

FEATHER RIVER AIR QUALITY MANAGEMENT DISTRICT
MEMORANDUM
08/05/2024

TO: FRAQMD BOARD OF DIRECTORS

FROM: Christopher Brown AICP, APCO

SUBJECT: Approve sole source purchasing and authorize the APCO to enter into an agreement with Western Weather Group to purchase and install 2 Weather Monitoring Stations and execute related documents.

RECOMMENDATION:

Approve sole source purchasing and authorize the APCO to enter into an agreement with Western Weather Group to purchase and install 2 Weather Monitoring Stations and execute related documents.

BACKGROUND:

Background

In summer of 2023 several agricultural burns resulted in unexpected smoke impacts in the District. Staff confirmed with the Air Resources Board and Western Weather Group, who is under contract to manage the Sacramento Valley Burn Program. Both agencies agree that a lack of weather stations in the southern part of the District is likely contributing to unexpecting smoke impacts. Filling these gaps in the weather station network should help improve forecasting.

The District has identified a source of state funding to cover the cost of the initial installation, however those funds are only accessible on a reimbursement basis. The initial installation cost per station is \$7,396.90 with a total cost of \$14,793.80 for both stations.

There will be a small annual ongoing cost for maintenance and cellular data services which will be included in future budgets.

JUSTIFICATION FOR SOLE SOURCE PURCHASING:

Sole Source Purchases is in the best interests of the District because:

- Western Weather Group, based in Chico, Ca. is under contract with the Sacramento Valley Basin Control Council (BCC) to manage the Valley wide Smoke Management Program. Western Weather uses their extensive weather station network to make determinations of burn day status and identify smoke impacts.
- Having weather stations installed and operated by a different vendor would introduce unneeded complexity and communication issues which would likely result in more communication breakdowns and missing data.

FISCAL IMPACT:

The District has included this item in the FY 24/25 proposed budget which is for consideration at this meeting.

LIST OF ATTACHMENTS:

Attachment 1: Proposed Contract with Western Weather Group

CONTRACT AGREEMENT #WWG-2024-01

This Contract Agreement (“Agreement”) is made and entered into this 5th day of August 2024, by and between Feather River Air Quality Management District (“FRAQMD”), and Western Weather Group, Inc. (“Consultant”).

RECITALS:

- A. FRAQMD has determined that it is desirable to retain Consultant to provide installation of two weather monitoring stations; and
- B. Consultant represents that it possesses the qualifications, experience, and facilities necessary to perform the services contemplated herein and has proposed to provide those services; and
- C. Consultant represents and warrants that Consultant is an independently established business entity formed as a corporation, that customarily provides services of the same nature as the services provided for FRAQMD under this Agreement; and
- D. Consultant represents and warrants that Consultant advertises these services to and contracts with entities other than FRAQMD; and
- E. Consultant represents and warrants that Consultant maintains a separate business location and has all required business licenses and tax registration, if any, in order to perform services under this Agreement; and
- F. FRAQMD desires to retain Consultant to perform the proposed services.

FRAQMD and Consultant agrees as follows:

AGREEMENT:

- 1. Scope of Services. Pursuant to Government Code Section 31000, FRAQMD retains Consultant to perform all the professional services described in Exhibit “A” which is attached hereto and incorporated herein by this reference which shall include the purchase and installation of two weather monitoring stations (“Services”).
- 2. Term. Services under this Agreement shall commence on August 5, 2024, and shall continue until the agreement is terminated by either party in accordance with the provisions of this Agreement.
- 3. Compensation.
 - A. The monitoring stations cost \$7,396.90 each for a total of \$14,793.80 for two weather monitoring stations incorporated herein by this reference. Notwithstanding the foregoing, it is mutually agreed that if, for the current fiscal year

and/or any subsequent fiscal years covered by this Agreement, insufficient funds are appropriated to make the payments called for by this Agreement, this Agreement shall be of no further force and effect. In this event, FRAQMD shall have no liability to pay any further amounts whatsoever to Consultant or furnish any other consideration under this Agreement and Consultant shall not be obligated to perform any further services under this Agreement. If funding for any fiscal year is reduced or deleted for the purposes of this program, FRAQMD shall have the option to either cancel this Agreement with no further liability incurring to FRAQMD or offer an amendment to Consultant to reflect the reduced amount available to the program. The parties acknowledge and agree that the limitations set forth herein are required by Article XVI, section 18 of the California Constitution. Consultant acknowledges and agrees that Article XVI, section 18 of the California Constitution supersedes any conflicting law, rule, regulation or statute.

