



SCOTTS VALLEY
WATER DISTRICT

Date

Name and Title

Company

Address

City State and Zip

Re: Project or services

The enclosed fully executed agreement along with this letter will serve as your formal Notice to Proceed on the above referenced project. Name and title will be your primary contact on this project and can be reached at email and phone.

Please call if you have any questions or need additional information.

Sincerely,

David McNair
General Manager

Enclosure:

Agreement

PROFESSIONAL SERVICES AGREEMENT FOR

TYPE OF SERVICE OR TITLE OF PROJECT

This Professional Services Agreement ("Agreement") is made and entered into on the ____ day of _____ 201_ by and between the SCOTTS VALLEY WATER DISTRICT ("District") and _____, DIR # _____ ("Consultant").

RECITALS

The District has a need for professional services described in Exhibit A and the Consultant is specially trained, experienced and competent to perform and has agreed to provide such services.

Now, therefore, in consideration of the mutual promises, covenants, terms and conditions hereinafter contained, the parties hereby agree as follows:

AGREEMENT

1) Scope of Services.

- a) The Consultant shall furnish to the District upon execution of this Agreement or receipt of the District's written authorization to proceed, those services and work set forth in Exhibit A ("Scope of Services") which is attached hereto and, by this reference, made a part hereof.
- b) The Consultant shall provide services and work under this Agreement consistent with the requirements and standards established by applicable federal, state and county laws, ordinances, regulations and resolutions. The Consultant represents and warrants that it will perform its work in accordance with generally accepted industry standards and practices for the work required under this agreement that are in effect at the time of performance of this Agreement.

2) Term; Schedule; Termination.

- a) The term of this Agreement shall be from the date of the District's Notice to Proceed until completion of the work. Services and work provided by the Consultant under this Agreement shall be performed in a timely manner as stated in Exhibit B ("Schedule").
- b) The District may, by written notice to the Consultant, terminate the whole or any part of this Agreement, if, in the judgment of the District that the Consultant has materially breached this Agreement, failed to timely provide and/or satisfactorily perform any task, deliverable, service, or other work required either under this Agreement or failed to demonstrate a high probability of timely fulfillment of performance requirements under this Agreement, or of any obligations of this Agreement, and in either case, fails to demonstrate convincing progress toward a cure within five (5) working days (or such

longer period as the District may authorize in writing) after receipt of written notice from the District specifying such failure. At the option of the District, this Agreement may terminate on the occurrence of (a) bankruptcy or insolvency of Consultant, or (b) the sale or transfer of Consultant's business.

3) Compensation.

- a) The Consultant shall be compensated for work performed as set forth in Exhibit C ("Payment Terms"). The Consultant shall provide the District with a periodic statement, as services warrant, of fees earned and costs incurred for services provided. The statement shall generally describe the services performed, hours worked, the applicable rate or rates, the basis for the calculation of fees, and a reasonable itemization of costs.
- b) The Consultant shall provide the District with copies of the certified payroll records (CPRs) along with the period statements if the services under this Agreement are being performed as part of an applicable public works or maintenance project, as defined by the Prevailing Wage Laws.
- c) The Consultant is not entitled to "reimbursable expenses."
- d) Payment by the District shall be conditioned upon and subject to the Consultant's satisfactory completion of work or appropriate phases or tasks as described in the attached Scope of Work.
- e) Except as expressly provided in this Agreement, the Consultant shall not be entitled to nor receive from the District any additional consideration, compensation, salary, wages or other type of remuneration for services rendered under this Agreement.
- f) The Consultant shall provide the District with a W-9 form. The District shall not withhold any Federal or State income taxes or Social Security tax from any payments made by the District to the Consultant under the terms and conditions of this Agreement. Payment of all taxes and other assessments on such sums is the sole responsibility of the Consultant.

4) Ownership of Work Product. All documents, drawings and work product ("Work") prepared or produced by the Consultant under this Agreement shall become and remain the property of the District, except as otherwise approved in writing by the District. The Consultant shall retain intellectual property rights in the Work, except Consultant shall grant the District a nonexclusive license in all Work protected by intellectual property rights, and District may reproduce the plans, prepare derivative works based on the Work, and build improvements depicted in or relating to the Work. The District shall indemnify the Consultant for any claims or damages arising from the District's negligence in modifying the Work.

