

## PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (“*Agreement*”) is made and entered into as of October \_\_\_\_, 2024 (the “*Effective Date*”) by and between **THE SALTON SEA AUTHORITY**, a California Joint Powers Agency (“*Authority*”, “*Owner*”), and [Consultant], a [California Corporation] (“*Consultant*”), with reference to the following facts and objectives:

**AGREEMENT** is made

Between the Owner:                   **THE SALTON SEA AUTHORITY**  
82500 Hwy 111, Suite 4  
Indio, CA 92201

and the Consultant:                   **[Consultant]**  
[Address Line 1]  
[Address Line 2]

Project:                                   **DESERT SHORES | Restoration Project**

Contract Sum:                         **[Contract Sum]**

### RECITALS

- A. Owner is responsible for working in consultation and cooperation with the State of California to oversee the comprehensive restoration of the Salton Sea, including the Desert Shores | Restoration Project (“*Project*”).
- B. Consultant is experienced in conducting Feasibility Studies, and providing Geotechnical, Geologic, and Hydrogeologic Services.
- C. Subject to the terms and conditions of this Agreement, Owner desires to engage Consultant, and Consultant agrees to be engaged, to perform certain Services (as defined below) relating to the Project.

### AGREEMENT

The parties agree as follows:

#### **ARTICLE 1** CONSULTANT SERVICES

- 1.1. Scope of Services: Consultant shall perform and shall provide the services, advice, and assistance to Owner as described in **Exhibit 1** attached hereto (Desert Shores | Restoration

Project Request for Qualifications / Proposals for Feasibility Study comprising Geotechnical, Geologic, and Hydrogeologic Services for the proposed restoration project in Imperial County, California, dated September 11, 2024) (the “*RFQ/P*”, the “*Scope of Work*”), which is incorporated herein by this reference; **Exhibit 1.1** attached hereto (Addendum 01 to the RFQ/P dated October 2, 2024), which is incorporated herein by this reference; and **Exhibit 2** attached hereto (the Consultant’s Proposal dated [Date]), which is incorporated herein by this reference. The services described in the Scope of Work, together with any Additional Services (as defined below), shall sometimes be collectively referred to herein as the “*Services*”.

- 1.2. **Additional Services:** Any services that are not specifically included within the Scope of Work or logically inferable therefrom shall be considered “*Additional Services*”. In the event Owner requests that Consultant perform Additional Services, Consultant shall not undertake any Additional Services without the prior written authorization of the Owner’s Representative identified in **Section 12.1**, in the form of a written change order or other written addendum or amendment to this Agreement that, at a minimum, (a) describes the Additional Services in detail in a form similar to the Scope of Work typified by **Exhibit 1**, and specifies the method of compensation and/or the stipulated fee to be paid for such Additional Services, and (b) satisfies the requirements of **Section 18.2**. In the event Owner authorizes Additional Services, all such Additional Services shall be subject to all of the terms and conditions of this Agreement, unless otherwise specifically agreed to in each applicable change order, addendum, or amendment in advance.
- 1.3. **Location:** Services shall be performed by Consultant at its offices, or at the Project location.
- 1.4. **Personnel:** All services hereunder shall be performed by highly experienced and skilled personnel in accordance with the highest applicable standards of care and professionalism consistent with a sophisticated Consultant experienced in providing similar services, including specific experience in groundwater well feasibility studies, well design projects, relevant geotechnical, geological, and hydrogeological work, groundwater monitoring and sampling, groundwater resource assessments and investigations, similar municipal water projects and regulatory compliance, and/or similar experience that is specific to your proposed approach for projects of a similar magnitude and complexity as the Consultant services required for the Project. Consultant shall be responsible for the professional quality, timeliness, coordination, and completeness of services. All of Consultant’s personnel assigned to perform services shall be approved by Owner in writing prior to their performance of the services. Consultant shall use only personnel required for the performance of the services who are qualified by education, training and experience to perform the tasks assigned to them. Consultant agrees to replace all of its employees whose work is considered by Owner to be unsatisfactory or contrary to the requirements of the services to be performed hereunder or for any other reason. The Owner shall not supervise nor control Consultant’s services.
- 1.5. **Subconsultants:** Owner hereby approves of the use of only those Subconsultants, if any, named in Consultant’s Scope of Work. Consultant shall not subcontract any portion of the services to be performed under this Agreement without providing Owner with prior written