B. The total compensation payable under this Agreement, inclusive of all expenses, shall not exceed the purchase price of the two weather monitoring stations for a total of \$14,793.80. FRAQMD shall make no payment to Consultant for the installation of the two weather monitoring stations unless such services and payment therefore have been mutually agreed to and this Agreement has been formally amended in accordance with the provisions of this Agreement.

C. Consultant agrees to testify at FRAQMD's request if litigation is brought against FRAQMD in connection with Consultant's work.

4. Invoice and Payments. Consultant shall submit the invoices for the purchase of the two weather monitoring stations after the initiation of this Agreement.

5. Notice. Any invoices, notices, or other documents required to be given under this Agreement shall be delivered either personally, by first-class postage pre-paid U.S. Mail, or overnight courier to the following addresses or such other address provided by the parties in accordance with this section:

If to FRAQMD:

Feather River Air Quality Management District
541 Washington Avenue
Yuba City, A 95991
Telephone: (530) 634-7659

If to Consultant:

Western Weather Group Inc.
686 Rio Lindo Avenue
Chico, CA 95926
Telephone: (530) 342-1700

Notice shall be deemed to be effective two days after mailing.

6. Independent Contractor.

A. It is understood and agreed, and is the intention of the parties hereto, that Consultant is an independent contractor, and not the employee or agent of FRAQMD for any purpose whatsoever. FRAQMD shall have no right to and shall not control the manner or prescribe the method by which the professional services are performed by Consultant herein. Consultant shall be entirely and solely responsible for its acts and the acts of its agents, employees, and subcontractors while engaged in the performance of services hereunder. Consultant shall have no claim under this Agreement or otherwise against FRAQMD for vacation pay, sick leave, retirement benefits, Social Security, workers compensation, disability, or unemployment insurance benefits or other employee benefits of any kind. The parties acknowledge that FRAQMD shall not withhold from Consultant's compensation any funds for income tax, FICA, disability insurance, unemployment insurance or similar withholding and Consultant is solely responsible for the timely payment of all such taxes and related payments to the state and federal governments, for itself and for its employees, agents, and subcontractors who might render services in connection with this Agreement. The Consultant shall inform all persons who perform any services pursuant to this Agreement of the provisions of this section.

B. In the event that the Consultant's activities under this Agreement, or any of them, are found by any state or federal agency to be those of an employee rather than an independent contractor, Consultant agrees to indemnify FRAQMD and hold FRAQMD harmless for any damages, costs, or taxes imposed upon it pursuant to the Internal Revenue Code or state or federal taxing laws, or retirement, including but not limited to any penalties and interest which FRAQMD may be assessed by such state or federal agency for failing to withhold from the compensation paid to Consultant under this Agreement any amount which may have been required to be withheld by law.

C. In the event that the Consultant's activities under this Agreement, or any of them, are found by the California Public Employee's Retirement System (CalPERS) to be those of an employee rather than an independent contractor, Consultant shall defend (with legal counsel reasonably acceptable to FRAQMD), indemnify and hold harmless the FRAQMD, its officers, employees, and agents, from and against any and all claims, losses, costs, contributions, arrears, interest, damages, penalties, expenses and liabilities of every kind, nature and description (including incidental and consequential damages, court costs, attorneys' fees, litigation expenses and fees of expert contractors or expert witnesses incurred in connection therewith and costs of investigation) that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, the Services provided under this Agreement.

7. Authority of Consultant. It is understood that Consultant is to provide information, research, advice, recommendations, and consultation services to FRAQMD. Consultant shall possess no authority with respect to any FRAQMD decision. FRAQMD is responsible for and shall make all governmental decisions related to work of Consultant.

8. Subcontracting and Assignment. Consultant shall not subcontract or assign any portion of the work to be performed under this Agreement without the prior written consent of FRAQMD.

