

**AMENDMENT NO. 1 TO STANDARD ON-CALL CONSULTANT AGREEMENT A4480A
BETWEEN THE SANTA CLARA VALLEY WATER DISTRICT
AND SWINERTON BUILDERS DBA SWINERTON MANAGEMENT AND CONSULTING**

This Amendment No. 1 (Amendment), effective as of the date it is fully executed by the Parties, amends the terms and conditions of the Standard On-Call Consultant Agreement A4479A (Agreement) dated June 8, 2021, between SANTA CLARA VALLEY WATER DISTRICT (District or Valley Water) and SWINERTON BUILDERS DBA SWINERTON MANAGEMENT AND CONSULTING (Consultant), collectively, the Parties.

RECITALS

WHEREAS, Consultant is currently providing professional on-call construction management services for Facilities for Valley Water; and

WHEREAS, the Agreement currently expires on December 31, 2025; and

WHEREAS, the Parties desire to amend the Agreement to increase the Not-to-Exceed Fees to provide funds for Consultant to continue performing on-call construction management services for Facilities; extend its term; to update the Standard On-Call Consultant Agreement language; and incorporate administrative changes.

NOW, THEREFORE, in consideration of the mutual promises and agreements stated herein and notwithstanding anything to the contrary stated in the Agreement Valley Water and Consultant hereby agree to amend the Agreement as follows:

1. Standard On-Call Consultant Agreement, Section Two, Duties of Consultant, subsection 6. Valley Water Standardization Requirements, is amended to state as follows:

“6. Valley Water Standardization Requirements

- A. Consultant shall perform the Services utilizing Valley Water nomenclature, standardized forms, software requirements, documented procedures, and best management practices. Consultant shall use Microsoft Office software and Autodesk Civil 3D software that is compatible with Valley Water Microsoft Office software and Autodesk software used at the time(s) Valley Water issues a Notice to Proceed pursuant to this Agreement.
- B. Engineering drawings prepared by Consultant must be in compliance with Valley Water’s Computer-Aided Design and Drafting (CADD) standards including line types, line weights, text sizes, text orientation, dimensioning, labeling/numbering system for detailed plan views, and detailed section views. Drawings prepared using different CADD software and versions must be converted to be compatible with Valley Water’s CADD software at no additional cost to Valley Water. Prior to acceptance, Valley Water reserves the right to test the submitted CADD files to verify that the files are not corrupted or missing linkages (for blocks, etc., used in the drawings) and that the standards are retained during the conversion process used by Consultant.”

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2. Standard On-Call Consultant Agreement, Section Four, Fees and Payments, subsection 1. Total Fixed Not-to-Exceed Fees, is amended to state as follows:

“1. Total Fixed Not-to-Exceed Fees

- A. Payment for all Services performed by Consultant to the satisfaction of Valley Water, as described in the Schedule will be based on the hourly rates, subject to the Total Fixed Not-to-Exceed (NTE) Fees stated in the Revised Schedule, Revised Attachment One, Fees and Payments. Valley Water will make payments to Consultant according to the terms provided for herein and in the Revised Schedule, Revised Attachment One, Fees and Payments. Payments made by Valley Water to Consultant for Services rendered will be considered full compensation for all personnel, materials, supplies, Subconsultant(s), equipment, and reimbursable expenses, incurred by Consultant to perform the Services. All Service requests will be made by Valley Water on an as-needed basis, subject to future Task Order(s) executed by Valley Water and Consultant.
- B. It is understood and agreed that there is no guarantee, either expressed or implied, as to the actual dollar amount, if any, of services that will be authorized under this Agreement, and that Valley Water is not obligated to request any service(s) from Consultant at all. However, in valuable consideration for Consultant's agreement to be on-call to perform services for Valley Water upon request with no minimum guaranteed amount of work, Valley Water will pay Consultant Five Hundred Dollars (\$500) on or before the expiration of this Agreement if Valley Water has not requested to utilize Consultant's services during the agreement term.
- C. The Revised Schedule, Revised Attachment One, Fees and Payments, sets forth the hourly rates and NTE fee, if any, for Services Consultant may perform pursuant to an executed Task Order.
- D. Services to be performed pursuant to a Task Order will commence only after written approval by both Valley Water's authorized representative referenced in the Revised Standard On-Call Consultant Agreement, Revised Appendix One, Additional Legal Terms, and Consultant's authorized representative.
- E. Notwithstanding any other provision of this Agreement, Valley Water agrees to pay Consultant in accordance with the terms set forth in an executed Task Order. Consultant represents and warrants that the amounts charged to Valley Water for Services do not exceed the amounts normally charged by Consultant to other customers for similar Services.
- F. Upon the written approval of Valley Water, the Services described in a Task Order task may be reduced, revised, or eliminated.
- G. Automobile travel mileage expenses will be paid at the current Internal Revenue Service (IRS) rate. Valley Water will not reimburse Consultant nor its Subconsultants for mileage nor travel time to and from Valley Water Headquarters and surrounding campus located at 5700 Almaden Expressway, San Jose, California. However, Valley Water will reimburse Consultant and its Subconsultants for mileage incurred from Valley Water Headquarters or Consultant's and Subconsultants' firm addresses,