notice of the identity of such subcontractor and/or subconsultant. Any subcontractor and/or subconsultant retained by Consultant and any subcontract entered into by Consultant shall be made subject to the terms and conditions of this Agreement. Consultant shall be fully responsible to Owner for the actions of persons and firms performing subcontract work as subconsultants or subcontractors (collectively, "*Subconsultants*") to Consultant. Consultant shall require each Subconsultant to indemnify Owner on the same terms as set forth in **Section 11.1** herein, in a separate written document executed by each Subconsultant and delivered to Owner prior to commencement of any subcontracted services. Consultant shall require each Subconsultant to carry and maintain, at its sole cost and expense, insurance policies as set forth in **Article 10** of this Agreement

- 1.6. Subconsultants: Consultant shall be responsible for the results of the work and/or the services performed by Consultant's personnel and all Subconsultants.
- 1.7. Warranty: Consultant represents and covenants that all advice, programs, plans, specifications, recommendations, reports, or other services rendered hereunder shall be of high quality and shall comply fully with all Applicable Laws (as defined in **Section 11.1** below) applicable to Owner, the Project and the subject matter hereof.

Consultant further agrees to immediately advise Owner of any proposed law, regulation, or other requirement identified during the term of the Agreement and that Consultant believes will, if adopted, likely require or warrant modification of or change to any advice, program, plan, specification, recommendation, report or other services previously made, or to be made, during the course of this Agreement.

## **ARTICLE 2** **COMPENSATION**

- 2.1. Fixed Rates: Owner shall pay Consultant on a Time & Material Basis at the fixed rates set forth in **Exhibit 2** attached hereto, which is incorporated herein by this reference, for services satisfactorily performed by Consultant in accordance with this Agreement. Subconsultants shall be paid at a fee of **1.0** times the amount billed to the Consultant unless otherwise identified in **Exhibit 2**. Consultant and Owner agree that the Maximum Fee set forth in **Section 2.2** shall not be exceeded without prior written approval by Owner and an amendment to this Agreement that satisfies the requirements of **Section 18.2**.
- 2.2. Maximum Cost for Consultant Fee: In no event shall Owner be obligated to pay more than a maximum of [Contract Sum] ("*Maximum Fee*") for services satisfactorily performed by Consultant and/or its Subconsultants in accordance with this Agreement and as described in the Scope of Work.
- 2.3. Reimbursable Expenses: The expenses described in this **Section 2.3** shall constitute the only expenses of Consultant which Owner shall reimburse to Consultant, unless Owner otherwise agrees in writing (collectively, "*Reimbursable Expenses*").

Owner shall reimburse Consultant for reasonable travel expenses paid or incurred by Consultant in connection with travel beyond a 50-mile radius from the Project, other than

travel to and from Consultant's offices. Owner will reimburse Consultant for costs of long-distance communication and reproduction services as may be required in the performance of this Agreement and for other expenses approved in writing in advance by Owner.

The maximum amount of Consultant's Reimbursable Expenses pre-authorized by this Agreement is \_\_\_\_\_ Dollars (\$\_\_\_\_\_). (*“Maximum Expenses”*).

- 2.4. Total Commitment Amount: The total amount contemplated and authorized under this Agreement is the sum of the Maximum Fee and the Maximum Expenses set forth in **Sections 2.2** and **2.3** (i.e., a total of \_\_\_\_\_ Dollars (\$\_\_\_\_\_)).

### **ARTICLE 3** **OBLIGATIONS OF OWNER**

- 3.1. Obligations of Owner: To the extent deemed necessary by Owner and Consultant during the period of the Agreement, and while Consultant is performing services hereunder, Owner shall cooperate with the Consultant, and permit reasonable access to pertinent information and locations, and provide necessary scheduling, technical information and electronic data files, as required to permit Consultant to efficiently perform the services required under this Agreement.

### **ARTICLE 4** **PERIOD OF PERFORMANCE**

- 4.1. Term: The term of this Agreement (the *“Term”*) shall commence on the Effective Date and shall terminate upon Consultant's completion of the Services, unless terminated sooner as provided herein, and subject to the survival of certain provisions as specified herein.
- 4.2. Schedule: Consultant shall submit for approval by Owner a project schedule for the performance of services of Consultant under this Agreement.
- 4.3. Termination: Owner may, upon written notice to Consultant, terminate all or a portion of the Services covered by this Agreement, at any time with or without cause, provided however, in the event of a termination without cause, Owner shall endeavor to provide ten (10) days' prior written notice.