9. Ownership of Materials, Confidentiality, Photographs and Recordings.

A. Documents & Data; Licensing of Intellectual Property. This Agreement creates an exclusive and perpetual license for FRAQMD to copy, use, modify, reuse, or sublicense any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates, materials, data and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data magnetically or otherwise recorded on computer media, which are prepared or caused to be prepared by Consultant under this Agreement ("Documents & Data"). Consultant shall require all subcontractors to agree in writing that FRAQMD is granted an exclusive and perpetual license for any Documents & Data the subcontractor prepares under this Agreement. Consultant represents and warrants that Consultant has the legal right to grant the exclusive and perpetual license for all such Documents & Data. Consultant makes no such representation and warranty in regard to Documents & Data which were prepared by design professionals other than Consultant or provided to Consultant by FRAQMD. FRAQMD shall not be limited in any way in its use of the Documents and Data at any time, provided that any such use not within the purposes intended by this Agreement shall be at FRAQMD's sole risk.

B. Intellectual Property. In addition, FRAQMD shall have and retain all right, title and interest (including copyright, patent, trade secret and other proprietary rights) in all plans, specifications, studies, drawings, estimates, materials, data, computer programs or software and source code, enhancements, documents, and any and all works of authorship fixed in any tangible medium or expression, including but not limited to, physical drawings or other data magnetically or otherwise recorded on computer media ("Intellectual Property") prepared or developed by or on behalf of Consultant under this Agreement as well as any other such Intellectual Property prepared or developed by or on behalf of Consultant under this Agreement. FRAQMD shall have and retain all right, title and interest in Intellectual Property developed or modified under this Agreement whether or not paid for wholly or in part by FRAQMD, whether or not developed in conjunction with Consultant, and whether or not developed by Consultant. Consultant will execute separate written assignments of any and all rights to the above referenced Intellectual Property upon request of FRAQMD. Consultant shall also be responsible to obtain in writing separate written assignments from any subcontractors or agents of Consultant of any and all right to the above referenced Intellectual Property. Should Consultant, either during or following termination of this Agreement, desire to use any of the above-referenced Intellectual Property, it shall first obtain the written approval of FRAQMD. All materials and documents which were developed or prepared by the Consultant for general use prior to the execution of this Agreement and which are not the copyright of any other party or publicly available and any other computer applications, shall continue to be the property of the Consultant. However, unless otherwise identified and stated prior to execution of this Agreement, Consultant represents and warrants that

it has the right to grant the exclusive and perpetual license for all such Intellectual Property as provided herein. FRAQMD further is granted by Consultant a non-exclusive and perpetual license to copy, use, modify or sub-license any and all Intellectual Property otherwise owned by Consultant which is the basis or foundation for any derivative, collective, insurrectional, or supplemental work created under this Agreement.

C. Confidentiality. Except as otherwise required by law, all ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other Documents & Data either created by or provided to Consultant in connection with the performance of this Agreement shall be held confidential by Consultant. Such materials shall not, without the prior written consent of FRAQMD, be used by Consultant for any purposes other than the performance of the Services. Nor shall such materials be disclosed to any person or entity not connected with the performance of the Services or the Project. Nothing furnished to Consultant which is otherwise known to Consultant or is generally known, or has become known, to the related industry shall be deemed confidential. Consultant shall not use FRAQMD's name or insignia, photographs of the Services, or any publicity pertaining to the Services in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of FRAQMD. Should Consultant receive a subpoena or court order related to this Agreement or Services, Consultant shall immediately provide written notice of the subpoena or court order to FRAQMD in order to allow FRAQMD to pursue legal remedies designed to limit any confidential information required to be disclosed or to assure the confidential treatment of the information following disclosure. Consultant shall not respond to any such subpoena or court order until notice to the FRAQMD is provided as required herein and shall cooperate with the FRAQMD in responding to the subpoena or court order.

D. Infringement Indemnification. Consultant shall defend, indemnify and hold FRAQMD, its officials, officers, employees, volunteers and agents free and harmless, pursuant to the indemnification provisions of this Agreement, for any alleged infringement of any patent, copyright, trade secret, trade name, trademark, or any other proprietary right of any person or entity in consequence of the use by FRAQMD of the Documents & Data, including any method, process, product, or concept specified or depicted.

