



APPROVED
BY THE CITY COUNCIL

JUL 18 1989

OFFICE OF THE
CITY CLERK

11

DEPARTMENT OF
PUBLIC WORKS

ENGINEERING DIVISION

THOMAS M. FINLEY
ENGINEERING DIVISION MANAGER

CITY OF SACRAMENTO
CALIFORNIA

CITY MANAGER'S OFFICE

RECEIVED

JUL 12 1989

AG 87001

927 TENTH STREET
ROOM 200
SACRAMENTO, CA
95814-2705

916-449-8220

CONSTRUCTION SECTION
640 BERGUT DRIVE
SUITE B
SACRAMENTO, CA
95814-0131

916-449-5282

July 18, 1989

City Council
Sacramento, Ca

Honorable Members in Session

SUBJECT: Laguna Creek Assessment District (PN:15AD;JN:9671) - Amendment of Consultant Services Agreement No. 87300 with Zentner and Zentner, Inc.

SUMMARY

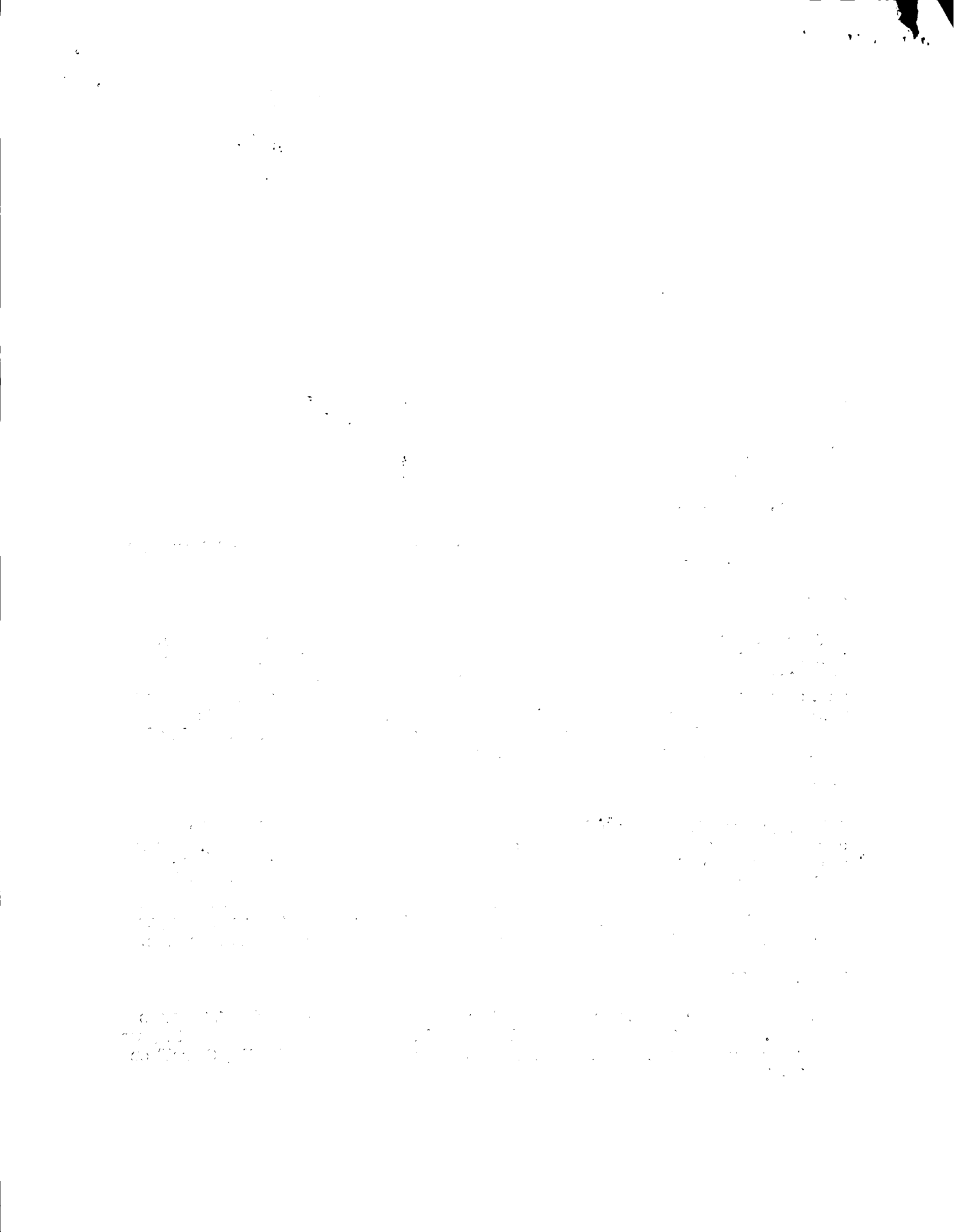
On June 14, 1988, the City Council approved an agreement with Zentner and Zentner, Inc. to provide floodway monitoring services after the construction of the Laguna Creek Assessment District project. During the initial stages of the floodway maintenance program it has been determined that additional services are required that were not provided for in the original agreement. It is recommended that this agreement be amended to provide for the additional scope of work and the associated costs by adoption of the attached resolution.

