

CONSULTANT SERVICES AGREEMENT

THIS CONSULTANT SERVICES AGREEMENT ("Agreement") is entered into as of the Effective Date (defined below) by and between the ROSS VALLEY SANITARY DISTRICT ("District") and _____ ("Consultant").

Recitals

A. WHEREAS, District desires to obtain Construction Management services in connection with the Woodland Capacity and Creek Crossings ("Project"); and

B. WHEREAS, Consultant is skilled and able to provide such services described in Section 3 of this Agreement; and

C. WHEREAS, District desires to retain Consultant pursuant to this Agreement to provide the services described in Section 3 and Exhibit A of this Agreement.

Agreement

NOW, THEREFORE, in consideration of their mutual covenants, the parties hereto agree as follows:

1. Incorporation of Recitals. The recitals set forth above, and all defined terms set forth in such recitals and in the introductory paragraph preceding the recitals, are hereby incorporated into this Agreement as if set forth herein in full.

2. Project Coordination.

A. District. The General Manager or his/her designee shall represent District for all purposes under this Agreement.

B. Consultant. Consultant shall assign _____ to supervise the progress and implementation of this Agreement for Consultant.

3. Scope and Performance of Services.

A. Scope of Services. Subject to such policy direction and approvals as District through its staff may determine from time to time, Consultant shall perform the services set out in the "Scope of Work" attached hereto as Exhibit A and incorporated herein by this reference.

B. Time of Performance. The services of Consultant are to commence no sooner than August 17th, 2023 and be completed not later than 365 days after Acceptance of the Construction work. Consultant shall perform its services in accordance with the schedule attached hereto as Exhibit B. Any changes to these dates in either this Section 3 or Exhibit B must be approved in writing by the Project Manager.

C. Standard of Quality. District relies upon the professional ability of Consultant as a material inducement to entering into this Agreement. All work performed by Consultant under this Agreement shall be in accordance with all applicable legal requirements and shall meet the standard of quality ordinarily to be expected of competent professionals in Consultant's field of expertise and experienced in the performance of the work specified in the Scope of Work.

4. Compensation and Method of Payment.

A. Compensation. The compensation to be paid to Consultant, including both payment for professional services and reimbursable expenses, shall be at the rate and schedules attached hereto as Exhibit C. However, in no event shall the amount District pays Consultant exceed ____ Dollars (\$____). Payment by District under this Agreement shall not be deemed a waiver of unsatisfactory work, even if such defects were known to District at the time of payment.

B. Timing of Payment. Consultant shall submit itemized monthly statements for work performed. District shall make payment, in full, within thirty (30) days after approval of the invoice by the Project Manager.

C. Changes in Compensation. Consultant will not undertake any work that will incur costs in excess of the amount set forth in Section 4.A without prior written amendment to this Agreement. Consultant shall receive no premium or enhanced pay for overtime or holiday hours.

D. Taxes. Consultant shall pay all taxes, assessments and premiums under the federal Social Security Act, any applicable unemployment insurance contributions, Workers Compensation insurance premiums, sales taxes, use taxes, personal property taxes, or other taxes or assessments now or hereafter in effect and payable by reason of or in connection with the services to be performed by Consultant.

E. Disputed Payments. If District objects to all or any portion of any invoice, District shall notify Consultant of the objection within thirty (30) days from receipt of the invoice, give reasons for the objection, and pay that portion of the invoice not in dispute. It shall not constitute a default or breach of this Agreement for District not to pay any invoiced amounts to which it has objected until the objection has been resolved by mutual agreement of the parties.

5. Amendment to Scope of Work. District shall have the right to amend the Scope of Work within the Agreement by written notice to Consultant. In the event of a material change in the Scope of Work, the compensation and time of performance shall be subject to renegotiation of the contract price upon written demand of either party to the Agreement. Consultant shall not commence any work exceeding the Scope of Work without prior written authorization from District. Failure of Consultant to secure District's written authorization for extra or changed work shall constitute a waiver of any and all right to adjustment in the contract price or time due, whether by way of compensation, restitution, quantum meruit, etc. for work done without the appropriate District authorization.

6. Term. This Agreement shall commence as of the Effective Date and shall continue in full force and effect until completed, amended pursuant to Section 20, or otherwise terminated as provided herein.