E. Photographs and Recordings. In performing the Services contemplated by this Agreement, Consultant may be given access to facilities, processes, events, and employees that are not otherwise accessible to the general public. In addition to the limitations set forth in paragraph C above, Consultant agrees not to photograph, videotape, or otherwise record any such facility, process, event, or employee without the express, written, consent of the FRAQMD and shall ensure that Consultant's officers, employees, representatives, agents, and subcontractors comply with this provision. Consultant further agrees that it shall not publish, post, disseminate, or make public any photograph, videotape or recording of any facility, process, event, or employee taken in violation of this provision shall ensure that Consultant's officers, employees, representatives, agents, and subcontractors comply with this provision. Failure to comply with the restrictions contained in this paragraph shall constitute grounds for the immediate

termination of this Agreement and shall entitle FRAQMD to the recovery of any and all damages incurred as a result thereof including reasonable attorneys' fees. Consultant shall defend, indemnify and hold FRAQMD, its officials, officers, employees, volunteers and agents free and harmless, pursuant to the indemnification provisions of this Agreement, for any violation of this paragraph.

10. Indemnification. To the fullest extent permitted by law, Consultant shall defend, indemnify and hold FRAQMD, its officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, in any manner arising out of or incident to any alleged negligent acts, omissions or willful misconduct of Consultant, its officials, officers, employees, agents, and subcontractors arising out of or in connection with the performance of the Services under this Agreement, including without limitation the payment of all consequential damages, attorneys' fees and other related costs and expenses. Consultant shall defend, at Consultant's own cost, expense and risk, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against FRAQMD, its officials, officers, employees, agents or volunteers. Consultant shall pay and satisfy any judgment, award or decree that may be rendered against FRAQMD or its officials, officers, employees, agents or volunteers, in any such suit, action or other legal proceeding. Consultant shall reimburse FRAQMD and its officials, officers, employees, agents and/or volunteers, for any and all legal expenses and costs, including reasonable attorneys' fees, incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by FRAQMD or its officials, officers, employees, agents or volunteers. Notwithstanding the foregoing, to the extent Consultant's Services are subject to Civil Code section 2782.8, the above indemnity shall be limited, to the extent required by Civil Code section 2782.8, to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant. This section shall survive any expiration or termination of this Agreement.

11. Insurance. Without limiting Consultant's indemnification of the FRAQMD, Consultant shall procure and maintain for the duration of this Agreement, insurance against claims for injuries to persons or damage to property that may arise from, or be in connection with, the performance of the work hereunder by Consultant, Consultant's agents, representatives, employees, and subcontractors.

A. Minimum Scope and Limit of Insurance.

1. Coverage shall be at least as broad as:

(i) Commercial General Liability (CGL): Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than \$2,000,000* per occurrence. If a general aggregate limit applies,

either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.

* \$1,000,000 Occurrence Limit Authorized: _____
Signature of FRAQMD APCO

(ii) Automobile Liability: Insurance Services Office Form Number CA 0001 covering, Code 1 (any auto), or if Consultant has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than \$1,000,000 per accident for bodily injury and property damage.

(iii) Workers' Compensation insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease. (Not required if Consultant certifies that it has no employees).

Consultant certifies that it has no employees: _____
Signature of Consultant

(iv) Professional Liability (Errors and Omissions) Insurance appropriate to the Consultant's profession, with limit no less than \$2,000,000 per occurrence or claim, \$2,000,000 aggregate. This provision may be waived by the FRAQMD APCO.

Waived: _____
Signature of FRAQMD APCO

(v) Cyber Liability Insurance with limits not less than \$2,000,000 per occurrence or claim, \$2,000,000 aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Consultant in this Agreement and shall include, but not be limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations. This provision may be waived by the FRAQMD APCO.

Waived: _____
Signature of FRAQMD APCO

2. If Consultant maintains broader coverage and/or higher limits than the minimums shown above, the FRAQMD requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Consultant. Any available insurance

proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the FRAQMD.

The coverage types and limits required pursuant to this Agreement shall in no way limit the liability of Consultant.

B. Other Insurance Provisions.

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

(i) Additional Insured Status. FRAQMD, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Consultant including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Consultant's insurance (at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 forms if later revisions used).

(ii) Primary Coverage. For any claims related to this Agreement, Consultant's insurance coverage shall be primary insurance primary coverage at least as broad as ISO CG 20 01 04 13 as respects FRAQMD, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by FRAQMD, its officers, officials, employees, or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.