Either Consultant or Owner may terminate this Agreement for cause in the event of a material breach by the other party by giving the other party at least thirty (30) calendar days' prior written notice of its intent to terminate unless the breaching party has cured the breach within the thirty (30) day notice period to the reasonable satisfaction of the non-breaching party.

Consequences of Expiration and/or Termination; Survival. In the event Owner terminates this Agreement for any reason, Owner shall be liable to Consultant only for payment in accordance with the payment provisions of this Agreement and only for services performed prior to the effective date of the termination and all work in progress at the time of such

termination that is delivered to Owner. Within ten (10) calendar days after any termination or expiration, Consultant shall deliver to Owner all work product completed or in progress up to the date of the termination or expiration for which payment has been or will be made and the parties shall cooperate to ensure an efficient and timely transfer of responsibilities. Also, the following shall survive any termination or expiration of the Agreement: (a) those rights and obligations that have accrued as of the date of expiration or termination; (b) those rights and obligations that expressly survive termination or expiration; (c) those rights and obligations under **Sections 4.3** (Termination), **Article 7** (Data), **Article 10** (Insurance Requirements), **Article 11** (Indemnification), **Article 14** (Dispute Resolution), and **Article 17** (Confidentiality), and (d); and any other provision that reasonably would be expected to survive termination shall survive termination or expiration of this Agreement. In the event that Consultant terminates under this Agreement as permitted herein, Owner may, at its sole discretion, require that Consultant complete services in progress and such completed services will be subject to approval by Owner before payment therefore is made, said approval not to be unreasonably withheld.

## **ARTICLE 5** **PAYMENT**

- 5.1. Consultant shall submit invoices for Services and Reimbursable Expenses on a monthly basis on or before the fifteenth (15<sup>th</sup>) day of each month. Each invoice shall contain the amount of fee for the period covered by the invoice; the amounts expended or incurred as Reimbursable Expenses; a summary of the total amount of previous invoices; the current invoice amount; and the unbilled balance of this Agreement and any approved Amendments. In addition, the Consultant shall, on a monthly basis, review its progress on the Project and confirm that such progress is in proportion to its Maximum Fees incurred to date.
- 5.2. Upon submission by Consultant of a valid and fully supported invoice for Consultant's services, and upon the approval by Owner, and Owner's Project Manager (Gafcon PM-CM LLC, "**Gafcon**"), Owner will pay Consultant for the amount requested in its current invoice within thirty (30) days from receipt of the fully supported invoice.
- 5.3. Payments past due and unpaid under this Agreement shall bear interest from the date payment is due at the annual rate of 1.50%.
- 5.4. Invoices for Consultant services shall be submitted electronically using the email address pnajar@gafcon.com and addressed to the Owner as follows:

**THE SALTON SEA AUTHORITY.**  
82500 Hwy 111, Suite 4  
Indio, CA 92201

Owner reserves the right to change its Representative at any time and with written notice to Consultant.

**ARTICLE 6**  
**CODES AND REGULATIONS**

- 6.1. All services performed under this Agreement shall conform to all Applicable Laws. Unless otherwise provided, the Applicable Laws referred to above shall be the latest edition or revision in effect as of the effective date of this Agreement. Nothing in this Agreement shall be construed as requiring or permitting services that are contrary to the above-referenced Applicable Laws.

**ARTICLE 7**  
**DATA**

- 7.1. Ownership of Data: Ownership of documents, materials, and Technical Data produced by or for Consultant or any of its employees or Subconsultants in the course of performing the services hereunder, and all proprietary rights therein, shall vest in and shall be delivered, as required herein or otherwise upon request, to Owner. For the purposes hereof, the term "**Technical Data**" means technical writings, pictorial reproductions, drawings or other graphical representations, tape recordings, reports, designs, specifications, calculations, tables and documents of technical nature, whether copyrightable or copyrighted, that are made in the course of performing services under this Agreement. Consultant may use data prepared or produced under this Agreement if such data is otherwise publicly available or upon the specific approval of Owner.
- 7.2. Protection of Proprietary Material: Consultant agrees not to reveal to third parties any information not generally known concerning computer programs, Technical Data and/or technical information, which may be confidential or proprietary to Owner. Consultant further agrees to respect and safeguard in every way practicable the proprietary nature of computer programs, Technical Data and technical information, and to insure that any copies of such programs, data and/or information, in whole or in part, in Consultant's possession at termination of this Agreement, whether in human or machine-readable form, is/are destroyed or returned to Owner. Consultant further agrees not to copy, or cause to be copied, any such programs or related information except as may be required for the performance of services assigned to Consultant under this Agreement. Consultant also agrees to comply with Owner policies concerning privacy of information and computer files.

