

CONSULTING SERVICES AGREEMENT

This Consulting Services Agreement ("CSA") is dated as of December 14, 2021 (the "Effective Date"), and is between UNION PACIFIC RAILROAD COMPANY, successor by merger of Southern Pacific Transportation Company, a Delaware corporation ("UPRR"), MARY LOU HELIX, KAREN HOOK, DEBBIE HOOK, AND BLAKE PUCELL (together, the "Hookston Group"), and CONTRA COSTA COUNTY, a political subdivision of the State of California (the "County") on one hand, and ERM-WEST, INC., a California corporation ("Contractor") on the other. Together, UPRR, the Hookston Group and the County are the "Hookston Parties."

RECITALS

- A. The Hookston Parties are parties to a settlement agreement that was entered into in 1997 to resolve a civil suit involving allegations of contamination of the soil, subsoil, surface water and groundwater on and emanating from an approximately 8-acre site located at the intersection of Hookston Road and Bancroft Road in Pleasant Hill, California (the "Hookston Site") (the "Settlement Agreement").
- B. The Hookston Site is currently regulated under Regional Water Quality Control Board Order No. R2-2007-0009, *Adoption of Final Site Cleanup Requirements and Recission of Order Nos. R2-2003-0035 and R2-2004-0081*, dated January 30, 2007 (the "Order").
- C. Simultaneous with the execution of this CSA, the Hookston Parties and Contractor are entering into a work authorization dated November 30, 2021 (a "Work Authorization"), that describes the scope of remediation and related environmental services (the "Work") Contractor is to perform at the Hookston Site through January 2023. If additional Work is to be performed by Contractor at the Site, the parties will execute additional Work Authorizations. Each Work Authorization is a part of this CSA and is incorporated by reference into this CSA.

The Hookston Parties and Contractor mutually agree as follows:

Section 1. CONTRACTOR REPRESENTATION AND WARRANTIES.

- Contractor shall perform the Work with the same care and skill ordinarily exercised by experienced professional performing similar services for projects of similar scope and complexity in the same jurisdiction.
- Contractor's personnel assigned by Contractor to perform the Work are experienced,

qualified, and licensed (if necessary or advisable) to perform the Work.

- Contractor and its personnel assigned to perform the Work shall comply in all respects with this CSA, and all federal, state and local laws, rules, regulations, orders, codes and ordinances applicable to the Work, including environmental, safety and health laws (if applicable) that are in effect at the time the Work is performed. Contractor warrants that its instructions to the Hookston Parties will comply in all respects with all applicable laws, rules, regulations, orders, codes and ordinances applicable to the Work.
- The Work will not infringe on any patent, copyright, trademark, or other intellectual property right, unless the Hookston Parties direct Contractor to incorporate software into the Work and such software is later determined to infringe on the intellectual property rights of a third party. If the Hookston Parties direct Contractor to incorporate software into the Work, Contractor will inform the Hookston Parties if Contractor has knowledge that the software requires a license agreement.
- Contractor has the expertise necessary to perform the Work and the Hookston Parties are entitled to rely on Contractor's expertise, reports, data and/or conclusions reached by Contractor in its performance of the Work.
- Contractor shall, at Contractor's own expense, furnish (unless herein otherwise specifically provided) all supervision, labor, tools, equipment, materials, and supplies and all other things requisite and necessary to perform the Work.
- Contractor has all necessary permits and/or licenses required to perform the Work contemplated by this CSA.
- Contractor warrants the Work for a period of one year from completion of the Work.
- CONTRACTOR MAKES NO REPRESENTATIONS OR WARRANTIES OTHER THAN THOSE EXPRESSLY SET FORTH HEREIN.

Section 2. HOOKSTON PARTIES REPRESENTATIONS AND WARRANTIES.

- The Hookston Parties shall cause their use of the Work, in accordance with Contractor's instructions, to comply with all applicable laws, rules, regulations, orders, codes and ordinances.