(iii) Notice of Cancellation. Each insurance policy required above shall state that coverage shall not be canceled, except with notice to FRAQMD.

(iv) Waiver of Subrogation. Consultant hereby grants to FRAQMD a waiver of any right to subrogation which any insurer of said Consultant may acquire against FRAQMD by virtue of the payment of any loss under such insurance. Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not FRAQMD has received a waiver of subrogation endorsement from the insurer.

(v) Self-Insured Retentions. Self-insured retentions must be declared to and approved by FRAQMD. FRAQMD may require the Consultant to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or FRAQMD.

(vi) Acceptability of Insurers. Insurance is to be placed with insurers authorized to conduct business in the State of California with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to FRAQMD.

(vii) Claims Made Policies. If any of the required policies provide coverage on a claims-made basis:

(a) The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work;

(b) Insurance must be maintained, and evidence of insurance must be provided for at least five (5) years after completion of the Services; and

(c) If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, Consultant must purchase "extended reporting" coverage for a minimum of five (5) years after completion of the Services.

2. Verification of Coverage. Consultant shall furnish FRAQMD with original Certificates of Insurance including all required amendatory endorsements (or copies of the applicable policy language effecting coverage required by this clause) and a copy of the Declarations and Endorsement Page of the CGL policy listing all policy endorsements to FRAQMD before work begins. However, failure to obtain the required documents prior to the work beginning shall not waive the Consultant's obligation to provide them. FRAQMD reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

3. Subcontractors. Consultant shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Consultant shall ensure that FRAQMD is an additional insured on insurance required from subcontractors.

4. Failure to Maintain Coverage. Consultant agrees to suspend and cease all operations hereunder during such period of time as the required insurance coverage is not in effect and evidence of insurance has not been furnished to FRAQMD. FRAQMD shall have the right to withhold any payment due Consultant until Consultant has fully complied with the insurance provisions of this Agreement. In the event that Consultant's operations are suspended for failure to maintain required insurance coverage, Consultant shall not be entitled to an extension of time for completion of the work because of production lost during suspension.

5. Safety. Consultant shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its work under this Agreement, Consultant shall at all times be in compliance with all applicable local, state and federal

laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed. Safety precautions as applicable shall include, but shall not be limited to:

(i) Adequate life protection and lifesaving equipment and procedures;

(ii) Instructions in accident prevention for all employees and subcontractors, such as safe walkways, scaffolds, fall protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and

(iii) Adequate facilities for the proper inspection and maintenance of all safety measures.

12. Professional Services.

A. All work performed under this Agreement shall be performed and completed in a professional manner. All services shall be performed in the manner and according to the professional standards observed by a competent practitioner of the profession in which Consultant and any subcontractors are engaged.

B. Consultant represents and warrants that it is professionally qualified to perform the services described herein; acknowledges that FRAQMD is relying upon Consultant's qualifications to perform these services in a professional manner; and agrees that FRAQMD's full or partial acceptance of any work does not release Consultant from its obligation to perform the services in accordance with this Agreement unless FRAQMD expressly agrees otherwise in writing.

C. Consultant shall not be considered to be in default because of any nonperformance caused by occurrences beyond its reasonable control. The compensation specified in Paragraph 3 may be reduced to account for such nonperformance.

13. Responsibility of Consultant.

A. Consultant shall be solely responsible for the quality and accuracy of its work and the work of its consultants performed in connection with this Agreement. Any review, approval, or concurrence therewith by FRAQMD shall not be deemed to constitute acceptance or waiver by FRAQMD of any error or omission as to such work.

B. Consultant shall coordinate the activities of all sub-consultants and is responsible to ensure that all work product is consistent with one another to produce a

unified, workable, and acceptable whole functional product. FRAQMD shall promptly notify Consultant of any defect in Consultant's performance.

C. The Services shall be performed by Consultant or under its supervision. Any additional personnel performing the Services under this 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 and as required by law. Consultant shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to, social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

14. Audit. The following audit requirements apply from the effective date of this Agreement until three years after FRAQMD's final payment:

A. Consultant shall allow FRAQMD's authorized representatives reasonable access during normal business hours to inspect, audit, and copy Consultant's records as needed to evaluate and verify any invoices, payments, and claims that Consultant submits to FRAQMD or that any payee of Consultant submits to Consultant in connection with this Agreement. 'Records' includes, but is not limited to, correspondence, accounting records, sub-consultant files, change order files, and any other supporting evidence relevant to the invoices, payments, or claims.