BACKGROUND

This project is attempting to duplicate conditions that occur naturally by the construction of vernal pools and other environmentally sensitive landscaping. Due to the unique nature of this project, additional monitoring services not previously anticipated are required to insure the successful establishment of these areas in compliance with the Corps of Engineers 404 permit. It has become apparent that more intense monitoring and field evaluation is required to assist the City in the proper management of the maintenance contractor and prevent accidental damage to this area.

FINANCIAL DATA

The City will incur no cost as a result of this amendment to the Consultant Services Agreement. Funding for this agreement is included in the Capital Improvements Program Budget for the Laguna Creek Assessment District which was approved by City Council on June 14, 1988.



City Council
Laguna Creek Assessment District (PN:15AD;JN:9671)
July 18, 1989
Page 2

It is recommended that the not-to-exceed limit of the Consultant Services Agreement with Zentner and Zentner, Inc. be increased from \$13,500 to \$55,000. Of the \$812,500 in contingency funds for the assessment district, approximately \$566,000 is currently available.

POLICY CONSIDERATIONS

None.

MBE/WBE EFFORTS

Not applicable.

This is an addendum to an existing agreement.

RECOMMENDATION

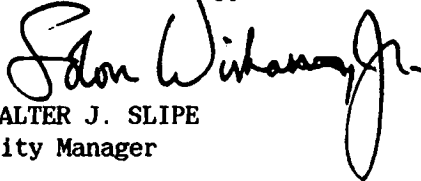
It is recommended that the City Manager and City Clerk be authorized to execute the amended agreement with Zentner and Zentner, Inc. by the adoption of the attached resolution.

Respectfully submitted,




THOMAS M. FINLEY
Engineering Division Manager

Recommendation Approved:

for. 
WALTER J. SLIPE
City Manager

Approved:


MELVIN H. JOHNSON
Director of Public Works

CONTACT PERSON

N. Dee Lewis, Supervising Engineer
449-8230

CH:ch:rh
ED1-07.J
06.2189

Attachments

July 18, 1989
District No. 7

RESOLUTION NO. 89-549

ADOPTED BY THE SACRAMENTO CITY COUNCIL

APPROVED
BY THE CITY COUNCIL

ON DATE OF _____

JUL 18 1989

OFFICE OF THE
CITY CLERK

RESOLUTION APPROVING AMENDMENT NO. 1
TO AN AGREEMENT BETWEEN THE CITY OF
SACRAMENTO AND ZENTNER AND ZENTNER,
INC. FOR ADDITIONAL ECOLOGICAL
MONITORING FOR THE LAGUNA CREEK
FLOODWAY (PN:15AD; AGREEMENT
NO. 87300)