7. Inspection. Consultant shall furnish District with every reasonable opportunity for District to ascertain that the services of Consultant are being performed in accordance with the requirements and intentions of this Agreement. All work done and all materials furnished, if any, shall be subject to the Project Manager's inspection and approval. The inspection of such work shall not relieve Consultant of any of its obligations to fulfill the Agreement as prescribed.

8. Ownership of Documents. Title to all plans, specifications, maps, estimates, reports, manuscripts, drawings, descriptions and other draft and final work products compiled by Consultant under the Agreement shall be vested in District, none of which shall be used in any manner whatsoever, by any person, firm, corporation, or agency (including Consultant) without the expressed written consent of District. Basic survey notes and sketches, charts, computations, and other data prepared or obtained under the Agreement shall be made available, upon request, to District without restriction or limitations on their use and without further employment of or payment of any compensation to Consultant. Consultant may retain copies of the above-described information but agrees not to disclose or discuss any

information gathered, discussed or generated in any way through this Agreement without the written permission of District during the term of this Agreement, unless required by law.

9. Employment of Other Consultants, Specialists or Experts. Consultant will not employ or otherwise incur an obligation on behalf of District to pay other consultants, specialists, or experts for services in connection with this Agreement without the prior written approval of District.

10. Conflict of Interest.

A. Consultant covenants and represents that neither it, nor any officer or principal of its firm, has, or shall acquire any investment, income, business entity, interest in real property, or other interest, directly or indirectly, which would conflict in any manner with the interests of District, hinder Consultant's performance of services under this Agreement, or be affected in any manner or degree by performance of Consultant's services hereunder. Consultant further covenants that in the performance of the Agreement, no person having any such interest shall be employed by it as an officer, employee, agent, or subcontractor without the express written consent of District. Consultant agrees to at all times avoid conflicts of interest, or the appearance of any conflicts of interest, with the interests of District in the performance of the Agreement.

B. Consultant is not a designated employee within the meaning of the Political Reform Act because Consultant:

(1) will conduct research and arrive at conclusions with respect to its rendition of information, advice, recommendation, or counsel independent of the control and direction of District or of any District official, other than normal contract monitoring; and

(2) possesses no authority with respect to any District decision beyond the rendition of information, advice, recommendation, or counsel. (2 Cal. Code Regs. § 18700(a)(2).)

11. Liability of District and Employees. Neither the District nor any representative officer, employee or agent of District shall be personally liable to Consultant or otherwise in the event of any default or breach of District, or for any amount which may become due to Consultant or any successor in interest, or for any obligations directly or indirectly incurred under the terms of this Agreement.

12. Indemnity. To the fullest extent permitted by law, Consultant hereby agrees to defend (by counsel reasonably satisfactory to District), indemnify, and hold harmless District, its officers, agents, employees, volunteers, and servants, from and against any and all claims, demands, damages, costs, liabilities, or obligations to the extent arising out of, pertaining to, or related to the negligence, recklessness, or willful misconduct of Consultant, its officers, employees, agents, and subcontractors undertaken pursuant to this Agreement excepting liabilities due to the sole negligence, active negligence, or willful misconduct of District. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable by or for Consultant under Worker's Compensation, disability or other employee benefit acts or the terms, applicability or limitations of any insurance held or provided by Consultant and shall continue to bind the parties after termination/completion of this agreement.

13. Consultant Not an Agent of District. Consultant, its officers, employees and agents shall not have any power to bind or commit District to any decision.

14. Independent Contractor. It is expressly agreed that Consultant, in the performance of the work and services agreed to be performed by Consultant, shall act as and be an independent contractor as defined in Labor Code 3353 and not an agent or employee of District; and as an independent contractor, Consultant shall obtain no rights to retirement benefits or other benefits which accrue to District's employees, and Consultant hereby expressly waives any claim it may have to any such rights.

15. Compliance with Laws.

A. General. Consultant shall use the standard of care in its profession to comply with all applicable federal, state, and local laws, codes, ordinances, and regulations. Consultant has and shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement any licenses, permits, insurance and approvals which are legally required for Consultant to practice its profession. Consultant shall maintain a District business license. District is not responsible or liable for Consultant's failure to comply with any or all of the requirements contained in this Section.

