



STANDARD CONSULTANT AGREEMENT

C0323 (08-03-09)

THIS AGREEMENT "Agreement" is entered into on _____, by and between SANTA CLARA VALLEY WATER DISTRICT, ("District"), and ALL CAPS ("Consultant").

WHEREAS District desires certain services hereinafter described and Consultant is capable of providing and desires to provide such services,

NOW, THEREFORE, District and Consultant for the consideration and upon the terms and conditions specified agree as follows:

SECTION I

SCOPE OF SERVICES

The services to be performed under this Agreement are as described in Appendix One attached hereto and incorporated herein by this reference.

SECTION II

DUTIES OF CONSULTANT

All work performed by Consultant or under its direction must be sufficient to meet the purposes specified in this Agreement, and must be rendered in accordance with the accepted practices and standards of Consultant's profession.

Consultant must stay informed of and observe any and all statutes, laws, ordinances, and regulations pertaining to Consultant's contractual performance. To the extent that any copyrighted materials are used or reproduced for use in such performance, Consultant must secure, at its sole cost and expense, any and all necessary permission to utilize or reproduce such materials in the manner proposed or suggested by the scope of services.

Consultant must not undertake any work beyond the scope of this Agreement unless such additional work is approved in advance in writing by District. The cost of such additional work will be reimbursed to Consultant by District on the same basis as provided in Section IV unless otherwise specified.

If in the performance of the services hereunder, it is necessary to conduct investigations or other operations in the field, security and safety of the area of such field operations under the control of the Consultant will be the responsibility of Consultant.

Where services hereunder include preparation of drawings and other contract documents by Consultant and where, notwithstanding acceptance and approval by District thereof, in the opinion of the District, drawings and other contract documents so prepared are found during the course of construction to require modification due to the oversight, inadvertence or negligent

Contract Name: _____

CAS File# _____

omissions of, errors by, or lack of detail provided by Consultant, such modifications must be made by Consultant without additional compensation. Where such contract documents are used in letting a contract for construction, Consultant will assume responsibility for any direct or actual damages suffered or incurred by the District, including, but not limited to, any increase in compensation due to a construction contractor, which increase is directly attributable to the required changes in the Drawings or other contract documents to the extent caused by Consultant's negligent acts, omissions, or errors.

Consultant is required, at District's request, to meet with District staff regarding performance of the Scope of Services.

In accordance with the provisions of Section 3700 of the California Labor Code, Consultant is required to secure Workers' Compensation insurance for its employees. Consultant must obtain and keep in full force and effect Workers' Compensation insurance necessary in connection with the performance of this Agreement to protect Consultant and its employees under the Workers' Compensation Insurance and Safety Act, including coverage under United States Longshoremen's and Harbor Worker Act, when applicable. Such insurance must be in a standard form and relieve the District of all responsibility therefore. Consultant must, prior to undertaking the work contemplated herein, supply District with a certificate of insurance evidencing that said requirements are fully in effect.

The Santa Clara Valley Water District is an equal opportunity employer and requires its contractors to have and adhere to a policy of equal opportunity and non-discrimination. In the performance of the Contract, the Consultant will comply with all applicable federal, state, local laws and regulations, and will not discriminate against any sub-consultant, employee, or applicant for employment, in the recruitment, selection for training including apprenticeship, hiring, employment, utilization, promotion, layoff rates of pay, or other forms of compensation, or against any other person, on the basis of race, color, religion, ancestry, gender, national origin, age (over 40), marital status, medical condition (including cancer), pregnancy, parental status, the exercise of family care leave rights, political affiliation, sexual orientation, gender identity, special disabled veteran status, Vietnam Era veteran and all other Veteran status, or because of a physical or mental disability (including HIV and AIDS). The Consultant's policy must conform with applicable state and federal guidelines including the Federal Equal Opportunity Clause, "Section 60-1.4 of Title 41, Part 60 of the Code of Federal Regulations," Title VII of the Civil Rights Act of 1964 as amended; the American's with Disabilities Act of 1990; the Rehabilitation Act of 1973 (sections 503 and 504); California Fair Employment and Housing Act (Government Code section 12900 et. Seq.); California Labor Code sections 1101 and 1102.