B. FRAQMD and Consultant shall be subject to the examination and audit of the State Auditor, at the request of FRAQMD or as part of any audit of FRAQMD. Such examinations and audits shall be confined to matters connected with the performance of this Agreement including but not limited to administration costs.

This section shall survive the expiration or termination of this Agreement.

15. Publication of Documents and Data. Consultant may not publish or disclose to any third party any information obtained in connection with services rendered under this Agreement without the prior written consent of FRAQMD. Notwithstanding the foregoing, submission or distribution to meet official regulatory requirements, or for other purposes authorized by this agreement, shall not be construed as publication in derogation of the rights of either FRAQMD or Consultant.

16. Termination. Either party shall have the right to terminate this Agreement at any time for any reason upon thirty (30) days advance written notice to the other party. Agreements exceeding the monetary limits delegated to the Purchasing Agent, or authorized deputies, are not valid unless duly executed by the Chair of the Board of Directors. If this Agreement was executed for FRAQMD by the Air Pollution Control Officer, or an authorized designee, this Agreement shall automatically terminate on the date that the provision of services or personal property or incurring of expenses, the

cumulative total of which, exceeds fifty-thousand dollars (\$50,000) for personal services contracts or forty-five thousand dollars (\$45,000) for public works contracts.

17. Jurisdiction. This Agreement shall be administered and interpreted under the laws of the State of California and any action brought hereunder shall be brought in the Superior Court in and for Sutter County.

18. Equal Opportunity Employment. Consultant represents that it is an equal opportunity employer, and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Consultant shall also comply with all relevant provisions of any minority business enterprise program, affirmative action plan or other related programs or guidelines currently in effect or hereinafter enacted.

19. Labor Certification. By its signature hereunder, Consultant certifies that it is aware of the provisions of Section 3700 of the California 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 agrees to comply with such provisions before commencing the performance of the Services.

20. Prevailing Wages.

A. Consultant certifies that it is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq., as well as California Code of Regulations, Title 8, Section 16000 et seq. ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. If the Services hereunder are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Consultant agrees to fully comply with and to require its subcontractors to fully comply with such Prevailing Wage Laws, to the extent that such laws apply. If applicable, FRAQMD will maintain the general prevailing rate of per diem wages and other information set forth in Labor Code section 1773 at its principal office and will make this information available to any interested party upon request. Consultant shall defend, indemnify and hold the FRAQMD, its elected officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties, or interest arising out of any failure or alleged failure of the Consultant or its subcontractors to comply with the Prevailing Wage Laws. Without limiting the generality of the foregoing, Consultant specifically acknowledges that FRAQMD has not affirmatively represented to Consultant in writing, in the call for bids, or otherwise, that the work to be covered by the bid or contract was not a "public work." To the fullest extent permitted by law, Consultant hereby specifically waives and agrees not to assert, in any manner, any past, present, or future claim for indemnification under Labor Code section 1781.

B. Consultant acknowledges the requirements of Labor Code sections 1725.5 and 1771.1 which provide that no contractor or subcontractor may be listed on a bid proposal for a public works project (submitted on or after March 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 (with limited exceptions from this requirement for bid purposes only under Labor Codes section 1771.1(a)).

C. Consultant acknowledges that no contractor or subcontractor may be awarded a contract for public works on a public works project (awarded on or after April 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5.

D. If the Services are being performed as part of the applicable “public works” or “maintenance” project, as defined by the Prevailing Wage Laws, Consultant acknowledges that this project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

21. Conflict With Laws or Regulations/Severability.

A. This Agreement is subject to all applicable laws and regulations. If any provision of this Agreement is found by any court or other legal authority, or is agreed by the parties, to be in conflict with any code or regulation governing its subject, the conflicting provision shall be considered null and void. If the effect of nullifying any conflicting provision is such that a material benefit of the agreement to either party is lost, the Agreement may be terminated at the option of the affected party. In all other cases, the remainder of the Agreement shall continue in full force and effect.