B. Workers' Compensation. Consultant certifies that it is aware of the provisions of the California Labor Code which require every employee to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and Consultant certifies that it will comply with such provisions before commencing performance of the Agreement and at all times in the performance of the Agreement.

C. District Not Responsible. District is not responsible or liable for Consultant's failure to comply with any and all of its requirements under this Section or otherwise under this Agreement. All such legal compliance obligations shall be borne by Consultant.

16. Assignment; Subcontractors; Employees.

A. Assignment. Consultant shall not assign, delegate, transfer, or convey its duties, responsibilities, or interests in this Agreement or any right, title, obligation, or interest in or to the same or any part thereof without District's prior written consent. Any assignment without such approval shall be void and, at District's option, shall immediately cause this Agreement to terminate.

B. Subcontractors; Employees. Consultant shall be responsible for employing or engaging all persons necessary to perform the services of Consultant hereunder. No subcontractor of Consultant shall be recognized by District as such; rather, all subcontractors are deemed to be employees of Consultant, and Consultant agrees to be responsible for their performance. Consultant shall give its personal attention to the fulfillment of the provisions of this Agreement by all of its employees and subcontractors, if any, and shall keep the work under its control. If any employee or subcontractor of Consultant fails or refuses to carry out the provisions of this Agreement or appears to be incompetent or to act in a disorderly or improper manner, it shall be discharged immediately from the work under this Agreement on demand of the Project Manager.

17. Insurance.

A. Minimum Scope of Insurance.

(1) Consultant agrees to have and maintain, for the duration of this Agreement, a Commercial General Liability insurance policy insuring it and its firm to an amount not less than \$2,000,000 (Two Million Dollars) combined single limit per occurrence and in the aggregate for bodily injury, personal injury, and property damage.

(2) Consultant agrees to have and maintain, for the duration of this Agreement, an Automobile Liability insurance policy insuring it and its staff to an amount not less than \$1,000,000 (One Million Dollars) combined single limit per accident for bodily injury and property damage.

(3) Consultant shall maintain professional errors and omissions liability insurance for protection against claims alleging negligent acts, errors, or omissions which may arise from Consultant's operations under this Agreement, whether such operations be by Consultant or by its employees, subcontractors, or subconsultants. The amount of this insurance shall not be less than \$1,000,000 (One Million Dollars) on a claims-made annual aggregate basis.

(4) A Workers' Compensation and Employers' Liability policy written in accordance with the laws of the State of California and providing coverage for any and all employees of Consultant:

(a) This policy shall provide coverage for Workers' Compensation (Coverage A).

(b) This policy shall also provide required coverage for Employers' Liability (Coverage B).

(5) All of the following endorsements are required to be made a part of each of the required policies, except for the Professional Liability and Workers' Compensation and Employers' Liability policies, as stipulated below:

(a) "District its officials, officers, agents, employees, and volunteers are hereby added as additional insureds, but only as respects work done by, for, or on behalf of the named insured."

(b) "This policy shall be considered primary insurance as respects any other valid and collectible insurance District may possess, including any self-insured retention District may have, and any other insurance District does possess shall be considered excess insurance only and shall not contribute with it."

(c) "This insurance shall act for each insured and additional insured as though a separate policy had been written for each. This, however, will not act to increase the limit of liability of the insuring company."

(6) Consultant shall provide to District all certificates of insurance with original endorsements effecting coverage required by this Section. Certificates of such insurance shall be filed with District on or before commencement of performance of this Agreement. District reserves the right to require complete, certified copies of all required insurance policies at any time.

(7) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to District, its officials, officers, agents, employees, and volunteers.

(8) Consultant's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

(9) Coverage for District, its officers, directors and employees as additional insureds shall be provided by a policy provision or by an endorsement providing coverage at least as broad as Additional Insured (Form B) endorsement form CG 2010 as published by the Insurance Services Office (ISO).

B. All Coverages. Each insurance policy required shall provide that coverage shall not be canceled, except after 30-days' prior written notice by certified mail, return receipt requested, has been given to District. Current certification of such insurance shall be kept on file with the General Manager at all times during the term of this Agreement.

C. Acceptability of Insurers. Insurance is to be placed with insurers with a Best's rating of no less than A:VII.

D. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by District. At District's option, Consultant shall demonstrate financial capability for payment of such deductibles or self-insured retentions.

