**AGREEMENT FOR PROFESSIONA**L  
**ENGINEERING AND CONSULTING SERVICES**

This Agreement is by and between the Merced Irrigation District, hereinafter described as "MID" or “District,” whose principal office is located at 744 W. 20th Street, Merced CA. 95340, and “Gannett Fleming, Inc.,” hereafter referred to as Consultant, whose principle office is located at 2251 Douglas Blvd., STE 200, Roseville CA. 95661, effective on the date MID signs this Agreement.

**RECITALS**

WHEREAS, MID has determined it is in the interest to proceed with the work hereinafter described as “Project; and

WHEREAS, MID has determined the Project involves the performance of professional and technical services of a temporary nature as more specifically described in individual Task Orders to be assigned as needed by MID; and

WHEREAS, MID does not have available employees to perform the services for the Project; and

WHEREAS, MID has requested the Consultant to perform such services for the Project; and

WHEREAS, the Consultant is professionally qualified in California to perform the professional and technical services required for the Project;

THEREFORE, MID and the Consultant, for the consideration hereinafter described, mutually agree as follows:

**SCOPE OF SERVICES**

Provide engineering and consulting services as described in individual Task Orders.

**PAYMENT TERMS**

1. In exchange for the Work, MID agrees to pay the Consultant based on Consultant’s actual time and expenses necessarily and actually expended on the Work in accordance with Consultant’s fee schedule, attached hereto as Exhibit “A” and incorporated herein. Consultant shall provide the District with an updated fee schedule on or before January 1st of each year. Rates may be adjusted with mutual consent of both District and Consultant. There shall be no compensation for extra or additional work or services by Consultant unless approved in advance in writing by the District. Consultant’s fee shall include all of Consultant’s costs and expenses related to the Work.
2. District shall provide Consultant with periodic written Work assignments using a Contract Task Order. Each Contract Task Order shall detail start and completion dates, Work description, an estimated not-to-exceed dollar amount, and other information necessary for Consultant to complete the Work.
3. At the end of each month, Consultant shall submit to the District an invoice for the Work performed during the preceding month. The invoice shall include a brief description of the Work performed, the dates of Work, number of hours worked and by whom (if payment is based on time), the Contract Task Order number and an itemization of any reimbursable expenditures. No markup above Consultant’s actual cost will be paid for reimbursable costs. If the Work is satisfactorily completed and the invoice is accurately computed, District shall pay the invoice within 30 days of its receipt.
4. The District shall not pay Consultant for travel unless approved in advance and then District shall pay approved travel and other incidental and necessary expenses at Consultant’s actual cost. Consultant must provide itemized, detailed receipts for reimbursement. No markup above Consultant’s actual cost will be paid by the District for these expenses. Mileage for travel will be paid at the Standard Mileage Rate in effect set by Internal Revenue Service.

**TIME FOR PERFORMANCE**

1. The Consultant shall commence services upon receipt of written direction to proceed from MID on a Task Order basis.
2. The Consultant shall perform the work described on each Task Order in accordance with the schedule set forth with each Task Order. Each mutually agreed Task Order is hereto and incorporated by this reference.
3. The Consultant and MID agree that the schedule in each Task Order represents their best estimates with respect to completion dates, and both the Consultant and MID acknowledge that it will not unreasonably withhold approval of the Consultant's requests for extensions of time in which to complete the work required of the Consultant hereunder.
4. The Consultant shall not be responsible for performance delays caused beyond the Consultant's reasonable control, and such delays shall extend the time for performance of the work by the Consultant. Delays caused by non-performance or unjustified delay in performance by a sub consultant of the Consultant are not considered to be beyond the Consultant's reasonable control.
5. The Consultant agrees that the personnel, including the principal Project Manager, and all sub consultants assigned to the Project by the Consultant, shall be subject to the prior approval of MID.
6. No change in sub consultants or key personnel shall be made by the Consultant without prior written approval of MID.

**INDEPENDENT CONTRACTOR**

1. It is understood and agreed that the Consultant is, and at all times shall be, an independent contractor and nothing contained herein shall be construed as making the Consultant or any individual whose compensation for services is paid by the Consultant, an agent or employee of MID, or authorizing the Consultant to create or assume any obligation or liability for or on behalf of MID.
2. The Consultant may also retain or subcontract for the services of other necessary consultants with the prior written approval of MID. Payment for such services shall be the responsibility of the Consultant. Any and all sub consultants employed by the Consultant shall be subject to the terms and conditions of this Agreement, except that MID shall have no obligation to pay any sub consultant for services rendered on the Project.