Section 3. ALLOCATION OF COSTS AND ESCROW ACCOUNT MANAGEMENT

The Hookston Parties will bear the cost of their obligations under each Work Authorization in accordance with the Settlement Agreement.

Section 4. CONTRACTOR COMPENSATION.

Contractor shall cause each Work Authorization to set forth an estimated costs for labor, subcontractors, and materials for the Work. The labor rates have been estimated using the current rate sheet for the calendar year when the work will occur. Contractor may adjust labor rates annually at the beginning of a new calendar year; provided the increase is no more than 3% per year.

Payments for Work will be made on a monthly basis for work performed by the Contractor in accordance with the relevant Work Authorization. The Hookston Parties will reimburse reasonable, documented expenses incurred by Contractor in the performance of the Work. The estimates set forth in the Work Letter do not include applicable taxes, including jurisdiction-specific taxes, such as sales tax, use tax, commodity tax, excise tax, valued added tax, withholding tax, transaction tax, customs, tariffs, duties and similar levies, which are the sole responsibility of the Hookston Parties. Contractor is responsible for applicable taxes on Contractor's net income or taxes arising from the independent contractor relationship between Contractor and its personnel. Late payments will bear interest at 1.5% per month. Contractor has the right to suspend performance of the Work in the event of non-payment of undisputed invoices.

The amount specified in each invoice is payable within thirty (30) days after presentation of an invoice.

Section 5. TERM; TERMINATION.

The term of this CSA begins on the Effective Date and will continue until Work under each Work Authorization is complete, unless terminated sooner as provided below.

Either Contractor or the Hookston Parties may terminate this CSA or any Work Authorization at any time during the Term, with or without cause, by providing the other party thirty (30) days written notice of termination. Upon termination, the Hookston Parties' sole obligation to Contractor is to pay for Work performed through the date of termination at the rates set forth in the relevant Work Authorization, together with all reasonable costs incurred by Contractor after termination that are necessary to conclude Contractor's performance under the relevant Work Authorization, including without limitation, demobilization and demurrage costs.

Section 6. INSURANCE REQUIREMENTS.

Contractor shall, at its sole cost and expense, procure and maintain during the life of this CSA (except as otherwise provided in this CSA) the following insurance coverage:

Commercial General Liability Insurance. Commercial general liability (CGL) with a limit of \$1,000,000 each occurrence and an aggregate limit of \$2,000,000.

Business Automobile Coverage Insurance. Business auto coverage with a combined single limit of \$1,000,000 for each accident and coverage must include liability arising out of any auto (including owned, hired, and non-owned autos).

Worker's Compensation and Employer's Liability Insurance. Coverage must include but is not limited to:

- Contractor's statutory liability under the worker's compensation laws of California.
- Employer's liability (Part B) with limits of \$1,000,000.00 each accident, \$1,000,000.00 disease policy limit, \$1,000,000.00 each employee.

Coverage must include liability arising out of the U.S. Longshoremen's and Harbor Workers' Act, the Jones Act, and the Outer Continental Shelf Land Act, if applicable.

Alternate Employer Endorsement. Worker's compensation and employer's liability insurance must be endorsed with form WC 00 03 01 A (or a substitute form providing equivalent coverage) showing each UPRR, the Hookston Group and the County in a schedule as an alternate employer, with each name stated on the certificate of insurance.

Umbrella or Excess Insurance. If Contractor utilizes umbrella or excess policies, these policies must "follow form" and afford no less coverage than the primary policy.

Other Requirements

All policy(ies) required above (except worker's compensation and employer's liability and professional liability) must identify each of the Hookston Parties as an "Additional Insured" using Additional Insured Endorsements CG 20 10 04 13 and CG 20 37 04 13 (or substitute forms providing equivalent coverage), which must be stated on the certificate of insurance. The coverage provided to the Hookston Parties as additional named insured shall, to the extent provided under Additional Insured Endorsement CG 20 10 04 13 and CG 20 37 04 13, provide coverage for the Hookston Parties negligence, whether sole or partial, active or passive, and may not be limited by Contractor's liability under the indemnity provisions of this CSA.