E. Verification of Coverage. Consultant shall furnish District with original Certificate(s) of Insurance verifying Consultant's receipt of the insurance coverage required herein.

F. Waiver of Subrogation. Owner and Consultant mutually waive any right of subrogation, which one may have against the other, with regard to any loss or damage arising out of or incident to the perils insured against by any policy of insurance required to be issued and maintained under this Contract. A waiver of subrogation shall be effective as to a person or entity even though that

person or entity would otherwise have a duty of indemnification, contractual or otherwise, or did not pay the insurance premium directly or indirectly, whether or not such person or entity had an insurable interest in the property damaged.

18. Termination of Agreement; Default.

A. This Agreement and all obligations hereunder may be terminated at any time, with or without cause, by District upon 5-days' written notice to Consultant.

B. If Consultant fails to perform any of its obligations under this Agreement within the time and in the manner herein provided or otherwise violate any of the terms of this Agreement, in addition to all other remedies provided by law, District may terminate this Agreement immediately upon written notice. In such event, Consultant shall be entitled to receive as full payment for all services satisfactorily rendered and expenses incurred hereunder, an amount which bears the same ratio to the total fees specified in the Agreement as the services satisfactorily rendered hereunder by Consultant bear to the total services otherwise required to be performed for such total fee; provided, however, that District shall deduct from such amount the amount of damages, if any, sustained by District by virtue of the breach of the Agreement by Consultant.

C. Upon termination of this Agreement with or without cause, Consultant shall turn over to the District immediately any and all copies of studies, sketches, drawings, computations, and other data, whether or not completed, prepared by Consultant or its subcontractors, if any, or given to Consultant or its subcontractors, if any, in connection with this Agreement. Such materials shall become the permanent property of District. Consultant, however, shall not be liable for District's use of incomplete materials nor for District's use of complete documents if used for other than as contemplated by this Agreement.

D. In addition to the foregoing right to terminate for default, District reserves the absolute right to terminate this Agreement without cause, upon written notice to Consultant. In the event of termination without cause, Consultant shall be entitled to payment in an amount not to exceed the Not-To-Exceed Amount which shall be calculated as follows: (1) Payment for Services then satisfactorily completed and accepted by District, plus (2) Payment for Additional Services satisfactorily completed and accepted by District, plus (3) Reimbursable Expenses actually incurred by Consultant prior to the date of termination, as approved by District. The amount of any payment made to Consultant prior to the date of termination of this Agreement shall be deducted from the amounts described in (1), (2) and (3) above. Consultant shall not be entitled to any claim or lien against District for any additional compensation or damages in the event of such termination and payment, it being understood that any payments are full compensation for services rendered prior to the time of payment and not for work that will not be performed. Consultant hereby waives all claims for damages and loss of anticipated profits on account of District's termination of the Agreement.

E. If this Agreement is terminated by District for default and it is later determined that the default termination was wrongful, such termination automatically shall be converted to and treated as a termination for convenience under this Section 18 and Consultant shall be entitled to receive only the amounts payable hereunder in the event of a termination for convenience.

19. Suspension. District shall have the authority to suspend this Agreement and the services contemplated herein, wholly or in part, for such period as it deems necessary due to unfavorable conditions or to the failure on the part of Consultant to perform any provision of this Agreement. Consultant will be paid for satisfactory Services performed through the date of temporary suspension.

20. Merger; Amendment. This Agreement constitutes the complete and exclusive statement of the agreement between District and Consultant and shall supersede all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended only by written

instrument, signed by both District and Consultant. All provisions of this Agreement are expressly made conditions.

21. Interpretation. This Agreement shall be interpreted as though it was a product of a joint drafting effort and no provisions shall be interpreted against a party on the ground that said party was solely or primarily responsible for drafting the language to be interpreted.

22. Litigation Costs. If either party becomes involved in litigation arising out of this Agreement or the performance thereof, the court in such litigation shall award reasonable costs and expenses, including attorneys' fees, to the prevailing party.

23. Time of the Essence. Time is of the essence of this Agreement.

24. Written Notice. Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other party shall be in writing and either served personally or sent by prepaid, first class mail. Any such notice, demand, etc. shall be addressed to the other party at the address set forth below. Either party may change its address by notifying the other party of the change of address. Notice shall be deemed communicated within 72 hours from the time of mailing if mailed as provided in this Section.

