement will:

1) receive a copy of the company's drug-free workplace policy statement; and,
2) agree to abide by the terms of the company's statement as a condition of employment on the Agreement.

Failure to comply with these requirements may result in suspension of payments under the Agreement or termination of the Agreement or both and Contractor may be ineligible for award of any future State agreements if the department determines that any of the following has occurred: the Contractor has made false certification, or violated the

certification by failing to carry out the requirements as noted above. (Gov. Code §8350 et seq.)

3. NATIONAL LABOR RELATIONS BOARD CERTIFICATION: Contractor certifies that no more than one (1) final unappealable finding of contempt of court by a Federal court has been issued against Contractor within the immediately preceding two-year period because of Contractor's failure to comply with an order of a Federal court, which orders Contractor to comply with an order of the National Labor Relations Board. (Pub. Contract Code §10296) (Not applicable to public entities.)

4. CONTRACTS FOR LEGAL SERVICES $50,000 OR MORE- PRO BONO REQUIREMENT: Contractor hereby certifies that contractor will comply with the requirements of Section 6072 of the Business and Professions Code, effective January 1, 2003.

Contractor agrees to make a good faith effort to provide a minimum number of hours of pro bono legal services during each year of the contract equal to the lesser of 30 multiplied by the number of full time attorneys in the firm's offices in the State, with the number of hours prorated on an actual day basis for any contract period of less than a full year or 10% of its contract with the State.

Failure to make a good faith effort may be cause for non-renewal of a state contract for legal services, and may be taken into account when determining the award of future contracts with the State for legal services.

5. EXPATRIATE CORPORATIONS: Contractor hereby declares that it is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of Public Contract Code Section 10286 and 10286.1, and is eligible to contract with the State of California.

6. SWEATFREE CODE OF CONDUCT:

a. All Contractors contracting for the procurement or laundering of apparel, garments or corresponding accessories, or the procurement of equipment, materials, or supplies, other than procurement related to a public works contract, declare under penalty of perjury that no apparel, garments or corresponding accessories, equipment, materials, or supplies furnished to the state pursuant to the contract have been laundered or produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. The contractor further declares under penalty of perjury that they adhere to the Sweatfree Code of Conduct as set forth on the California Department of Industrial Relations website located at www.dir.ca.gov, and Public Contract Code Section 6108.

b. The contractor agrees to cooperate fully in providing reasonable access to the contractor's records, documents, agents or employees, or premises if reasonably required by authorized officials of the contracting agency, the Department of Industrial Relations,

or the Department of Justice to determine the contractor's compliance with the requirements under paragraph (a).

7. DOMESTIC PARTNERS: For contracts over $100,000 executed or amended after January 1, 2007, the contractor certifies that contractor is in compliance with Public Contract Code section 10295.3.

DOING BUSINESS WITH THE STATE OF CALIFORNIA

The following laws apply to persons or entities doing business with the State of California.

1. CONFLICT OF INTEREST: Contractor needs to be aware of the following provisions regarding current or former state employees. If Contractor has any questions on the status of any person rendering services or involved with the Agreement, the awarding agency must be contacted immediately for clarification.

Current State Employees (Pub. Contract Code §10410):

1). No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any state agency, unless the employment, activity or enterprise is required as a condition of regular state employment.

2). No officer or employee shall contract on his or her own behalf as an independent contractor with any state agency to provide goods or services.

Former State Employees (Pub. Contract Code §10411):

1). For the two-year period from the date he or she left state employment, no former state officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the contract while employed in any capacity by any state agency.

2). For the twelve-month period from the date he or she left state employment, no former state officer or employee may enter into a contract with any state agency if he or she was employed by that state agency in a policy-making position in the same general subject area as the proposed contract within the 12-month period prior to his or her leaving state service.

If Contractor violates any provisions of above paragraphs, such action by Contractor shall render this Agreement void. (Pub. Contract Code §10420)

Members of boards and commissions are exempt from this section if they do not receive payment other than payment of each meeting of the board or commission, payment for preparatory time and payment for per diem. (Pub. Contract Code §10430 (e))

2. LABOR CODE/WORKERS' COMPENSATION: Contractor needs to be aware of the provisions which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions, and Contractor affirms to comply with such provisions before commencing; the performance of the work of this Agreement. (Labor Code Section 3700)

3. AMERICANS WITH DISABILITIES ACT: Contractor assures the State that it complies with the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA. (42 U.S.C. 12101 et seq.)

4. CONTRACTOR NAME CHANGE: An amendment is required to change the Contractor's name as listed on this Agreement. Upon receipt of legal documentation of the name change the State will process the amendment. Payment of invoices presented with a new name cannot be paid prior to approval of said amendment.

5. CORPORATE QUALIFICATIONS TO DO BUSINESS IN CALIFORNIA:

a. When agreements are to be performed in the state by corporations, the contracting agencies will be verifying that the contractor is currently qualified to do business in California in order to ensure that all obligations due to the state are fulfilled.

b. "Doing business" is defined in R&TC Section 23101 as actively engaging in any transaction for the purpose of financial or pecuniary gain or profit. Although there are some statutory exceptions to taxation, rarely will a corporate contractor performing within the state not be subject to the franchise tax.

c. Both domestic and foreign corporations (those incorporated outside of California) must be in good standing in order to be qualified to do business in California. Agencies will determine whether a corporation is in good standing by calling the Office of the Secretary of State.

6. RESOLUTION: A county, city, district, or other local public body must provide the State with a copy of a resolution, order, motion, or ordinance of the local governing body which by law has authority to enter into an agreement, authorizing execution of the agreement.

7. AIR OR WATER POLLUTION VIOLATION: Under the State laws, the Contractor shall not be: (1) in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; (2) subject to cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or (3) finally determined to be in violation of provisions of federal law relating to air or water pollution.

8. PAYEE DATA RECORD FORM STD. 204: This form must be completed by all contractors that are not another state agency or other governmental entity.