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whichever is closer to the destination, to Project site(s) and, if directed or authorized by Valley Water, to meeting locations such as with regulatory agencies, for community outreach activities and meetings, for partnering meetings, and Dispute Review Board meetings.”

3. Standard On-Call Consultant Agreement, Section Four, Fees and Payments, subsection 2. Consultant Invoices, is amended to state as follows:

“2. Consultant Invoices

- A. Consultant’s invoices will be prepared in accordance with the terms of this Agreement, Section Four, Fees and Payments, and represent Services performed and reimbursable costs incurred during the identified billing period. Invoices must be consistent with Scope of Services and executed Task Orders, and include the following:
- 1) Employee classification and name itemized with all labor charges by Service task;
 - 2) Summary of the amount Consultant has been billed by their Subconsultants and further detailed by Service task;
 - 3) A description of the site where Services were performed, if applicable;
 - 4) The name of Valley Water staff requesting Services;
 - 5) The dates when Services were performed;
 - 6) Other direct charges and reimbursable expenses by Task Order task;
 - 7) Other direct charges and expenses must reflect actual fees versus the Task Order not-to-exceed fees as stated in the Revised Schedule(s), Revised Attachment One, Fees and Payments, and/or Task Orders;
 - 8) The total amount due for completing the Services specified in that Task Order, which must not exceed the not-to-exceed amount specified in that Task Order.
 - 9) To the extent that Consultant is adding an administrative, processing, overhead or mark-up fee, Valley Water will not pay for such duplication of costs for both Consultant and its Subconsultants.
- B. Invoices will include a summary of labor expenditures, direct costs, and billed Subconsultant charges. Invoices will be organized such that the billing categories correspond with the Task Order.
- C. Notwithstanding language to the contrary in an executed Task Order, Consultant must invoice Valley Water for a Task Order within 30 calendar days of Valley Water accepting the deliverables of that Task Order.

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D. Consultant shall email all invoices to: APinvoice5750@valleywater.org

Valley Water mailing address for invoices, if needed:

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

E. Consultant must also ensure that each invoice contains the following information:

- 1) Agreement number;
- 2) Task Order number;
- 3) Full legal name of Consultant/Firm;
- 4) Payment remit-to address;
- 5) Invoice number;
- 6) Invoice date (the date invoice is emailed);
- 7) Detailed description of Services provided, including the “distribution account(s)” for those Services;
- 8) Number of hours spent by each person performing services and a brief description of the Services performed by each person; and
- 9) Beginning and end date for billing period that services were provided.

F. Consultant shall invoice for its performance of the Services as stated in an executed Task Order on a monthly basis consistent with the task fee breakdown stated in the Task Order(s), Attachment A. Unless otherwise specified in a Task order, Consultant will be paid for the Services as described in an executed Task Order.