The fact that insurance is obtained by Contractor or the Hookston Parties on behalf of Contractor will not be deemed to release or diminish the liability of Contractor, including, without limitation, liability under the indemnity provisions of this CSA. Damages recoverable by the Hookston Parties from Contractor or any third party will not be limited by the amount of the required insurance coverage.

Contractor waives all rights against the Hookston Parties and their agents, officers, directors and employees, where permitted by law, for recovery of damages to the extent these damages are covered by the worker's compensation and employer's liability or

commercial umbrella/excess liability insurance obtained by Contractor required by this CSA, which must be stated on the certificate of insurance.

Prior to commencing the Work, Contractor shall furnish the Hookston Parties with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements in this CSA.

All insurance policies must be written by a reputable insurance company acceptable to Hookston or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the Work is to be performed.

Section 7. ENFORCEABILITY; CHOICE OF LAW; CHOICE OF FORUM.

This CSA is governed by the Laws of the State of California.

Section 8. INDEPENDENT CONTRACTOR.

Contractor and the agents and employees of the Contractor are not and may not be considered as employees of the parties comprising the Hookston Parties. Contractor is and will remain an independent contractor and nothing herein contained may be construed inconsistent with that status. If the Hookston Parties determine, in their discretion, that any person employed by Contractor or any subcontractor is not performing the Work in accordance with Contractor representations and warranties set forth in this CSA or the relevant Work Authorization, then, upon the request of a majority of the entities comprising the Hookston Parties, Contractor shall permanently remove such person from the Work.

Section 9. PAYMENT OF WAGES AND PAYROLL TAXES.

Contractor shall pay the wages and salaries of the officers and employees of the Contractor in strict accordance with all applicable law, including those relating to wages, prevailing wages, minimum wages, working hours, overtime, and working conditions. Contractor agrees to accept exclusive liability for the payment of any and all payroll taxes or contributions for unemployment insurance or old age pensions or annuities that are measured by the wages, salaries or other remuneration paid to the employees of the Contractor or measured by the performance by Contractor of the services, or the furnishing of equipment, tools, or materials, as provided herein. Contractor shall reimburse the Hookston Parties for any of the aforesaid taxes and contributions that they may be required to pay. Contractor shall comply with all valid administrative regulations respecting the assumption of liability for the aforesaid taxes and contributions and the supplying of information to the proper authorities.

The Contractor agrees to comply with the provisions of 29 Code of Federal Regulations (CFR), Part 470, if applicable.

Section 10. GENERAL INDEMNITY AND LIABILITY.

Contractor shall defend, indemnify, and hold harmless the Hookston Parties from all fines, judgments, awards, claims, demands, liability, losses, damages and expenses (including attorney fees and costs) ("Claims") to the extent caused by Contractor's negligent actions, omissions, or willful misconduct in the performance of this CSA, including but not limited to those Claims based on injury or death to third parties and loss or damage to property belonging to third parties (including environmental claims). If a Claim is brought by an employee of Contractor, then Contractor shall defend, indemnify, and hold harmless the Hookston Parties harmless from such employee's Claim. **EXCEPT AS OTHERWISE SET FORTH HEREIN, CONTRACTOR'S INDEMNIFICATION OBLIGATION WITH RESPECT TO CLAIMS BROUGHT BY CONTRACTOR'S EMPLOYEES HEREUNDER IS EXPRESSLY INTENDED TO INCLUDE INDEMNIFICATION FOR ALL CLAIMS, INCLUDING THOSE CAUSED OR ALLEGED TO BE CAUSED BY THE PARTIAL OR SOLE NEGLIGENCE OF THE HOOKSTON PARTIES AND/OR THEIR EMPLOYEES, WHETHER ACTIVE OR PASSIVE, BUT EXCLUDING HOOKSTON PARTIES' GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. TO THE EXTENT IT MAY LAWFULLY DO SO, CONTRACTOR WAIVES ANY AND ALL DEFENSES UNDER WORKERS' COMPENSATION OR INDUSTRIAL INSURANCE ACTS TO SO INDEMNIFY THE HOOKSTON PARTIES.**

THIS INDEMNIFICATION OBLIGATION BY CONTRACTOR INCLUDES ANY CLAIMS, SUITS OR JUDGMENTS BROUGHT AGAINST THE HOOKSTON PARTIES UNDER THE FEDERAL EMPLOYER'S LIABILITY ACT, INCLUDING CLAIMS FOR STRICT LIABILITY UNDER THE SAFETY APPLIANCE ACT OR THE BOILER INSPECTION ACT.