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

1. That the contract amount for the Consultant Service Agreement with Zentner and Zentner, Inc. for floodway monitoring services after construction of the Laguna Creek Assessment District project (PN:15AD; Agreement No. 87300) is increased from a not-to-exceed amount of \$13,500 to \$55,000.
2. That the City Manager and City Clerk are authorized to execute Amendment No. 1 to the subject agreement:

MAYOR

ATTEST:

CITY CLERK

CH:ch:rh
ED1-07.J

FOR CITY CLERK USE ONLY

RESOLUTION NO.: _____

DATE ADOPTED: _____

Department: Public Works

PN/JN NO.: 9671

Division: Engineering

Proj. Name: Laguana Creek Monitoring

Location: Franklin to Bruceville Road

CITY OF SACRAMENTO

CONSULTANT AND PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made at Sacramento, California, as of

_____, 19____, by and between the CITY OF SACRAMENTO, a municipal corporation ("City") and

Zentner & Zentner
(Consultant)

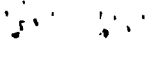
785 Market Street, 14th Floor San Francisco CA 94103
(Address) (City) (State) (Zip)

("Consultant"), who agree as follows:

1. Services. Subject to the terms and conditions set forth in this Agreement, Consultant shall provide to City the services described in Exhibit A. Consultant shall provide said services at the time, place, and in the manner specified in Exhibit A. The Consultant shall not be compensated for services outside the scope of Exhibit "A" unless prior to the commencement of such services: (a) Consultant notifies the City that such service is deemed an additional service and Consultant estimates the additional compensation required for this activity; and (b) the City, after notice, approves the additional service and amount of compensation therefor.

2. Payment. City shall pay Consultant for services rendered pursuant to this Agreement at the times and in the manner set forth in Exhibit B. The payments specified in Exhibit B shall be the only payments to be made to Consultant for services rendered pursuant to this Agreement unless pursuant to paragraph 1 above, City approves additional compensation for additional services. Consultant shall submit all billings for said services to City in the manner specified in Exhibit B; or, if no manner be specified in Exhibit B, then according to the usual and customary procedures and practices which Consultant uses for billing clients similar to City.

AG101-2
Feb, 1987
GSPD-87-14



3. Facilities and Equipment. Except as set forth in Exhibit C, Consultant shall, at its sole cost and expense, furnish all facilities and equipment which may be required for furnishing services pursuant to this Agreement. City shall furnish to Consultant only the facilities and equipment listed in Exhibit C according to the terms and conditions set forth in Exhibit C.

4. General Provisions. The general provisions set forth in Exhibit D, which include insurance requirements, are part of this Agreement. In the event of any inconsistency between said general provisions and any other terms or conditions of this Agreement, this Agreement shall control over the general provisions.

5. City Representative. The City Representative specified in Exhibit A, or the representative's designee, shall administer this Agreement for the City.

6. Exhibits. All exhibits referred to herein are attached hereto and are by this reference incorporated herein.

Executed as of the day first above stated.

CITY OF SACRAMENTO
A Municipal Corporation

CITY:

(Title)

APPROVED AS TO FORM:

CITY ATTORNEY

ATTEST:

CITY CLERK

CONSULTANT: 

John Zentner

Principal
(Consultant Title)

785 Market Street, 14th Floor
(Address)

San Francisco, CA 94103
(City/State/Zip)

Attachments:

Exhibit A Exhibit C
Exhibit B Exhibit D

EXHIBIT A

CONSULTANT AND PROFESSIONAL SERVICES AGREEMENT

REPRESENTATIVES AND SERVICES TO BE PROVIDED

BY Zentner & Zentner

1. Representatives:

The City Representative for this Agreement is:

Craig S. Hamner Associate Civil Engr. 916-449-5897
(Name) (Title) (Telephone)

All consultant questions pertaining to this agreement will be referred to the above named person, or the representative's designee.