**ARTICLE 8**  
**ADVERTISING**

- 8.1. Consultant agrees not to use the name of Owner or to quote the opinion of any of Owner's employees or representative in any advertising without obtaining the prior written consent of Owner.

**ARTICLE 9**  
**INDEPENDENT CONTRACTOR**

- 9.1. Consultant shall be an independent contractor, and neither Consultant nor any employee of Consultant shall be, or be deemed to be, an employee, agent or representative of Owner.

**ARTICLE 10**  
**INSURANCE REQUIREMENTS**

- 10.1. Consultant shall not commence services under this Agreement until it has obtained all of the insurance required under this Agreement as described below as evidenced by valid insurance certificates, and such insurance and certificates have been approved by Owner. The Consultant shall not allow any Subconsultant to commence services under a subcontract until the Subconsultant has obtained all required insurance policies, or until the Consultant has insured the Subconsultant under its own insurance policies.

Insurance required under this Agreement shall be:

- (a) Commercial General Liability (bodily injury, property damage, personal injury) insurance, with a single limit of not less than \$1,000,000 per Occurrence, or current limit carried, whichever is greater, and \$2,000,000 in the Aggregate, or current limits carried, whichever is greater. Coverage shall include, without limitation, coverage for bodily injury, including death; contractual liability specifically covering the indemnity obligations stated in **Section 11.1** and elsewhere in the Agreement; independent professionals coverage; personal injury including coverage for suits brought by employees of Consultant; broad form property damage including completed operations; and completed operations insurance.

Commercial General Liability insurance shall include the following provisions, coverages, or endorsements:

“The Salton Sea Authority, members of the Salton Sea Authority’s Board, and the officers, agents, employees and volunteers of the Salton Sea Authority, individually and collectively, and Gafcon PM-CM LLC.” shall be included as Additional Insureds.

The Consultant's insurance shall be primary coverage, and any insurance or self-insurance carried by Owner or any other Indemnified Party shall be excess and noncontributory.

Thirty (30) days’ prior written notice of cancellation or material change in the insurance must be given to Owner.

Consultant and Consultant's insurance companies waive their rights to subrogation against the above named insureds.

- (b) Worker's Compensation insurance and employer's liability insurance with limits not less than \$1,000,000 covering all persons whom the Consultant may employ in

carrying out the services hereunder. Worker's Compensation insurance must be in accordance with the Worker's Compensation laws of the State of California.

- (c) Automobile Liability Insurance to cover, without limitation, claims based on automobile liability (bodily injury and property damage) including coverage for all owned, hired and non-owned automobiles with minimum limits of \$1,000,000 Combined Single Limit.

Automobile Liability Insurance shall include the following provisions, coverages, or endorsements:

“The Salton Sea Authority, members of the Salton Sea Authority’s Board, and the officers, agents, employees and volunteers of the Salton Sea Authority, individually and collectively, and Gafcon PM-CM LLC.” shall be included as Additional Insureds.

The Consultant's insurance shall be primary coverage, and any insurance or self-insurance carried by Owner or any other Indemnified Party shall be excess and noncontributory.

Thirty (30) days’ prior written notice of cancellation or material change in the insurance must be given to Owner.

Consultant and Consultant's insurance companies waive their rights to subrogation against the above named insureds.

- (d) Professional Liability (Errors and Omissions) insurance, with a single limit of not less than \$5,000,000 per Occurrence, or current limit carried, whichever is greater.

“The Salton Sea Authority, members of the Salton Sea Authority’s Board, and the officers, agents, employees and volunteers of the Salton Sea Authority, individually and collectively, and Gafcon PM-CM LLC.” shall be included as Additional Insureds.

The Consultant's insurance shall be primary coverage, and any insurance or self-insurance carried by Owner or any other Indemnified Party shall be excess and noncontributory.