**DUE DILIGENCE**

1. Unless hereinafter specified, neither party shall be responsible for the services of the other or any subcontractor or sub-consultant employed by the other party.
2. The Consultant shall comply with applicable federal, state, and local laws in the performance of work under this Agreement.

**INDEMNITY**

1. The Consultant agrees to indemnify, defend, and save MID, their officers, agents and employees harmless from any and all liability, claims, demands, damages, or injuries to any person, including injury to the Consultant's employees and all claims which arise from or are connected with the negligent performance of or failure to perform the work or negligent acts of the Consultant, its officers, agents or employees, or its sub consultant(s) or any person acting for the Consultant or under its control or direction; provided, however, that this indemnification and hold harmless shall not include claims arising from the sole negligence or willful misconduct of MID, their officers, agents or employees.

**INSURANCE**

1. (a) The Consultant shall maintain, at its sole expense, throughout the term of this Agreement and any extension thereof, Professional Errors and Omission Insurance coverage in the form and substance and with carriers acceptable to MID. Such coverage in the form and substance and with carriers acceptable to MID. Such coverage in the form and substance and with carriers acceptable to MID. Such coverage limits shall not be less than $1,000,000 per claimand $2,000,000 annual aggregate.

(b) During the entire term of this Agreement, the Consultant agrees to maintain General Liability Insurance in form and substance and with carriers acceptable to MID at its sole expense to protect against loss from liability imposed by law for damages on account of bodily injury, including death there from, suffered or alleged to be suffered by any person or persons whomever, resulting directly or indirectly from any act or activities of the Consultant its sub-consultant or any person acting for the Consultant or under its control or direction, and also to protect against loss from liability imposed by law for damages to any property of any persons caused directly or indirectly by or from acts or activities of the Consultant or its sub consultants, or any person acting for the Consultant or under its control or direction.

(c) Such General Liability Insurance shall be maintained in full force and effect throughout the terms of the Agreement and any extension thereof in the minimum limits provided below:

**General Liability**

Bodily Injury $3,000,000 per occurrence

Annual Aggregate $5,000,000

(d) If the operation under this Agreement results in an increased or decreased risk in the opinion of the MID General Manager, then the Consultant agrees that the minimum limits herein above designated shall be changed accordingly upon request by the MID General Manager.

(e) The Consultant shall maintain, at its sole expense, and throughout the term of this Agreement and any extension thereof, Public Liability and Property Damage Insurance coverage for owned and non-owned automotive equipment operated on MID premises. Such coverage limits shall not be less than $2,000,000 combined single limit.

(f) The Consultant shall maintain, at its sole expense, Workers’ Compensation Insurance in the amounts of $1,000,000 employers liability, will fully comply with the laws of the State of California and which shall indemnify, insure and provide legal defense for both the Consultant and MID against any loss, claim, or damage arising from any injuries or occupational diseases happening to any worker employed by the Consultant in the course of carrying out the Agreement.

(g) MID, their officers, employees and agents shall be named as additional insured on all policies of insurance under Form CG 20 10 11-85, except errors & omissions and worker’s compensation.

(h) A Certificate of Insurance and appropriate additional insured endorsement evidencing the above insurance coverage shall be submitted to MID prior to the execution of this Agreement on behalf of MID.

(i) Insurance companies providing insurance hereunder shall be rated (A minus: VII -) or better in Best's Insurance Rating Guide and shall be authorizedto conduct insurance business in the State of California. 

(j) The terms of the insurance policy or policies issued to provide the above insurance coverage shall not be canceled by the carrier without thirty (30) days prior notice of cancellation to MID, except that cancellation for non-payment of premium shall require ten (10) days prior notice. In the event the said insurance is canceled, the Consultant shall, prior to the cancellation date, submit to MID Finance new evidence of insurance in the amounts established.