The Consultant Representative for this Agreement is:

John Zentner Principal 415-495-6916
(Name) (Title) (Telephone)

All City questions pertaining to this Agreement will be referred to the above named person. All correspondence to the City will be addressed to:

City of Sacramento-Dept. of Public Works
Engineering Division-Construction Section
640 Bercut Drive, Sacramento, CA 95814

Attn: Craig S. Hamner

2. Services to be provided are specified below:

A. Monitoring

1. Monthly (January 1989 to April 1989) pool water depths.
2. Two vernal pool plant surveys.
3. Monthly (January 1989 to April 1989) pool invertebrate sampling.
4. Monthly (October 1988 to April 1989) avifauna census.
5. One riparian tree survival and condition survey
6. One emergent marsh plant survey.

7. Report preparation and delivery (15 copies).
8. Communications with City and agencies.

Post-Construction Monitoring:

1. Invertebrate Surveys.
2. Pool vegetation surveys.
3. Water depth, bird, tree, and marsh plant surveys.
4. Report preparation.
5. Communication with City and agencies.

EXHIBIT B

CONSULTANT AND PROFESSIONAL SERVICES AGREEMENT

WITH Zentner & Zentner

The consultant will be paid on a time and materials basis in accordance with the following fee schedule:

FEE SCHEDULE / MANNER OF PAYMENT

Labor Costs

Principal at \$70.00 per hour

Reimbursable Costs

Invertebrate Survey - Lump Sum - \$6,500
Pool Vegetation Survey - Lump Sum - \$3,200
Mileage at \$0.25 per mile
Supplies maximum of \$150.00
Photo Copying at \$0.10 per page
Clerical/Typing at \$1.50 per page

The total amount of payment shall not exceed the sum of \$13,500.00

Request for payment shall be sent to:

City of Sacramento-Dept. of Public Works

Engineering Division - Construction Sect.

640 Bercut Drive, Sacramento, CA 95814

Attn: Craig S. Hamner

Ref: PN/JN: 9671

EXHIBIT C

CONSULTANT AND PROFESSIONAL SERVICES AGREEMENT

WITH Zentner & Zentner

FACILITIES AND EQUIPMENT TO BE PROVIDED BY CITY

The City will not furnish facilities or equipment for this Agreement.

If facilities and equipment are to be furnished, specify below:

EXHIBIT D

GENERAL PROVISIONS

1. **Independent Contractor.** At all times during the term of this Contract, Consultant shall be an independent Contractor and shall not be an employee of the City. City shall have the right to control Consultant only insofar as the results of Consultant's services rendered pursuant to this Contract; however, City shall not have the right to control the means by which Consultant accomplishes services rendered pursuant to this Agreement.

2. **Licenses; Permits; Etc.** Consultant represents and warrants to City that he has all licenses, permits, qualifications and approvals of whatsoever nature which are legally required for Consultant to practice its profession. Consultant represents and warrants to City that Consultant shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement any licenses, permits, and approvals which are legally required for Consultant to practice its profession.

3. **Time.** Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary for satisfactory performance of Consultant's obligations under this Agreement. Neither party shall be considered in default of this Agreement to the extent performance is prevented or delayed by any cause, present or future, which is beyond the reasonable control of the party.

4. **Consultant Not Agent.** Except as City may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

5. **Assignment Prohibited.** No party to this Agreement may assign any right or obligation pursuant to this Agreement. Any attempted or purported assignment of any right or obligation pursuant to this Agreement shall be void and of no effect.

6. **Personnel.** Consultant shall assign only competent personnel to perform services pursuant to this Agreement. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the removal of any person or persons assigned by Consultant to perform services pursuant to this Agreement, Consultant shall remove any such person immediately upon receiving notice from City of the desire of City for the removal of such person or persons.