Consultant is responsible for designating a specific person responsible for assuring nondiscrimination and non-harassment as provided in the Agreement. That named individual must investigate all complaints directed to them by District. District will refer complaints in writing, and investigations will be deemed concluded only upon submission of a written investigation report from the Consultant to the District. The scope of such investigations must include not only officers, employees, and agents of the Consultant, but also all subcontractors, subconsultants, materialmen, and suppliers of the Consultant. In cases where such investigation results in a finding of discrimination, harassment, or hostile work environment, Consultant must take prompt, effective disciplinary action against the offender. Failure to take appropriate action is a material breach of the Agreement.

SECTION III

DUTIES OF DISTRICT

District agrees to make available to Consultant all data and information in the possession of District which District deems necessary to the preparation of the work, and District will actively aid and assist Consultant in obtaining such information deemed necessary from other agencies and individuals.

The District will authorize a staff person as the District representative to confer with Consultant relative to Consultant services hereunder. The work in progress hereunder will be reviewed by District at each milestone or at the discretion of District. If the District determines that the work is satisfactory and meets the requirements of the Agreement, it will be approved. If the work is not satisfactory, District will inform Consultant of the changes or revisions necessary to secure approval. However, none of the proposed changes or revisions or anything else in this Agreement should be construed to relieve the Consultant of professional or legal responsibility for the performance of any services. Corrections to the work as a result of errors or omissions of Consultant will not result in additional costs or expenses to District.

SECTION IV

FEES AND PAYMENT

District will pay for the services described in this Agreement according to the fee schedule set forth in Appendix Two attached hereto and incorporated herein by this reference. Payment for services and any other expenses related to this Agreement must not exceed the limit or limits shown in Appendix Two. Such payment is considered as full compensation for all labor, materials, supplies, equipment, and other items used in carrying out the services described in this Agreement.

Consultant must send all invoices to:

Santa Clara Valley Water District
Attention: Accounts Payable
P.O. Box 20670
San Jose, CA 95160-0670

Consultant must invoice for services on a monthly basis against the schedule of payments outlined in Appendix Two. Each monthly invoice must include a progress statement indicating whether or not the services are on schedule to be completed in accordance with Appendix Three. If completion of the services is not on schedule to be completed per Appendix Three, the progress statement must specify the anticipated length of the delay, the cause of the delay, the measures taken or proposed to mitigate the delay, and the timetable to implement those measures. In addition to ensuring that each invoice is accompanied with a progress statement, Consultant must also ensure that each invoice contains the following information:

- Agreement Number.
- Full Legal Name of Consultant/Firm.
- Payment Remit-to Address.
- Invoice Number.
- Invoice Date (the date invoice is mailed).
- Beginning and end date for billing period that services were provided.

If a progress statement is not attached to the invoice, or if the invoice does not contain the bulleted items above, that invoice will not be processed for payment.

Consultant must maintain records detailing the time worked by each employee and the rate at which the employee's time is being charged. When applicable, invoices must detail the time worked by each class of employee, and the rate at which the class of employee's time is being charged. In order to obtain reimbursement for allowable expenses, the statements must include an itemization of the actual expenses incurred.

Unless otherwise specified, when the total compensation payable under this Agreement exceeds twenty thousand dollars (\$20,000), ten (10) percent of each statement will be withheld by District and not paid to Consultant until thirty (30) calendar days after the assigned District representative signed off the final approval for the entire work as stated in Appendix One and close out of the Agreement. Provided that at any time after fifty (50) percent of the work has been completed, the District may, at its sole discretion, determine that satisfactory progress is being made in the completion of the Agreement, and prospectively make the remaining progress payments in full. The retention previously withheld on the first fifty (50) percent of the work will continue to be withheld until final contract close out.

SECTION V

TIME OF BEGINNING AND SCHEDULE FOR COMPLETION

Consultant must begin work by the date indicated in the written Notice to Proceed from District. The notice will not be issued until after this Agreement has been approved and authorized by District.