Thirty (30) days’ prior written notice of cancellation or material change in the insurance must be given to Owner.

Consultant and Consultant's insurance companies waive their rights to subrogation against the above named insureds.

- 10.2. Prior to the commencement of any services hereunder and thereafter as coverage expires and is renewed or new coverage obtained, Consultant shall provide Owner with a certificate or endorsement naming “The Salton Sea Authority, members of the Salton Sea Authority’s Board, and the officers, agents, employees and volunteers of the Salton Sea Authority,



individually and collectively, and Gafcon PM-CM LLC.” as Additional Insureds with respect to that insurance policy.

- 10.3. The insurance arranged by the Consultant and all Subconsultant(s) shall include contractual liability endorsements insuring the indemnity clause of this Agreement set forth in **Article 11**, below.

Insurance shall be placed with insurance companies rated at least A-X by Best's Key Rating Guide. Consultant shall also carry such other insurance as Owner reasonably requests. Within two (2) days from the date hereof but in no event later than Consultant's commencement of services, Consultant shall file with Owner a valid, original "Certificate of Insurance" evidencing that all required insurance is in full force and effect. Consultant shall file with Owner valid, original Certificates of Insurance prior to Consultant's renewal of each coverage described in this Section. Consultant shall maintain current and valid Certificates of Insurance which shall be kept on file with Owner at all times during the term hereof and during the performance of Services pursuant to the Agreement. Owner shall not be obligated to process any invoices or applications for payment submitted by Consultant for services performed or Reimbursable Expenses unless Owner has valid, original Certificate(s) of Insurance for Consultant and all Subconsultants. Consultant shall not make any changes in or allow the required insurance coverages to lapse without first obtaining prior written approval from Owner.

All policies for insurance shall be in a form satisfactory to Owner and shall contain an endorsement providing that Owner must be given thirty (30) days' prior written notice of any cancellation, non-renewal or material change in the policy or coverage thereunder. Upon request Consultant shall furnish Owner with complete copies of the insurance policies required by this Section. The failure to secure and maintain or add by endorsement Owner or any Indemnified Party shall not act as a defense to the enforcement of the terms of the Agreement. Any such insurance policy shall apply separately to each insured against whom claim is made or suit is brought and shall contain no provision which excludes coverage of a claim made by one insured under the policy against another insured under the policy. Any insured loss shall be adjusted with Owner and made payable to Owner, subject to any applicable mortgagee clause.

## **ARTICLE 11** **INDEMNIFICATION**

- 11.1. **Indemnity:** Consultant agrees to indemnify and hold harmless Owner, and any of its constituent partners, officers, directors, shareholders, board members, attorneys, consultants, tenants, representatives, and all of their respective employees, officers, directors, agents, successors and assigns (individually, an ***“Indemnified Party”***, and collectively, ***“Indemnified Parties”***) harmless from and against any and all liabilities, losses, demands, causes of action, judgments, liens, orders, costs, claims, damages, penalties or expenses (including, without limitation, reasonable attorneys' fees and witness

fees) (collectively, “**Claims**”) to the extent caused by (i) the willful misconduct or negligent acts, errors or omissions of Consultant, its Subconsultants and/or any of their respective agents, employees, officers, directors or representatives or anyone else for whom Consultant is legally liable in connection with the performance of Services under this Agreement; (ii) with respect to any Claims not arising from Consultant's or its Subconsultant's professional services, any Claims arising from the acts of Consultant or its Subconsultants in connection with this Agreement (e.g., claims for bodily injury or property damage covered by Commercial General Liability Insurance); and/or (iii) Consultant's or Subconsultant's failure to comply with all applicable codes, rules, laws, orders, directives, mandates, guidelines, requirements, ordinances and regulations of all local, state and federal governmental authorities with jurisdiction relating to the Project site or Consultant's performance of services for the Project (collectively, “**Applicable Laws**”). Consultant's obligation to indemnify the Indemnified Parties under this **Section 11.1** shall apply regardless of any concurrent or contributory passive negligent act, error or omission of the party to be indemnified; provided, however, Consultant shall not be obligated to defend or indemnify an Indemnified Party to the extent such damages are the result of the sole or active negligence or willful misconduct of one or more of the Indemnified Parties. Owner agrees to promptly notify Consultant of any such Claim, and the Indemnified Parties shall allow Consultant to defend such Claim with counsel reasonably selected by Consultant and/or to settle such Claim on behalf of the applicable Indemnified Parties, with such Indemnified Parties' reasonable consent. Owner and any other applicable Indemnified Party shall provide reasonable assistance in such defense or settlement at the request and expense of Consultant. At its option, an Indemnified Party may reasonably participate in the defense of a Claim against the Consultant at such party's own expense.