7. **Standard of Performance.** Consultant shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in California. All products of whatsoever nature which Consultant delivers to City pursuant to this Agreement shall be prepared in a workmanlike manner and conform to the standards of quality normally observed by a person practicing in Consultant's profession.

8. **Termination/Suspension.** City shall have the right to terminate or suspend this Agreement at any time by giving notice of such termination or suspension to Consultant. In the event City shall give such notice of termination or suspension, Consultant shall immediately cease rendering services pursuant to this Agreement.

In the event of suspension, the consultant shall continue to render services upon receiving written notice from the City.

In the event City shall terminate this Agreement:

(1) Consultant shall deliver copies of all writings prepared by it pursuant to this Agreement. The term "writings" shall be construed to mean and include:

handwriting, typewriting, printing, photostating, photographing, and every other means of recording upon any tangible thing any form of communication or representation, including letter, works, pictures, drawings, sounds, or symbols, or combinations thereof.

(2) City shall have full ownership and control of all such writings delivered by Consultant pursuant to this Agreement.

(3) City shall pay Consultant the reasonable value of services rendered by Consultant pursuant to this Agreement; provided, however, City shall not in any manner be liable for lost profits which might have been made by Consultant had Consultant completed the services required by this Agreement. In this regard, Consultant shall furnish to City such financial information as in the judgment of the City Representative is necessary to determine the reasonable value of the services rendered by Consultant. In the event of a dispute as to the reasonable value of the services rendered by Consultant, the decisions of the Director of the City Department administering this Agreement shall be final. The foregoing is cumulative and does not affect any right or remedy which City may have in law or equity.

9. **Indemnity and Hold Harmless** The Consultant shall assume the defense of, and indemnify and save harmless, the City, its officers, employees, and agents, and each and every one of them, from and against all actions, damages, costs, liability, claims, losses, and expenses of every type and description to which any or all of them may be subjected, by reason of, or resulting from the negligent act or omission of the performance of this contract by Consultant. The foregoing shall include, but not be limited to, any attorney fees reasonably incurred by City.

10. **Equal Employment Opportunity** During the performance of this agreement, Consultant, for itself, its assignees and successors in interest, agrees as follows:

A. **Compliance With Regulations:** Consultant shall comply with the Executive Order 11246 entitled "Equal Employment Opportunity", as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60), hereinafter referred to as the "Regulations".

B. **No discrimination:** Consultant, with regard to the work performed by it after award and prior to completion of the work pursuant to this agreement, shall not discriminate on the ground of race, color, religion, sex, national origin, age, marital status, physical handicap or sexual preference in the selection and retention of subcontractors, including procurement of materials and leases of equipment. Consultant shall not participate either directly or indirectly in discrimination prohibited by the Regulations.

C. **Solicitations for Subcontractors, Including Procurement of Materials and Equipment:** In all solicitations either by competitive bidding or negotiations made by Consultant for work to be performed under any subcontract, including procurement of materials or equipment, each potential subcontractor or supplier shall be notified by Consultant of Consultant's obligation under this Agreement and the

Regulations relative to nondiscrimination on the ground of race, color, religion, sex, national origin, age, martial status, physical handicap or sexual preference.

D. **Information and Reports:** Consultant shall provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the City of Sacramento to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of Consultant is in the exclusive possession on of another who fails or refuses to furnish this information, Consultant shall so certify to the City of Sacramento, and shall set forth what efforts it has made to obtain the information.

E. **Sanctions for Noncompliance:** In the event of noncompliance by Consultant with the nondiscrimination provisions of this agreement, the City of Sacramento shall impose such contract sanctions as it may determine to be appropriate including, but not limited to:

- (1) Withholding of payments to Consultant under the contract until consultant complies;
- (2) Cancellation, termination, or suspension of the agreement, in whole or in part.

