

CONSULTANT SERVICES AGREEMENT
(Design Services [Name of Project])

This CONSULTANT SERVICES AGREEMENT (“**Agreement**”) is effective [REDACTED] (“**Effective Date**”) and is between the West County Wastewater District, a sanitary district organized and existing under the Sanitary District Act of 1923 (“**WCW**”) and [Consultant Name]. (“**Consultant**”), each a “**Party**” and together the “**Parties**.”

A. WCW issued a Request for Proposals, attached as Exhibit A, for design services [Description of the Project] (the “**Project**”).

B. Consultant has furnished WCW with a proposal to perform the Project as set forth in detail in Exhibit B, subject to the terms and conditions of this Agreement.

C. The Parties intend by this Agreement to establish the terms and conditions for Consultant to provide the **Services** (defined below) to WCW.

The Parties therefore agree as follows:

Section 1. Services.

1.1. Scope of Work. The scope of the Consultant's services will consist of services set forth in Exhibit A and Exhibit B (collectively referred to as the “**Services**”). If any conflict or other discrepancy arises or appears between the body of this Agreement and the exhibits to this Agreement, the body of the Agreement takes precedence over the exhibits, and Exhibit A takes precedence over Exhibit B.

1.2. Changes and/or Extra Work.

(i) WCW may, at any time, by written order, make changes within the Scope of Services described in this Agreement. If those changes cause an increase in the budgeted cost or the time required for the performance of the Services, then upon the submission of sufficient support by Consultant for compensation for a change to either the amount of Consultant's compensation and/or the schedule for performance of the Services, WCW will issue a change by supplemental agreement or amendment to the Agreement, subject to the provisions of Section 1.2 (ii) below. If Consultant encounters any unanticipated conditions or contingencies that may affect the Scope of Services and result in an adjustment in the amount of compensation or time required for performance of the Services, Consultant must so advise WCW immediately upon notice of such condition or contingency. The written notice must explain the circumstances giving rise to the unforeseen condition or contingency and must set forth the proposed adjustment in compensation and/or schedule resulting therefrom. Consultant shall give such notice to WCW before Consultant performs work related to the proposed adjustment in compensation. Any and all pertinent changes must be expressed in a written supplement or amendment to this Agreement before Consultant implements the changes.

(ii) Only WCW's Board of Directors or General Manager may authorize changed or extra work, modification of the time of completion of the Services, or additional compensation for the tasks to be performed by Consultant. Consultant recognizes that other WCW personnel do not have authorization to order changed or extra work or to obligate WCW to the payment of additional compensation. The failure of Consultant to secure the prior written authorization for any changed or extra work will constitute a waiver of any and all right to

adjustment in the contract price due to the unauthorized work, and Consultant will not be entitled to any compensation whatsoever for the performance of that changed or extra work. If Consultant and WCW agree that changed or extra work is required, a change order by supplemental agreement or amendment to this Agreement will be required.

1.3. WCW's Duties Regarding Data and Property Access. WCW shall furnish Consultant available studies, reports, and other data pertinent to the Services. Consultant may use and rely upon all the information provided by WCW in performing the Services. WCW shall arrange for the Consultant to access and make all provisions for Consultant to enter upon public and private property as may be reasonably necessary for Consultant to perform the Services.

Section 2. Time of Completion.

Consultant shall begin performing the Services promptly upon receiving WCW's notice to proceed ("**Notice to Proceed**"), and shall complete the Services no later than [#of days] days after the issuance of the Notice to Proceed.

Section 3. Compensation.

3.1. Not-to-Exceed Price. If the Consultant performs the Services to the satisfaction of WCW, then WCW shall pay the Consultant an all-inclusive compensation not to exceed \$[dollar amount]. This amount will fully compensate Consultant for all indirect and direct personnel, materials, supplies, equipment and services costs incurred by the Consultant and used in carrying out or completing the Services. Any Services requiring additional compensation must be authorized in advance by a written change order pursuant to Section **Error! Reference source not found.**

3.2. Invoice. Consultant shall invoice WCW once each month for the Services performed during the preceding month. The invoice shall itemize all charges in the detail generally required by WCW, including at a minimum:

- (i) the date of performance of each of the Services,
- (ii) identification of the person who performed the Services,
- (iii) a detailed description of the Services performed on each date,
- (iv) if applicable, the hourly rate at which the Services on each date are charged,
- (v) an itemization of all costs incurred and
- (vi) the total charges for the Services for the month invoiced.

3.3. Audit; Timeliness. Consultant shall provide, upon WCW's request, documentation substantiating charges billed to WCW pursuant to this Agreement. WCW may perform an audit of the Consultant's relevant records pertaining to the charges. Any Services performed more than 60 days prior to the date upon which they are invoiced to WCW will not be compensable.