G. Valley Water Project Manager will review Consultant’s written invoice within five Valley Water business days of receipt, address any questions with Consultant’s Contact/Principal Officer and approve the undisputed amount of the invoice within ten working days of receipt of the invoice. Valley Water will pay undisputed invoice amounts within 30 calendar days from date invoice is received by Valley Water Project Manager.

H. Invoice Disputes

- 1) Valley Water may in good faith assert a bona fide dispute as to all or a portion of fees specified in any invoice. If any portion of an amount due to Consultant pursuant to this Agreement is subject to a bona fide dispute between the Parties, within 30 calendar days of Consultant’s submission of an invoice in which a

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disputed amount is included, Valley Water will notify Consultant in writing of the specific items in dispute, and will describe Valley Water's reason(s) for disputing each such item.

- 2) Consultant and Valley Water Project Manager must act in good faith to resolve the dispute in a timely manner. If the dispute is not resolved by Consultant and Valley Water Project Manager within 30 calendar days of Consultant receiving Valley Water's written notice of dispute, Consultant and Valley Water will attempt to resolve the Dispute pursuant to the Revised Standard On-Call Consultant Agreement, Appendix Two, Dispute Resolution.
 - I. Consultant's Services will be performed by its staff members and Subconsultants' staff members at the lowest hourly and unit rates commensurate with the complexity of the required Services.
 - J. Consultant shall ensure that its personnel performing services pursuant to this Agreement document their time doing so."
4. Standard On-Call Consultant Agreement, Section Four, Fees and Payments, subsection 3. Prevailing Wages, is amended to state as follows:

"3. Prevailing Wages

A. A portion of the Services to be performed pursuant to this Agreement may be considered "Public Works" subject to California Labor Code §1771, et. seq. and the applicable implementing regulations. If Consultant's Services includes such work, Consultant and its Subconsultants must comply with all Labor Codes applicable to prevailing wages.

B. Labor Code §1720 provides as follows:

"(a) As used in this chapter, "public works" means all of the following:

(1) Construction, alteration, demolition, installation, or repair work done under contract and paid for in whole or in part out of public funds, except work done directly by a public utility company pursuant to order of the Public Utilities Commission or other public authority. For purposes of this paragraph, "construction" includes work performed during the design, site assessment, feasibility study, and other preconstruction phases of construction, including, but not limited to, inspection and land surveying work, regardless of whether any further construction work is conducted, and work performed during the postconstruction phases of construction, including, but not limited to, all cleanup work at the jobsite. For purposes of this paragraph, "installation" includes, but is not limited to, the assembly and disassembly of freestanding and affixed modular office systems."

C. Consultant and its Subconsultants shall not engage in the performance of public work, as defined in California Labor Code §1771.1, unless currently registered and qualified to perform public work pursuant to California Labor Code §1725.5.

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- D. The General Prevailing Wage Rates issued by the California Department of Industrial Relations may be adjusted by the State throughout the term of this Agreement. Notwithstanding any other provision of this Agreement, Consultant will not be entitled to any adjustment in compensation rates in the event there are adjustments to the General Prevailing Wage Rates.
- E. This Agreement is subject to compliance monitoring and enforcement by the State of California Department of Industrial Relations. Upon request, Consultant and Subconsultants must furnish the records specified in Labor Code §1776 directly to the Labor Commissioner, in a format prescribed by the Labor Commissioner.
- F. All records or documents required to be kept verifying statutory compliance with the prevailing wage requirement, such as certified payroll records, must be made available for audit at no cost to Valley Water, at any time during regular business hours, upon written request by Valley Water. Records and documents to be provided in electronic or hard copy format, at Valley Water's discretion.

G. California State Department of Industrial Relations Contractor and Sub-Contractor Registration Requirements

Prior to Valley Water executing a Task Order for Services involving public works, as defined herein, Consultant, and its Subconsultant(s) performing public works, must provide evidence, in the form required by Valley Water, that Consultant and its Subconsultant(s) are in compliance with the California State Department of Industrial Relations Contractor and Sub-Contractor Registration Requirements.”