**EQUAL EMPLOYMENT OPPORTUNITY**

1. During the performance of this Agreement, the Consultant will not unlawfully discriminate against any employee or applicant for employment because of race, religion, creed, color, national origin, sex, sexual orientation, or age. The Consultant will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, religion, creed, color, national origin, sex, sexual orientation, or age.
2. Consultant and subconsultants shall pay prevailing wage rates when required by the Labor Laws of the State of California.

**DOCUMENTS**

1. (a) The Consultant shall deliver to MID’s representative as designated in each Task Order, fully completed and detailed project-related documents which shall become the property of MID. The Consultant may retain, for its files, copies of any and all material, including drawings, documents, and specifications, produced by the Consultant in performance of this Agreement.

(b) The Consultant shall be entitled to copies of all furnished materials for his files and his subconsultants.

(c) MID agrees to hold the Consultant free and harmless from any claim arising from any unauthorized use of computations, maps, and other documents prepared or provided by the Consultant under this Agreement, if used by MID on other work without the permission of the Consultant. Consultant acknowledges that Consultant work product produced under this agreement may be public record under State law.

**TERM AND TERMINATION**

1. (a) Term. This Agreement will remain in effect until terminated by either Consultant or MID as provided herein, but not longer than five (5) years from the date of Agreement execution.

(b) Termination. MID may terminate this Agreement without fault on the part of Consultant by giving at least ten (10) days written notice to the Consultant. The written notice shall specify the date of termination. Upon receipt of such notice, the Consultant may continue services on the project through the date of termination, provided that no service(s) shall be commenced or continued after receipt of the notice, which is not intended to protect the interest of MID. MID shall pay the Consultant within thirty (30) days after the date of termination for all non-objected to services performed by the Consultant in accordance herewith through the date of termination. Such termination may be effective immediately.

(c) Termination. Either party may terminate this agreement for cause. In the event MID terminates this agreement for cause, the Consultant shall perform no further service(s) under the Agreement unless the notice of termination authorizes such further work.

1. This Agreement is binding on MID and Consultant and their successors and assigns. Except as otherwise provided herein, neither MID nor the Consultant shall assign, sublet, or transfer its interest in this Agreement or any part thereof without the prior written consent of the other.

**TASK ORDER CONTACTS**

1. Each Task Order shall identify an MID representative and a Consultant representative as the primary contact person for each party regarding performance of each Task Order. MID’s representative shall cooperate with the Consultant, and the Consultant's representative shall cooperate with MID in all matters regarding the respective Task Order in such a manner as will result in the performance of the services in a timely and expeditious fashion.
2. This Agreement represents the entire and integrated Agreement between MID and the Consultant, and supersedes all prior negotiations, representations or Agreements, either written or oral. This Agreement may be modified or amended only by a subsequent written Agreement signed by both parties.
3. Where the payment terms provide for compensation on a time and materials basis, the Consultant shall maintain adequate records to permit inspection and audit of the Consultant's time and materials charges under this Agreement. The Consultant shall make such records available to MID at the Consultant's office during normal business hours upon reasonable notice. Nothing herein shall convert such records into public records. Except as may be otherwise required by law, such records will be available only to MID. Such records shall be maintained by the Consultant for three (3) years following completion of the services under this Agreement.

**CONFIDENTIALITY**

1. MID and Consultant agree, that to the extent permitted by law, until final approval by MID, all data shall be treated as confidential and will not be released to third parties without prior written consent of both parties.
2. The Consultant shall employ no MID official or employee in the work performed pursuant to this Agreement. No officer or employee of MID shall have any financial interest in this Agreement in violation of federal, state, or local law.
3. All plans, drawings, specifications, reports, logs and other documents prepared by the Consultant in its performance under this Agreement shall, upon completion of the project, be delivered to and be the property of MID, provided that the Consultant shall be entitled, at its own expense, to make copies thereof for its own use.

**CHOICE OF LAW**

1. The laws of the State of California shall govern the rights, obligations, duties, and liabilities of the parties to this Agreement, and shall also govern the interpretation of this Agreement. Venue shall be vested in the Superior Court of the State of California, County of Merced.

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| IN WITNESS HEREOF, the parties have each caused their authorized representative to execute this Agreement. |

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| **MERCED IRRIGATION DISTRICT** | | |  |  | **GANNETT FLEMING, INC.** | | |  |
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| Peter Wade - Hydroelectric Department Manager | | | |  | Drew G. Kennedy, PG, CEG  Vice President | | | |
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