3.4. Payment. WCW shall endeavor to pay Consultant no later than 30 days after approval of an invoice by WCW's staff. If WCW objects to any invoice submitted by Consultant,

WCW will advise the Consultant in writing giving reasons for its objection. If any invoice submitted by the Consultant is disputed by WCW, only the disputed portion will be withheld from payment and the Consultant must continue to perform diligently during the pendency of any dispute resolution process that may ensue.

Section 4. Professional Ability; Standard of Quality.

WCW has relied upon the Consultant's representations regarding its professional training and ability to perform the Services as a material inducement to enter into this Agreement. Consultant shall therefore provide properly skilled professional and technical personnel to perform all Services under this Agreement. All Services under this Agreement must be performed in a skillful, professional manner in accordance with applicable legal requirements and must meet the standard of quality ordinarily to be expected of competent professionals in Consultant's field of expertise.

Section 5. Safety.

Consultant shall comply with all applicable WCW ordinances, policies and procedures, including but not limited to those pertaining to safety in the workplace.

Section 6. Indemnification.

Consultant shall hold harmless and indemnify, including without limitation the duty and cost to defend, WCW, the Board, each member of the Board, and WCW's officers, agents and employees from and against all liability and all claims, demands, damages, or costs, subject to the limitations set forth by law, including attorney's fees, arising out of or related to the Services. In no event will the cost to defend exceed the Consultant's proportionate percentage of fault, provided, however, that this limitation is subject to the meet-and-confer requirements of California Civil Code Section 2782.8, as amended from time-to-time.

Section 7. Insurance.

7.1. Without limiting Consultant's indemnification obligations provided for above, Consultant shall take out before beginning performance of the Services and maintain at all times during the life of this Agreement the following policies of insurance with insurers possessing a Best rating of not less than A-VII. Consultant shall not allow any subcontractor, professional or otherwise, to commence work on any subcontract until all insurance required of the Consultant has also been obtained by the subcontractor.

(i) Workers' Compensation Coverage. Statutory Workers' Compensation insurance and Employer's Liability Insurance to cover its employees and all individuals and/or entities employed by Consultant, directly or indirectly, to perform any aspect of the Services. In the alternative, Consultant may rely on a self-insurance program to meet its legal requirements so long as the program of self-insurance complies fully with the provisions of the California Labor Code. Consultant shall also require all subcontractors, if such are authorized by WCW, to similarly provide Workers' Compensation insurance as required by the Labor Code of the State of California for all of the subcontractor's employees. All Workers' Compensation policies shall be endorsed with the provision that the insurance will not be suspended, voided, or cancelled until 30 days prior written notice has been provided to WCW by the insurer. The Workers' Compensation insurance must also contain a provision whereby the insurance company agrees to waive all rights of subrogation against WCW and its elected or appointed officials, officers,

agents, and employees for losses paid under the terms of such policy which arise from, or pertain to, or relate to the Services performed by the insured for WCW.

(ii) General Liability Coverage. Commercial general liability insurance, including personal injury and property damage insurance for all activities of the Consultant and any subcontractors, that arise out of, or pertain to, or relate to the Services. The insurance shall be written on a comprehensive general liability form and include a broad form comprehensive general liability endorsement. In the alternative, WCW will accept, in satisfaction of these requirements, commercial general liability coverage which is equivalent to the comprehensive general liability form and a broad form comprehensive general liability endorsement. The insurance shall be in an amount of not less than \$1 million combined single limit personal injury and property damage for each occurrence. The insurance shall be occurrence-based insurance. General liability coverage written on a claims-made basis shall not be acceptable absent prior written authorization from WCW.

(iii) Automobile Liability Coverage. Automobile liability insurance covering bodily injury, wrongful death, and property damage for all activities of the Consultant arising out of or in connection with this Agreement, including coverage for owned, hired and non-owned vehicles, in an amount of not less than \$1 million combined single limit for each occurrence.

(iv) Professional Liability Coverage. Consultant shall also take out and maintain professional liability, errors and omissions insurance in an amount not less than \$1 million. The professional liability insurance policy must be endorsed with a provision stating that it will not be suspended, voided, cancelled, or reduced in coverage or in limits except after 30 days written notice has been provided to WCW.

7.2. Policy Endorsements. Each general liability and automobile liability insurance policy must be endorsed with the following provisions:

(i) WCW, and its elected or appointed officials and employees must be named as insureds or additional insureds with regard to damages and defenses of claims arising from activities performed by or on behalf of the Consultant.

(ii) The insurance afforded by each policy will apply separately to each insured who is seeking coverage or against whom a claim is made, or a suit is brought, except with respect to the insurer's limits of liability.