- 11.2. **Infringement:** Consultant, at its sole cost and expense, shall defend, indemnify and hold harmless all Indemnified Parties from and against any and all Claims which may be made in connection with, or alleging, an infringement of a patent, copyright, trademark, service mark, trade secret, or other legally protected proprietary right by work product provided to Owner by Consultant in the form as such deliverable product was delivered; provided, however, that the foregoing indemnity shall not apply to the extent that such infringement is caused by a design provided by Owner for inclusion into such work product or by any modification thereto by or on behalf of Owner.
- 11.3. **Survival:** The provisions of **Article 11** shall survive the termination or expiration of this Agreement.

**ARTICLE 12**  
**COMMUNICATIONS**

- 12.1. Communications between Consultant with Owner shall be through the following persons:

Owner:

**THE SALTON SEA AUTHORITY**  
G. Patrick O’Dowd, Executive Director

Consultant:

**[CONSULTANT]**  
[Name]

82500 Hwy 111, Suite 4  
Indio, CA 92201  
Phone: (760) 565-3100  
Email: gpodowd@saltonsea.com

[Address Line 1]  
[Address Line 2]  
Phone: [Phone 1]  
Email: [Email 1]

- 12.2. Notice: Any notice, demand, consent, approval or statement required or permitted to be given under this Agreement shall be in writing and shall be delivered (a) in person, (b) by deposit in the United States mail, first-class certified or registered mail, postage pre-paid, return receipt requested, (c) by private messenger or courier service (e.g., Federal Express, DHL, UPS), prepaid, or (d) via email. The notice, demand, consent, approval or statement shall be addressed as follows (or to such other address or individual as either party may specify from time to time by written notice in the manner provided in this section). Telephone numbers are provided for convenience only and shall not constitute effective notice.

If to Owner:

**THE SALTON SEA AUTHORITY**  
G. Patrick O’Dowd, Executive Director  
82500 Hwy 111, Suite 4  
Indio, CA 92201  
Phone: (760) 565-3100  
Email: gpodowd@saltonsea.com

If to Consultant:

**[CONSULTANT]**  
[Name]  
[Address Line 1]  
[Address Line 2]  
Phone: [Phone 1]  
Email: [Email 1]

**ARTICLE 13**  
**CONFLICT OF INTEREST**

- 13.1. Consultant affirms that to the best of its knowledge, there exists no actual or potential conflict between Consultant's family, business or financial interest and the services under this Agreement, and in the event of change in either private interests or services under this Agreement, it will notify Owner in writing of any possible or actual conflict of interest which may arise as a result of such change.

**ARTICLE 14**  
**DISPUTE RESOLUTION**

- 14.1. Any suit, action or legal proceeding (an *“Action”*) arising out of or relating to this Agreement shall be filed and maintained in Los Angeles County Superior Court.
- 14.2. Prevailing Party: The prevailing party in any Action shall be entitled to recover from the other party all reasonable fees, costs and expenses incurred by the prevailing party in connection with such Action, including without limitation reasonable attorney fees and expenses, all of which shall be deemed to have accrued upon the commencement of such

Action and shall be paid whether or not such Action is prosecuted to a final judgment or award. Any judgment or award entered in such Action shall contain a specific provision providing for the recovery of fees, costs and expenses, including without limitation reasonable attorney fees and expenses, incurred by the prevailing party. The **“Prevailing Party”** shall mean the party who recovered a greater relief in the Action or who prevails by dismissal, default or otherwise and not necessarily the party in whose favor a judgment or award is rendered, except if the parties enter into a settlement agreement that provides otherwise.

## **ARTICLE 15** **ASSIGNMENT PROHIBITED**

- 15.1. Except for subcontracting specifically approved in writing by Owner, Consultant shall neither assign its rights nor delegate its duties under this Agreement or any part hereof without the prior written consent of Owner, which consent shall not relieve Consultant from any of its obligations under this Agreement. This Agreement shall inure to the benefit of and be binding upon the successors and permitted assigns of the parties hereto.