5) Prevailing Wages, DIR Registration. The Consultant shall abide by all applicable prevailing wage laws as set forth in Labor Code Section 1720 and 1770 et seq. If the services under this Agreement, or any portion thereof, are being performed as part of an applicable public works or maintenance project, as defined by the Prevailing Wage Laws, the Consultant

agrees to fully comply, and to require its sub consultants to comply with such laws. It shall be the Consultant's sole responsibility to comply with all applicable registration and labor compliance requirements.

- 6) **Required Licenses, Certificates and Permits.** Any licenses, certificates or permits required by the federal, state, county or municipal governments for the Consultant to provide the services and work described in Exhibit A must be procured by the Consultant and be valid at the time the Consultant enters into this Agreement. Further, during the term of this Agreement, the Consultant must maintain such licenses, certificates and permits in full force and effect. Licenses, certificates and permits may include but are not limited to driver's licenses, professional licenses or certificates and business licenses. Such licenses, certificates and permits shall be procured and maintained in force by the Consultant at no expense to the District.
- 7) **Office Space, Supplies, Equipment, etc.** Unless otherwise provided in this Agreement, the Consultant shall provide such office space, supplies, equipment, vehicles, reference materials and telephone service as is necessary for Consultant to provide the services under this Agreement.
- 8) **Insurance.** The Consultant shall take out, and maintain during the life of this Agreement, insurance policies with coverage at least as broad as follows:
 - a) **General Liability Insurance.** Commercial general liability insurance covering bodily injury, personal injury, property damage, products and completed operations with limits of no less than Two Million Dollars (\$2,000,000) per incident or occurrence.
 - b) **Professional Liability Insurance.** Professional errors and omissions liability insurance with limits of no less than One Million Dollars (\$1,000,000) aggregate. Such professional liability insurance shall be continued for a period of no less than one year following completion of the Consultant's work under this Agreement.
 - c) **Automobile Liability Insurance.** If the Consultant or Consultant's officers, employees, agents or representatives utilize a motor vehicle in performing any of the work or services under this Agreement, owned/non-owned automobile liability insurance providing combined single limits covering bodily injury and property damage liability with limits of no less than One Million Dollars (\$500,000) per incident or occurrence.
 - d) **Workers' Compensation Insurance.** Workers' Compensation insurance as required by the California Labor Code.
 - e) **Deductibles.** Any deductibles or self-insured retentions over \$10,000 must be declared in writing and approved by the District. At the option of the District, either: (a) the insurer shall reduce or eliminate such deductibles or self-insured retentions, or (b) Consultant shall provide a bond, cash, letter of credit, guaranty or other security satisfactory to the District guaranteeing payment of the self-insured retention or deductible and payment of any and all costs, losses, related investigations, claim administration and de-

fense expenses. The District, in its sole discretion, may waive the requirement to reduce or eliminate deductibles or self-insured retentions, in which case, the Consultant agrees that it shall be responsible for and pay any self-insured retention or deductible and shall pay any and all costs, losses, related investigations, claim administration and defense expenses related to or arising out of Consultant's defense and indemnification obligations as set forth in this Agreement.