(iii) The insurance must be primary insurance as respects WCW and its elected or appointed officers, officials and employees. Any other insurance maintained by WCW or its elected or appointed officers, officials, employees, or volunteers will be in excess of this insurance and will not contribute with it.

(iv) The insurance must not be suspended, voided, cancelled, or reduced in coverage or in limits except after thirty (30) days prior written notice has been provided to WCW.

(v) Any failure to comply with the reporting requirements of any policy must not affect coverage provided to WCW, its elected or appointed officers, officials or employees.

7.3. Insurance Certificates and Endorsements. Prior to commencing the Services under this Agreement, Consultant shall submit to WCW documentation evidencing the required insurance signed by the insurance agent and the companies named. This documentation must

be on forms which are acceptable to WCW and must include all required endorsements and verify that coverage is actually in effect. Failure to provide these forms within the time specified by WCW may result in the automatic termination of this Agreement and award of this Agreement to another Consultant if WCW, in its sole discretion, decides to do so. Current certification of insurance must be kept on file with WCW at all times during the term of this Agreement.

7.4. Deductible and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by WCW.

7.5. Termination of Insurance. If WCW receives notification that Consultant's insurance will be suspended, voided, cancelled or reduced in coverage or in limits, and if the Consultant does not provide for either the reinstatement of that insurance or for the furnishing of alternate insurance containing all of the terms and provisions specified above prior to the termination of that insurance, then WCW may either terminate this Agreement for that breach, or WCW may secure the required insurance to satisfy the conditions of this Agreement and deduct the cost of that insurance from compensation which would otherwise be due and payable to the Consultant for the Services.

Section 8. Subcontracts.

Consultant shall not subcontract any portion of the Services without the written authorization of WCW. If WCW consents to a subcontract, Consultant shall be fully responsible to WCW and third parties for all acts or omissions of the subcontractor to which the Services or any portion thereof are subcontracted. Nothing in this Agreement creates any contractual relationship between WCW and any subcontractor or any obligation on the part of WCW to pay or cause the payment of any monies due to any subcontractor except as otherwise is required by law.

Section 9. Assignment.

Consultant shall not assign any right or obligation under this Agreement without WCW's prior written consent. Any attempted assignment of any right or obligation under this Agreement without WCW's prior written consent will be void.

Section 10. Entire Agreement.

This Agreement represents the entire understanding of WCW and Consultant as to the Services. No prior oral or written understanding will be of any force or effect with respect to the Services. This Agreement may not be modified or altered except in writing signed by both Parties.

Section 11. Jurisdiction.

This Agreement will be administered and interpreted under the laws of the State of California. Venue for any litigation arising from this Agreement will be the Superior Court of the State of California in Contra Costa County.

Section 12. Suspension of Services.

Upon written request by Consultant, WCW may suspend, in writing, all or any portion of the Services if unforeseen circumstances beyond the control of WCW or Consultant make normal

progress of the Services impossible, impractical or infeasible. Upon WCW's written determination to suspend performance of the Services, the time for completion of the Services will be extended by the number of days that performance of the Services is suspended.

Section 13. Termination of Services.

13.1. Termination Without Cause. WCW may at any time, at its sole discretion, terminate all or any portion of the Services and this Agreement upon written notice to Consultant. Upon receipt of notice of termination, Consultant shall stop performance of the Services at the stage directed by WCW. Consultant will be entitled to payment within 30 days for Services performed up to the date of receipt of the written notice of termination. Consultant will not be entitled to payment for any Services performed after the receipt of the notice of termination unless WCW authorizes that payment in advance in writing.

13.2. Termination for Cause. If Consultant fails to perform any of the obligations required of Consultant within the time and in the manner provided for under the terms of this Agreement, or if Consultant violates any of the terms and conditions of this Agreement, WCW may terminate this Agreement by providing Consultant with written notice. The Consultant will be compensated for all Services performed prior to the date of receipt of the notice of termination. However, WCW may deduct from the compensation owed to Consultant the amount of damage sustained or estimated by WCW resulting from Consultant's breach of this Agreement. In the event of termination, the WCW will not in any manner be liable for the Consultant's actual or projected lost profits had the Consultant completed the services required by this Agreement

13.3. Survival. Consultant's obligations pursuant to Section 6 (Indemnification) and Section 7 (Insurance) will survive termination and continue in effect for as long as necessary to fulfill the purposes of those sections.

Section 14. Independent Contractor.

Consultant will in all respects be an independent contractor and not an agent or employee of WCW. Consultant shall exercise full control and supervision of the means and methods of performing the Services. Consultant will not receive any premium or enhanced pay for Services normally understood as overtime; Consultant will not receive holiday pay, sick leave, administrative leave or pay for any other time not actually expended in the performance of the Services. Consultant will not be eligible for benefits and will not receive any compensation from WCW except as expressly set forth in this Agreement. Consultant shall submit completed W-9 and Report of Independent Contractor forms upon execution of this Agreement and prior to the payment of any compensation hereunder.