F. **Incorporation of Provisions:** Consultant shall include the provisions of Paragraphs A through E in every subcontract, including procurement of materials and leases of equipment, unless exempt by Regulations, order, or instructions issued pursuant thereto. Consultant shall take such action with respect to any Regulations, order or instructions issued pursuant thereto. Consultant shall take such action with respect to any subcontract or procurement as the City of Sacramento may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event Consultant becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, Consultant may request City to enter such litigation to protect the interests of City.

11. **Insurance Requirements.** During the duration of this Agreement Consultant shall maintain the following noted insurance:

	<u>Required</u>	<u>Not Required</u>
Coverage - Broad Form Comprehensive Liability	<u>X</u>	___
Business Auto Liability	<u>X</u>	___
Workers' Compensation & Employers' Liability	___	<u>X</u>
Professional Liability (Errors and Omissions)	___	<u>X</u>

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

- (1) Insurance Services Office form number GL 0404 (Broad Form Comprehensive General Liability);
- (2) Insurance Services Office form number CA 0001 (Ed. 1/78) (Automobile Liability, code 1 "any auto");
- (3) Workers' Compensation as required by the Labor Code of the State of California, and Employers' Liability insurance.
- (4) Professional Liability (Errors and Omissions) insurance against loss due to error, omission or malpractice.

B. Minimum Limits of Insurance

Consultant shall maintain limits no less than:

- (1) Comprehensive General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage.
- (2) Automobile Liability: \$500,000 combined single limit per accident for bodily injury and property damage.
- (3) Workers' Compensation and Employers' Liability: Workers' compensation limits as required by the Labor Code of the State of California and Employers' Liability limits of \$ N/A per accident.
- (4) Professional Liability (Errors and Omission): \$ N/A combined single limit per occurrence.

C. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the City.

D. Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

- (1) General Liability and Automobile Liability Coverages
 - a. The City, its officials, employees and volunteers are to be covered as insured as respects: liability arising out of activities performed by or on behalf of the Consultant; products and completed operations of the Consultant; premises owned, leased or used by the Consultant; or automobiles owned, leased, hired or borrowed by the Consultant. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officials, employees or volunteers.



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- b. The Consultant's insurance coverage shall be primary insurance as respects the City, its officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officials, employees or volunteers shall be excess of Consultant's insurance and shall not contribute with it.
- c. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officials, employees or volunteers.
- d. Coverage shall state that Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

(2) **Workers' Compensation and Employers' Liability Coverages**

The insurer shall agree to waive all rights of subrogation against the City, its officials, employees and volunteers for losses arising from work performed by Consultant for the City. This requirement may, however, be waived in individual cases at the discretion of the City.

(3) **All Coverages**

Each insurance policy required by this Agreement shall be endorsed to state that coverage shall not be suspended, voided, cancelled, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

E. Acceptability of Insurers

Insurance is to be placed with insurers with a Bests' rating of no less than A:XIII. This requirement may, however, be waived in individual cases; provided, however, that in no event will a carrier with a rating below A:X be acceptable.

F. Verification of Coverage

Consultant shall furnish the City with certificates of insurance and with original endorsements effecting coverage required by this clause. The certificates and endorsements for each insurance policy are to be signed by a person authorized by the insurer to bind coverage on its behalf. The certificates and endorsements are to be on forms provided by the City and are to be forwarded to the City representative named in Exhibit A.

G. Payment Withhold

The City will withhold payments to the Consultant, if certificates of insurance and endorsements required in paragraph F above have not been provided.



July 26, 1989

Zentner and Zentner
925 Ygnacio Valey Road Suite 250
Walnut Creek CA 94596

On July 18, 1989, the Sacramento City Council adopted Resolution No. 89-549 authorizing the execution of Agreement No. 89001 regarding amendment number 1 to AG 87300 for additional ecological monitoring for Laguna Creek Floodway.

Enclosed, for your records, is one fully certified copy of said agreement and authorizing resolution.

Sincerely,

Janice Beaman
Acting Assistant City Clerk

mls/11

Enclosures

cc: Public Works
Risk Management