The schedule for completion of the work is detailed in Appendix Three attached hereto and incorporated herein by this reference.

SECTION VI

CHANGES IN WORK

District may order, via a written amendment signed by each parties authorized representative, changes in scope or character of work, either decreasing or increasing the amount of Consultant's services.

This Agreement may be terminated for cause by either party for failure to comply with any terms and conditions of this Agreement, provided, however, that the party in breach has five (5) business days or such period as the parties may otherwise agree in writing to cure such breach following written notification. Additionally, this Agreement may be terminated for

convenience by the District upon five (5) business days prior written notice to Consultant. In the event of termination of this Agreement, (i) the District's sole obligation will be to pay Consultant for any authorized work performed through the date of the termination, subject to the not-to-exceed amount for each task; and (ii) Consultant must provide the District with all deliverables and other tangible data created through the date of termination. This paragraph will not be deemed to waive, prejudice, or diminish any rights which the District or Consultant may have at law or in equity for an unlawful termination or other breach of this Agreement by the other party.

SECTION VII

DELAYS AND EXTENSIONS

In the event Consultant is delayed in performance of its services by circumstances beyond its control, District may in its discretion grant a reasonable adjustment in the Schedule of Completion. All claims for adjustments in Schedule of Completion must be submitted to the District representative by Consultant within thirty (30) calendar days of the time of occurrence of circumstances necessitating the adjustment.

SECTION VIII

RESOLUTION OF DISPUTES

In the event of a dispute regarding performance of any of the terms of this Agreement, the parties agree to proceed as follows:

Internal Review: If Consultant wants to dispute an interpretation or requirement, Consultant must invoke this provision and submit the particulars of Consultant's position in writing to the identified District Representative. District Representative must reply in writing to the Consultant. If Consultant is not satisfied by the response of the District Representative, Consultant may appeal to the District's Contract Administrator, or designee. To exercise this administrative remedy the Consultant must submit their written position, the District Representative's response and any other additional reply information the Consultant deems relevant to the decision, to the District's Contract Administrator, or designee, with a copy to the District Representative. The Contract Administrator may at his/her discretion hold a meeting, ask for additional written information, and/or issue a decision based on the information submitted. If after following the Internal Review Process the Consultant is still not satisfied, Consultant may seek external review.

External Review: Consultant, only after proceeding through the Internal Review Process, or District may seek external review where there is a dispute regarding an interpretation or requirement under the Agreement. The intent of this provision is to provide an informal dispute resolution measure which is alternative to a court action. The parties agree that they will submit the controversy to mediation before a mediator. The selection of the mediator and the ground rules for the mediation must be agreed upon by the parties. If agreement cannot be reached to pursue binding mediation or another acceptable alternative dispute resolution procedure, the matter may be submitted to Court for traditional resolution.

SECTION IX

MISCELLANEOUS PROVISIONS

District reserves the right to approve the project manager assigned Consultant to said work.

Consultant may not assign this Agreement without the express written consent of the District.

Consultant is employed to render a professional service only and any payments made to Consultant are compensation solely for such services as Consultant may render.

Any discretion or right to approve given to any party herein must be exercised in a reasonable manner.

All work performed, and documents produced, pursuant hereto will, upon completion, become the property of District. In the event the work is not completed, the completed portions thereof will become the property of District. However, District agrees that any reuse of any of the materials so furnished by Consultant will be at District's own risk unless prior written approval has been given by Consultant for such reuse. Any and all original correspondence, memoranda, reports, designs, plans, specifications, data compilations, computer programs, or drawings delivered to District by Consultant under terms of this Agreement, in or by any medium (including computer files transmitted electronically or on disk) is deemed to be "work for hire" under the copyright laws of the United States and the copyright will belong to the District. Co-venturers, subcontractors, and vendors to Consultant likewise be bound by these copyright terms. District makes no copyright claim and requires no release for copyrighted material or trademarked names used incidentally by Consultant.

Consultant represents and warrants that neither it or its Parent or Subsidiary Company is currently acting as consultant or expert for any party in support of a claim, potential claim, or active or potential legal action against the District by such party. Consultant agrees that it or its Parent or Subsidiary Company will not so act as such consultant or expert for the duration of this Agreement without first obtaining the written consent of District.