If to District: Ross Valley Sanitary District
 2960 Kerner Boulevard
 San Rafael, CA 94901
 Attention: General Manager

If to Consultant:

25. Consultant's Books and Records.

A. Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services, or expenditures and disbursements charged to District and all documents and records which demonstrate performance under this Agreement for a minimum period of four (4) years, or for any longer period required by law, from the date of termination or completion of this Agreement.

B. Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit, at any time during regular business hours, upon written request by the General Manager, District Counsel, or a designated representative of any of the foregoing. Copies of such documents shall be provided to District for inspection when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at Consultant's address indicated for receipt of notices in this Agreement.

C. District may, by written request by any of the above-named officers, require that custody of the records be given to District and that the records and documents be maintained in the District office. Access to such records and documents shall be granted to any party authorized by Consultant, Consultant's representatives, or Consultant's successor-in-interest.

D. Pursuant to California Government Code Section 10527, the parties to this Agreement shall be subject to the examination and audit of representative of the Auditor General of the State of California for a period of three (3) years after final payment under the Agreement. The examination and audit shall be confined to those matters connected with the performance of this Agreement including, but not limited to, the cost of administering the Agreement.

26. Agreement Binding. The terms, covenants, and conditions of this Agreement shall apply to, and shall bind, the heirs, successors, executors, administrators, assigns, and subcontractors of both parties.

27. Equal Employment Opportunity. Consultant is an equal opportunity employer and agrees to comply with all applicable state and federal regulations governing equal employment opportunity. Consultant will not discriminate against any employee or applicant for employment because of race, age, sex, creed, color, sexual orientation, marital status or national origin. Consultant will take affirmative action to ensure that applicants are treated during such employment without regard to race, age, sex, creed, color, sexual orientation, marital status, or national origin. Such action shall include, but shall not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; lay-offs or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Consultant further agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

28. Section Headings. The headings of the several sections, and any table of contents appended hereto, shall be solely for convenience of reference and shall not affect the meaning, construction or effect hereof.

29. District Not Obligated to Third Parties. District shall not be obligated or liable for payment hereunder to any party other than Consultant.

30. Remedies Not Exclusive. No remedy herein conferred upon or reserved to District is intended to be exclusive of any other remedy or remedies, and each and every such remedy, to the extent permitted by law, shall be cumulative and in addition to any other remedy given hereunder or now or hereafter existing at law or in equity or otherwise.

31. Severability. If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had not been contained herein.

32. No Waiver Of Default. No delay or omission of District to exercise any right or power arising upon the occurrence of any event of default shall impair any such right or power or shall be construed to be a waiver of any such default of an acquiescence therein; and every power and remedy given by this Agreement to District shall be exercised from time to time and as often as may be deemed expedient in the sole discretion of District.

33. Successors And Assigns. Subject to Section 16.A. above, all representations and covenants set forth in this Agreement, by or on behalf of, or for the benefit of any or all of the parties hereto, shall be binding upon and inure to the benefit of such party, its successors and assigns.

34. Exhibits. The following exhibits are attached to this Agreement and incorporated herein by this reference as if set forth herein in full:

- A. Exhibit A: Scope of Work
- B. Exhibit B: Schedule of Performance
- C. Exhibit C: Compensation

35. Execution. This Agreement may be executed in several counterparts, each of which shall constitute one and the same instrument and shall become binding upon the parties when at least one copy hereof shall have been signed by both parties hereto. In approving this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

36. Applicable Law; Venue. This Agreement shall be construed and interpreted according to California law. In the event that suit shall be brought by either party hereunder, the parties agree that trial of such action shall be held exclusively in a state court in the County of Marin, California.

IN WITNESS WHEREOF, District and Consultant have executed this Agreement as of the date first above written.

DISTRICT:

Consultant:

ROSS VALLEY SANITARY DISTRICT

By: _____

By: _____

Name:

Name: _____

Title: General Manager

Title: _____

"Effective Date": _____

Date: _____

APPROVED AS TO FORM:

APPROVED AS TO FORM:

By: _____

By: _____

Name: Andrea P. Clark

Name: _____

Title: District Counsel

Title: _____

EXHIBIT A

Scope of Work

[to be inserted]

EXHIBIT B

Schedule of Performance

[to be inserted]

EXHIBIT C

Compensation

[to be inserted]