## **ARTICLE 16** **LAW**

- 16.1. This Agreement and all services hereunder shall be governed by, and construed in accordance with, the laws of the State of California.

## **ARTICLE 17** **CONFIDENTIALITY**

- 17.1. **Confidential Information**: As used in this Agreement, **“Confidential Information”** means any nonpublic information that a party (the **“Disclosing Party”**) discloses or otherwise makes available to the other party (the **“Receiving Party”**) that is used in the Disclosing Party's business and is: (i) of a confidential or proprietary nature, and either gives the Disclosing Party some competitive business advantage or the opportunity of obtaining such advantage, or the disclosure of which could be detrimental to the interests of the Disclosing Party; (ii) designated as Confidential Information by the Disclosing Party, or from all the relevant circumstances should reasonably be assumed by Receiving Party to be confidential or proprietary to the Disclosing Party; and (iii) not generally known by non-Disclosing Party personnel.
- 17.2. **Exclusions**: Information shall not be considered Confidential Information to the extent that such information is (i) publicly available, or becomes publicly available without restriction and through no fault or action of the Receiving Party or its agents or contractors, (ii) rightfully received by the Receiving Party from a third party that is not itself under an obligation to keep such information confidential, (iii) already in the Receiving Party's possession and lawfully received from sources other than the Disclosing Party that are not

themselves under an obligation to keep such information confidential, (iv) independently developed by the Receiving Party without use of or reference to the Confidential Information of the Disclosing Party, which can be supported by documentation prepared contemporaneously with such independent development, or (v) approved in writing for release or disclosure without restriction by the Disclosing Party.

- 17.3. Permitted Use and Disclosure: The Receiving Party shall exercise the same standard of care to protect such information as is used to protect its own Confidential Information. Receiving Party may use the Disclosing Party's Confidential Information only as necessary for its performance under this Agreement. Notwithstanding the foregoing, Receiving Party may disclose the Disclosing Party's Confidential Information (a) to the extent disclosure is required by law or court order, (b) with the prior written consent of the Disclosing Party, (c) to the Receiving Party's attorneys or accountants on a need to know basis for legal or accounting advice, and/or (d) in the event of a dispute between the parties relating to this Agreement, to a court or other adjudicative body with jurisdiction to resolve the dispute and/or enforce the terms of this Agreement.
- 17.4. Survival of Obligations: This confidentiality provision will remain in effect during the Term and for a period of three (3) years after the termination of the Agreement, except with respect to Confidential Information of the Disclosing Party that constitutes a trade secret under applicable law, in which case, such obligations of Receiving Party shall continue until such Confidential Information becomes publicly known or made generally available through no action or inaction of the Receiving Party

## **ARTICLE 18**

### **CONTRACT DOCUMENTS & MISC. PROVISIONS**

- 18.1. Integrated Agreement: This Agreement constitutes the entire agreement between the parties with respect to their subject matter, and supersedes any prior negotiations, agreements or understandings with respect to their subject matter.
- 18.2. Amendment. This Agreement shall not be amended, except in writing, signed by both parties and identified as an amendment, addendum, or Change Order to this Agreement, as the case may be.
- 18.3. Time is of the Essence: It is mutually agreed that time is of the essence for each and every portion of this Agreement and for any Services or other requirements of the Agreement, and, in the event of an extension of time under the Agreement is allowed for the completion of any services, the new time fixed by such extension shall be of the essence for this Agreement.
- 18.4. Waiver of Provisions: If at any time Owner or Consultant, as the case may be, shall have consented to any waiver, modification or alleged breach by the other party of any covenant, condition or provision of this Agreement, such consent must be in writing and the consenting party shall not thereafter be deemed to have consented to any further waiver,

modification or alleged breach by the other party, whether new or continuing of the same or any other covenant, condition or provision of this Agreement.