The Hookston Parties shall give notice to Contractor, in writing, of the receipt or pendency of any Claims. Contractor shall defend the Hookston Parties, at the Hookston Parties' discretion, from and against all Claims for which Contractor has an indemnification obligation with counsel reasonably satisfactory to the Hookston Parties. Contractor may not settle any Claim in a manner that would impose any expense, penalty, obligation or limitation on the Hookston Parties without the prior written consent of each of the parties comprising the Hookston Parties. The Hookston Parties have the right, but not the obligation, to defend any Claim, and if the Hookston Parties opt to defend, Contractor shall remain obligated to indemnify, and save harmless the Hookston Parties from and against all Claims. If Contractor disputes its indemnification obligation with regard to a particular Claim, Contractor shall nevertheless defend the Hookston Parties, and the Hookston Parties shall reimburse Contractor for any portion of the damages, judgments, decrees, attorney fees, costs, and expenses that is determined attributable to the Hookston Parties by a court of competent jurisdiction.

Contractor's obligations to defend, indemnify, and hold harmless exist whether the Claims giving rise to these obligations are made against the parties comprising the Hookston Parties individually or collectively as a whole. Contractor's obligations to

defend, indemnify, and hold harmless the Hookston Parties shall survive the termination or expiration of this CSA and the Work Authorizations.

EXCEPT FOR GROSS NEGLIGENCE, WILLFUL MISCONDUCT OR BREACH OF CONFIDENTIALITY, (A) NEITHER PARTY WILL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES, ECONOMIC LOSSES OR LOST PROFITS, AND (B) CONTRACTOR IS NOT LIABLE IN THE AGGREGATE FOR ANY DAMAGES IN EXCESS OF \$3,000,000.

The obligations and limitations of this Section shall survive any termination of this CSA.

Section 11. CONFIDENTIAL INFORMATION.

County is a political subdivision of the State of California and is, therefore, subject to the California Public Records Act (California Government Code Sections 6250 *et seq.*, the "Act"). Any information provided to the Hookston Parties by Contractor is subject to disclosure pursuant to the Act.

Section 12. RIGHT TO STOP WORK; EXTRA WORK.

The Hookston Parties have the right to stop the Work or make changes in the amount, dimensions or character of the Work as the majority of the Hookston Parties determine is in the best interest of the Hookston Parties. Any increase in the Work that results from such changes, is to be paid for by the Hookston Parties at the same rates as similar work is contracted for under a Work Authorization. Any work that the Hookston Parties may require that is outside the scope of a Work Authorization will be the subject of a separate agreement between the parties or a third-party contractor. Contractor is not liable for any work performed by a third-party contractor.

Contractor has the right to suspend performance of the Work, or terminate this CSA, without liability, immediately upon notice to the Hookston Parties if Contractor determines in its reasonable discretion, based on industry norms and the circumstances surrounding the Work, that the health and safety of its personnel or its subcontractors' personnel is or may be at risk in performing the Work.

Section 13. CONTRACTOR'S BOOKS AND RECORDS – AUDITING.

Contractor shall maintain comprehensive records of its employees, its equipment and the Work performed under this CSA and each Work Authorization. Contractor shall keep these records available for inspection by the Hookston Parties' and their respective authorized representatives at all times for the later to occur of (i) a period of seven (7) years following completion of the Work, and (ii) the expiration or termination of this CSA.