Neither Consultant, nor any parent or subsidiary of Consultant, nor any affiliated entity sharing substantially similar ownership or control with Consultant, are eligible to bid on any contract to be awarded for the construction of any project which may be the subject of services provided under this Agreement.

Consultant hereby acknowledges that District policy prohibits the acceptance by District personnel of gifts of any kind from vendors or contractors. Consultant must honor this policy by not sending or bringing gifts to the District.

Consultant agrees that District, or its agent, has the right to review, obtain, and copy all records pertaining to performance of this Agreement. Consultant agrees to provide District, or its agent, with any relevant information requested and will permit District, or its agent, access to its premises, upon reasonable notice, during normal business hours for the purpose of interviewing employees and inspecting or copying books, records, accounts, computerized records, and other materials that may be relevant to the matter under investigation for the purpose of determining compliance with this Agreement. Consultant further agrees to maintain such records for a period of three (3) years after final payment under this Agreement.

It is understood and agreed that the District does not wish to receive from Consultant any confidential information of Consultant or of any third party. Consultant represents and warrants that any information provided to the District in the course of entering into and performing work under this Agreement is not confidential or proprietary to Consultant or any third party. Consultant must maintain confidential all District information which may be disclosed to Consultant where such information by its nature would construed as being confidential by a reasonable person. Consultant will use its best efforts to prohibit any use or disclosure of the District's confidential information, except as absolutely necessary to perform work under this Agreement.

Consultant must notify the District in writing of each completed deliverable described in Appendix One. Within thirty (30) calendar days of Consultant's notice, the District must either (i) notify Consultant that the District accepts the deliverable, or (ii) notify the Consultant of any deficiencies in such deliverable. If the District advises Consultant of deficiencies in the deliverable, Consultant must correct, at no cost to the District, those deficiencies as soon as possible and must again notify the District upon completion. The District must then respond to Consultant's notice within thirty (30) calendar days of receipt, and Consultant must correct at no cost to the District any further deficiencies noted. This process will continue until Consultant has corrected all deficiencies.

This Agreement, which includes the terms and conditions, Appendix One, Appendix Two, Appendix Three, and Appendix Four, represents the entire understanding between the parties hereto relating to the services described in this Agreement and supersedes any and all prior proposals or agreements, whether written or oral, that may exist between the parties. This Agreement may not be modified or amended except in writing signed by a duly authorized representative of the party against whom enforcement is sought.

SECTION X

INDEMNIFICATION

Notwithstanding any other provision of this Agreement, Consultant agrees to indemnify, defend and hold harmless the District, its agents, officers, directors, and employees from and against any and all demands, claims, damages, losses and reasonable expenses, including but not limited to liabilities, obligations, claims, costs, reasonable expenses (including without limitation interest, penalties and reasonable attorney's fees), fines, taxes, levies, imposts, assessment, demands, damages or judgments of any kind or nature, whether in law or equity (including without limitation, death or injury to any person, property damage, administrative and judicial orders and consents, or any other loss) to the extent they arise out of, pertain to, or relate to the Consultant's negligence, recklessness, or willful misconduct. The foregoing does not limit any strict liability imposed onto the Consultant by law.

SECTION XI
INSURANCE

Consultant's insurance requirements, if any, are set forth in Appendix Four attached hereto and incorporated herein by this reference.

IN WITNESS WHEREOF, the parties have executed this Agreement the day first hereinabove written.

SANTA CLARA VALLEY WATER DISTRICT
"District"

ALL CAPS
"Consultant"

By: _____
Name
Title

By: _____
Name
Title

ATTEST:

Firm Address:

Clerk/Board of Directors (or)
Contract Administrator

"The official signing for Consultant certifies, to the best of his or her knowledge and belief, that neither Consultant nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency."

NOTE: "No representative may obligate the District to pay fees in excess of the amount in Appendix Two without written authorization from the Board of Directors or appropriate Executive Officer, in accordance with Board Governance Policies."