- 18.5. Survival: All representations and covenants made or given by Consultant in this Agreement, together with any and all causes of action and other rights and remedies which Owner or Consultant may have as a result of breach of any term, condition, representation, or covenant of the other party pursuant to this Agreement, shall survive any expiration or termination of this Agreement.
- 18.6. Force Majeure: Neither Owner nor Consultant shall be liable for damages due to delay or failure to perform any obligation under this Agreement if and to the extent that such delay or failure results from circumstances beyond the control of the Owner or Consultant. In the event of such a force majeure event, the Consultant shall provide Owner with notice of such event within ten (10) days from its occurrence and the time for Consultant's performance shall be extended for the duration of the force majeure event as set forth in a change order or addendum pursuant to **Section 1.2** above.
- 18.7. Obligations to Third Parties: The execution and delivery of this Agreement shall not be deemed to confer any rights upon, nor obligate Owner, to any person or entity other than Consultant.
- 18.8. Owner's Approval Right: Owner shall have the right, in its sole discretion, to disapprove any portion of the Consultant's services that does not conform to the Scope of Work or to the description of any Additional Services contained in an addendum, amendment, or Change Order. Owner is in no way responsible for any defects in the services performed or Project documents prepared by Consultant that are submitted to, reviewed or approved by Owner.
- 18.9. Consultant's Duty to Complete Work: During all disputes, actions, claims or other matters arising out of or relating to this Agreement or the breach thereof, Consultant shall carry on its duties hereunder, provided Owner is not in default in its obligation to pay Consultant undisputed amounts pursuant to the provisions of this Agreement.
- 18.10. Liens: Consultant shall pay when due all claims for services or labor incurred at its instance or request in the performance of this Agreement. If, in the performance of Consultant's services, any mechanic's liens, stop notices, attachments, garnishments or suits are filed by Consultant's Subconsultants or parties for which Consultant is responsible (except when such lien or stop notice is caused by Owner's default in its obligation to pay Consultant pursuant to the provisions of this Agreement) against the Project, the site on which the Project is located, or any portion thereof, in connection with claims for services or labor incurred at the instance or request of Consultant in the performance of this Agreement, Consultant shall remove such lien when filed or within five (5) days after written demand by Owner, cause the effect of such lien, stop notice, attachment or suit to be removed from the Project, the site or any portion thereof in a manner satisfactory to Owner. If Consultant fails to cause the removal of any lien, stop notice, attachment or suit in accordance with the foregoing, Owner is hereby authorized to take whatever actions it deems necessary to cause the lien, stop notice, attachment or suit, together with its effect upon said title, to be

removed, discharged, satisfied, compromised or dismissed, and the cost thereof, including, without limitation, actual attorneys' fees incurred by Owner, shall become immediately due from Consultant to Owner. Consultant may contest any such lien, attachment or suit, provided it shall cause the effect to be removed from the Project or any part thereof.

- 18.11. Exhibits: All Exhibits attached hereto are incorporated into this Agreement and made a part hereof, in order of precedence:
- (a) **Exhibit 1.1**: Addendum 01 to the RFQ/P dated October 2, 2024 (if applicable).
  - (b) **Exhibit 1**: Desert Shores | Restoration Project Request for Qualifications / Proposals for Feasibility Study comprising Geotechnical, Geologic, and Hydrogeologic Services for the proposed restoration project in Imperial County, California, dated September 11, 2024.
  - (c) **Exhibit 2**: The Consultant's Proposal dated \_\_\_\_\_.
- 18.12. General Interpretation: The terms of this Agreement have been negotiated by the parties hereto and the language used in this Agreement shall be deemed the language chosen by the parties to express their mutual intent. This Agreement shall be construed without regard to any presumption or rule requiring interpretation against the party causing such agreement or any portion thereof to be drafted, in favor of the party receiving a particular benefit under the Agreement. No rule of strict construction shall be applied against any person.
- 18.13. In the event any provision of this Agreement is found to be legally unenforceable, such unenforceability shall not prevent the enforcement of any other provision if the essential terms and conditions of this Agreement for each party remain valid, binding and enforceable.
- 18.14. Whenever used in this Agreement, as the context requires, the singular number includes the plural, and the plural number includes the singular.
- 18.15. Counterparts / Electronic Signature: This Agreement shall be binding and effective on the parties only when executed by both parties. For the convenience of the parties, this Agreement, and any amendment to this Agreement, may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same Agreement or amendment, as applicable. A signed copy of this Agreement or an amendment delivered by email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy.

This Agreement was entered into as of the day and year first written above.

**OWNER:**

**THE SALTON SEA AUTHORITY**

**CONSULTANT:**

**[CONSULTANT]**

By: \_\_\_\_\_

Name: G. Patrick O'Dowd

Title: Executive Director

Date: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_