At any time, the Hookston Parties and their respective authorized representatives have the right to audit Contractor's records to determine the accuracy of bills submitted by the Contractor pursuant to this CSA and any Work Authorization. Contractor shall reimburse

the Hookston Parties for amounts that are not supported by the records maintained by Contractor.

Contractor may exclude any hardware infrastructure, trade secrets, proprietary information, confidential data, non-reimbursable costs or derivation of rates or profit margins from any audit conducted.

Section 14. ASSIGNMENT – SUBCONTRACTING.

The Contractor may not assign or subcontract this CSA or any interest therein, except as set forth in a Work Authorization.

The Contractor shall comply with the provisions of 29 CFR, Part 470, if applicable.

Section 15. PATENT, COPYRIGHT, AND OTHER INFRINGEMENTS.

The Contractor shall indemnify, defend, and hold harmless the Hookston Parties from and against any and all claims, lawsuits, judgments, losses, costs, and expenses (including attorneys' fees) arising out of any claims or action made or brought against the Hookston Parties that are based on a claim that any product, equipment, design, or any other material or thing furnished by Contractor, or used by Contractor in performing the Work, including without limitation, any computer software or related equipment or products, infringes upon patent, copyright, trademark, or other proprietary right of any third party, constitutes misappropriation of a trade secret, or constitutes misuse of a license. This indemnification obligation does not apply in the case where the majority of the Hookston Parties directed Contractor to incorporate infringed third-party intellectual property rights into the Work.

Section 16. MODIFICATION – WAIVER OF DEFAULT – ENTIRE CSA.

This CSA may be only be amended in a writing that is signed by Contractor and each of the Hookston Parties. Any waiver by the Hookston Parties of any default by Contractor does not affect or impair any right arising from any subsequent default. This CSA and the Work Authorizations constitute the entire understanding between Contractor and the Hookston Parties with respect to the Work and supersede any prior negotiations, understandings or agreements, whether written or oral, with respect to the Work or any part thereof.

Section 17. ENFORCEABILITY.

If any provision of this agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions will continue in full force and effect unless the rights and obligations of the parties have been materially altered or abridged by such invalidation, voiding or unenforceability.

There are no third-party beneficiaries to this CSA or the Work Authorizations.

Section 18. RETAINED RIGHTS.

Contractor retains all right, title and interest in and to any invention, whether patentable or not, including but not limited to compositions, formulas, designs, products, and methods, together with any data, and any know-how, copyrights, software programs, trade secrets, patents, copyrightable materials, and other intellectual property ("Intellectual Property") (a) owned, made, conceived, authored, reduced to practice, or otherwise developed by Contractor prior to the Effective Date of this CSA, or (b) developed by Contractor outside the scope of Work under this CSA.

Section 19. MISCELLANEOUS.

The Hookston Parties represents and warrant that (i) they will provide access to the Hookston Site, including access to public and private property as required for Contractor to perform Work, (ii) they will provide complete and accurate information as necessary for Contractor's performance of the Work, (iii) they will approve or direct each specific location for boring, drilling, excavation or other intrusive work before Contractor performs Work, (iv) Contractor may rely on all information provided by the Hookston Parties in order for Contractor to perform Work, (v) Contractor is not responsible for any conditions existing at Hookston Site prior to Contractor's performance of any work at the Hookston Site related to the Order, (vi) Contractor is not responsible for handling or transporting hazardous materials or other waste from the Hookston Site, for which the Hookston Parties remain liable, and (vii) the Hookston Parties remain liable for the acts or omissions of any third parties that the Hookston Parties engage to perform work at the Hookston Site.

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The parties are signing this CSA as of the date set forth in the introductory paragraph.

UNION PACIFIC RAILROAD: UNION PACIFIC RAILROAD COMPANY

By: _____

Title: _____

Printed Name: _____

CONTRA COSTA COUNTY

By: _____

Title: _____

Printed Name: _____

HOOKSTON GROUP

By: _____

Title: _____

Printed Name: _____

CONTRACTOR: ERM-West, Inc.

By: _____

Title: _____

Printed Name: _____