B. Consultant shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Consultant shall be liable for all violations of such laws and regulations in connection with Services. If Consultant performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to FRAQMD, Consultant shall be solely responsible for all costs arising therefrom. Consultant shall defend, indemnify and hold FRAQMD, its officials, officers, employees and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

22. Provisions Required by Law Deemed Inserted. Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted and this Agreement shall be read and enforced as though it were included. If through mistake or otherwise, any provision is not inserted or is not correctly inserted, then upon application of either Party, the Agreement shall be amended to make the insertion or correction. All references to statutes and regulations shall include all amendments, replacements, and enactments in the subject which are in effect as of the

date of this Agreement, and any later changes which do not materially and substantially alter the positions of the Parties.

23. Waivers. Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.

24. Amendments. Any amendments to this Agreement shall be in writing and executed by both parties.

25. Entire Agreement. This Agreement constitutes the entire Agreement between the parties for the provision of services to FRAQMD by Consultant and supersedes all prior oral and written agreements and communications.

26. Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of any successors to or assigns of the parties.

27. Construction. This Agreement reflects the contributions of both parties and accordingly the provisions of Civil Code section 1654 shall not apply in interpreting this Agreement.

28. No Third-Party Beneficiaries. There are no intended third-party beneficiaries of any right or obligation assumed by the Parties.

29. Prohibited Interests. Consultant warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, FRAQMD shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of FRAQMD, during the term of his or her service with FRAQMD, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

30. Employment Adverse to FRAQMD. Consultant shall notify FRAQMD, and shall obtain FRAQMD's written consent, prior to accepting work to assist with or participate in a third-party lawsuit or other legal or administrative proceeding against FRAQMD during the term of this Agreement.

31. Conflict of Employment. Employment by Consultant of personnel currently on the payroll of FRAQMD shall not be permitted in the performance of this Agreement, even though such employment may occur outside of the employee's regular working hours or on weekends, holidays or vacation time. Further, the employment by Consultant of personnel who have been on FRAQMD's payroll within one year prior to the date of

execution of this Agreement, where this employment is caused by and or dependent upon Consultant securing this or related Agreements with FRAQMD, is prohibited.

32. Time of Essence. Time is of the essence for each and every provision of this Agreement.

33. Cooperation; Further Acts. The parties shall fully cooperate with one another and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

34. Survival. All rights and obligations hereunder that by their nature are to continue after any expiration or termination of this Agreement, including, but not limited to, the indemnification and confidentiality obligations, and the obligations related to receipt of subpoenas or court orders, shall survive any such expiration or termination.

35. Authority to Enter Agreement. Consultant has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Consultant warrants that the individual who has signed this Agreement has the legal power, right, and authority to make this Agreement and bind the Consultant.

36. Counterparts/Electronic, Facsimile, and PDF Signatures. This Agreement may be executed in any number of counterparts, each of which will be an original, but all of which together will constitute one instrument. Each Party of this agreement agrees to the use of electronic signatures, such as digital signatures that meet the requirements of the California Uniform Electronic Transactions Act ("CUETA") Cal. Civ. Code §§ 1633.1 to 1633.17), for executing this agreement. The Parties further agree that the electronic signatures of the Parties included in this agreement are intended to authenticate this writing and to have the same force and effect as manual signatures. Electronic signature means an electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign the electronic record pursuant to the CUETA as amended from time to time. The CUETA authorizes use of an electronic signature for transactions and contracts among Parties in California, including a government agency. Digital signature means an electronic identifier, created by computer, intended by the party using it to have the same force and effect as the use of a manual signature, and shall be reasonably relied upon by the Parties. For purposes of this section, a digital signature is a type of "electronic signature" as defined in subdivision (i) of Section 1633.2 of the Civil Code. Facsimile signatures or signatures transmitted via pdf document shall be treated as originals for all purposes.

FRAQMD

CONSULTANT

By: _____
CHRISTOPHER D. BROWN
AIR POLLUTION CONTROL OFFICER

By: _____
MATT WANINK
OPERATIONAL MANAGER
METEOROLOGIST

APPROVED AS TO FORM:

By: _____
WILLIAM J. VANASEK
DISTRICT COUNSEL

Exhibits:
Exhibit A – Scope of Work
Exhibit B – Fee Schedule