Section 15. Ownership of Documents.

Within 30 days after the Consultant substantially completes performance of the Services, or within 30 days after the termination of this Agreement, the Consultant shall deliver to WCW all files, records, materials and documents drafted or prepared by Consultant in the performance of the Services. All such files, records, materials and documents are the property of WCW and not the property of the Consultant. All finished and unfinished reports, plans, studies, documents and other writings prepared by and for Consultant, its officers, employees and agents in the course of performing the Services become the sole property of WCW upon payment to Consultant for the Services, and WCW will have the exclusive right to use those materials in its sole discretion

without further compensation to Consultant or to any other person or entity. Consultant shall, at Consultant's expense, provide such reports, plans, studies, documents and writings to WCW or any person or entity WCW may designate, upon written request. Consultant may keep file copies of all documents prepared for WCW. Use of any such documents by WCW for projects that are not the subject of this Agreement or for purposes beyond the scope of the Services will be at WCW's sole risk without legal liability or expense to Consultant.

Section 16. Compliance with Federal, State and Local Laws.

Consultant shall comply with all applicable federal, state and local laws, statutes, ordinances, rules and regulations affecting the Services, including without limitation laws requiring licensing and prohibiting discrimination in employment because of race, creed, color, sex, age, marital status, physical or mental disability, national origin or other prohibited bases. WCW will not be responsible or liable for Consultant's failure to comply with applicable laws, statutes, ordinances, rules or regulations.

Section 17. Retention of Records.

Consultant and any subcontractors authorized by the terms of this Agreement shall keep and maintain full and complete documentation and accounting records, employees' time sheets, and correspondence pertaining to the Services, and Consultant shall make such documents available for review and/or audit by WCW and WCW's representatives at all reasonable times during performance of the Services and for at least four years after completion of the Services and/or termination of this Agreement.

Section 18. Alternative Dispute Resolution

Before resorting to mediation or other legal process, the primary contacts of the Parties shall meet and confer and attempt to amicably resolve any dispute arising from or relating to this Agreement subject to the following provisions. Any Party desiring to meet and confer shall so advise the other Party pursuant to a written notice. Within 15 days after a Party provides that written notice, the primary contacts for each Party shall meet and attempt to amicably resolve their dispute. Each primary contact, or the person acting in their absence with full authority to resolve the dispute, shall attend the meeting and shall be prepared to devote an entire day thereto. This Section survives the termination or expiration of this Agreement.

Section 19. Severability.

The provisions of this Agreement are severable. If any portion of this Agreement is held invalid by a court of competent jurisdiction, the remainder of the Agreement will remain in full force and effect unless amended by the mutual written consent of the Parties.

Section 20. Time of the Essence.

Time is of the essence in the performance of the Services. The Consultant shall perform its Services with due and reasonable diligence consistent with sound professional practices and shall devote such time to the performance of the Services as may be necessary for their timely completion.

Section 21. Written Notification.

Except as otherwise specified in this Agreement, any notice, demand, request, consent, approval or communications that either Party desires or is required to give to the other Party must be in writing and either served personally or sent by first class mail, postage prepaid and addressed as follows. Either Party may change its address by notifying the other party in writing of the change of address. Notice will be deemed given two business days after mailing if mailed within the State of California as provided in this Section.

If to WCW: West County Wastewater
2910 Hilltop Drive
Richmond, CA 94806
Attn: General Manager
With a courtesy copy by email to msavannah@wcd.org

If to Consultant: [Consultant Name (include any dba or Inc.)]
[Street Address]
[City, State Zip]
Attn: [Name]
with a courtesy copy by email to: [Email Address]
[Phone Number]

Section 22. Execution.

This Agreement may be executed in counterparts. Electronic signatures are valid as original signatures.

Section 23. Successors.

This Agreement will be binding on and inure to the benefit of the Parties and WCW's successors or assigns, except to the extent of any contrary provision in this Agreement.

Section 24. Third Parties

The Services are intended solely for the benefit of WCW. No other person or entity may rely on the Consultant's performance of the Services, and no right to assert a claim against Consultant by assignment of indemnity rights or otherwise shall accrue to a third party as a result of this Agreement or Consultant's performance of the Services.

The Parties are signing this Agreement to be effective as of the Effective Date.

WEST COUNTY WASTEWATER DISTRICT [COMPANY NAME (include any DBA or INC.)]

By: _____
Lisa Malek-Zadeh
General Manager

By: _____
[Name]
[Title]

Date _____

Date _____

Exhibit A
Request for Proposals

Exhibit B

[Company Name] Proposal