- f) **Additional Insured Endorsement.** The Consultant shall obtain a separate endorsement to all required insurance policies, except Workers' Compensation insurance and Professional Liability insurance, naming the District and its officers, officials and employees as additional insureds.
 - g) **Consultant's Insurance is Primary.** The Consultant's insurance coverage shall be primary insurance regarding the District and the District's officers, officials and employees. Any insurance or self-insurance maintained by the District or the District's officers, officials and employees shall be excess of the Consultant's insurance and shall not contribute to the Consultant's insurance.
 - h) **Approved Insurers.** Insurance shall be placed with California admitted insurers (licensed to do business in California) with a current rating by Best's Key Rating Guide of no less than A:VII; except as otherwise approved by the District.
 - i) **Subcontractors.** The Consultant shall require that all of its subcontractors are subject to the insurance and indemnity requirements stated herein or shall include all subcontractors as additional insureds under its insurance policies.
 - j) **Certificates of Insurance.** Prior to the date the Consultant begins performance of its obligations under this Agreement, the Consultant shall furnish the District with certificates of insurance showing coverage required by this Agreement.
- 9) **Defense and Indemnification.** The Consultant shall exonerate, indemnify, defend, and hold harmless the District and the Funding Agency, and their officers, agents, employees and volunteers from and against all damages, liability, losses, claims, suits, or actions of any kind and nature whatsoever, including attorneys' fees, arising directly or indirectly from the Consultant's negligence, errors, omissions or willful misconduct in performance of this Agreement
- 10) **Status of Consultant.** All acts of the Consultant and its officers, employees, agents, representatives, subcontractors and all others acting on behalf of the Consultant relating to the performance of this Agreement shall be performed as independent contractors and not as agents, officers or employees of the District. The Consultant, by virtue of this Agreement, has no authority to bind or incur any obligation on behalf of the District. If the Consultant deems it appropriate to employ a subconsultant, expert or investigator in connection with the performance of the services under this Agreement, the Consultant shall so advise the District and seek the District's prior approval. Any consultant, expert or investigator em-

ployed by the Consultant at the Consultant's expense and shall be the agent of the Consultant and not the District.

- 11) **Records and Audit.** The Consultant shall prepare and maintain all writings, documents and records prepared or compiled in connection with the performance of this Agreement for at least four (4) years. Any authorized representative of the District shall have access to any writings as defined above for the purposes of making audit, evaluation, examination, excerpts and transcripts during the period such records are to be maintained by the Consultant.
- 12) **Assignment.** This is an agreement for the services of the Consultant. The District has relied upon the skills, knowledge, experience and training of the Consultant and Consultant's firm, associates and employees as an inducement to enter into this Agreement. The Consultant shall not assign or subcontract this Agreement without the express written consent of the District.
- 13) **Waiver of Default.** Waiver of any default by either party to this Agreement shall not be deemed to be waiver of any subsequent default. Waiver or breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of this Agreement unless this Agreement is modified as provided below.
- 14) **Severability.** If any portion of this Agreement or application thereof to any person or circumstance shall be declared invalid by a court of competent jurisdiction or if it is found in contravention of any federal, state or county statute, ordinance or regulation the remaining provisions of this Agreement or the application thereof shall not be invalidated thereby and shall remain in full force and effect.
- 15) **Amendment.** This Agreement may be modified, amended by the mutual consent of the parties hereto if such amendment or change is in written form and executed with the same formalities as this Agreement and attached to the original Agreement to maintain continuity.
- 16) **Entire Agreement.** This Agreement supersedes any and all other agreements, either oral or in writing, between any of the parties herein with respect to the subject matter hereof and contains all the agreements between the parties with respect to such matter.
- 17) **Construction.** Headings or captions to the provisions of this Agreement are solely for the convenience of the parties, are not part of this Agreement, and shall not be used to interpret or determine the validity of this Agreement. Any ambiguity in this Agreement shall not be construed against the drafter, but rather the terms and provisions hereof shall be given a reasonable interpretation as if both parties had in fact drafted this Agreement.
- 18) **Governing Law and Venue.** This Agreement shall be deemed to be made under and shall be governed by and construed in accordance with, the laws of the State of California. Any ac-

tion brought to enforce the terms or provisions of this Agreement shall have venue in Santa Cruz County.

- 19) Counterparts.** All counterparts shall be construed together and shall constitute one agreement. A signature reproduced electronically, by facsimile or .pdf shall be treated as an original signature.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first written above. This Agreement may be executed in one or more counterparts by the parties hereto.

CONSULTANT

DISTRICT

By: _____

By: _____

Contact Name
Business
Address
City, State, Zip
Email Address

David McNair, General Manager
Scotts Valley Water District
2 Civic Center Drive
Scotts Valley, CA 95066
dmcnair@svwd.org

EXHIBIT A

Scope of Services

EXHIBIT B

Schedule

EXHIBIT C

Payment Terms