- 5. Standard On-Call Consultant Agreement, Section Four, Fees and Payments, subsection 4. Retention, is amended to state as follows:

“4. Retention

- A. Unless otherwise specified in an executed Task Order, when the total compensation payable pursuant to this Agreement for an individual Task Order exceeds \$20,000, ten percent of each invoice for that Task Order will be withheld by Valley Water and not paid to Consultant until 30 calendar days after the assigned Valley Water representative signs the final approval for all Services/deliverables as stated in the executed Task Order, consistent with Section Three, Duties of Valley Water, subsection 2. Review of Deliverables.
- B. At any time after 50% of the work to be performed pursuant to an individual Task Order has been completed, Valley Water may, at its sole discretion, determine that satisfactory progress is being made in the completion of the Task Order, and prospectively make the remaining progress payments in full. The retention previously withheld on the first 50% of the individual Task Order work will continue to be withheld until the Task Order is completed to the satisfaction of Valley Water. Prior to final close out of the Task Order, any remaining retention for undisputed work will be released to Consultant.
- C. Consultant may request, and Valley Water may consider and approve, release of retention withheld by Valley Water.”

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6. Standard On-Call Consultant Agreement, Section Eight, Indemnification, is amended to state as follows:

- “1. Notwithstanding any other provision of this Agreement, Consultant agrees to indemnify, defend and hold harmless Valley Water, 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 on the Consultant by law.
2. Notwithstanding any other provision of this Agreement, to the fullest extent permitted by law (including, without limitation, California Civil Code §2782.8), 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 Consultant’s negligence, recklessness, or willful misconduct in connection with the performance of any work performed pursuant to this Agreement by Consultant as a design professional; provided that this duty shall not apply to injuries or damages for which Valley Water has been found in a court of competent jurisdiction to be liable by reason of its own negligence, recklessness, or willful misconduct.
3. The rights, duties, and obligations of the Parties as set forth above in this Section Eight, Indemnification, subsections 1. and 2., survive termination, expiration, completion, and suspension of this Agreement.”

7. Standard On-Call Consultant Agreement, Section Eleven, Equal Opportunity, is amended to state as follows:

“1. Equal Opportunity Employer

Valley Water is an equal opportunity employer and requires its consultants to have and adhere to a policy of equal opportunity and non-discrimination. In the performance of the Agreement, Consultant will comply with all applicable federal, state, local laws and regulations, and will not discriminate against any subcontractor, employee, or applicant for employment in the recruitment, hiring, employment, utilization, promotion, classification or reclassification, transfer, recruitment advertising, evaluation, treatment, demotion, layoff, termination, rates of pay or other forms of compensation, and selection for professional development training (including apprenticeship), or against any other person, on the basis of sex (which includes pregnancy, childbirth,

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breastfeeding and medical conditions related to pregnancy, childbirth or breastfeeding), race, religion, color, national origin (including language use restrictions), ancestry, religious creed (including religious dress and grooming practices), political affiliation, disability (mental and physical, including HIV or AIDS), medical condition (cancer and genetic characteristics), genetic information, marital status, parental status, gender, age (40 and over), pregnancy, military and veteran status, sexual orientation, gender identity and gender expression, the exercise of family and medical care leave, the exercise of pregnancy disability leave, or the request, exercise, or need for reasonable accommodation.

2. Compliance with Applicable Equal Opportunity Laws

Consultant's policy must be in conformance with applicable state and federal guidelines including the Federal Equal Opportunity Clause, 41 Code of Federal Regulations, Part 60-1, §60-1.4; Title VII of the Civil Rights Act of 1964 as amended; the Americans with Disabilities Act of 1990; the Rehabilitation Act of 1973 (§503 and §504); the Age Discrimination Act of 1975 (42 U.S.C. §6101 et seq.); the California Fair Employment and Housing Act (Government Code §12900 et. seq.); and California Labor Code §1101 and §1102.

3. Investigation of Claims

Consultant must designate a specific position within its organization to be responsible for investigating allegations of non-compliance with the anti-discrimination and anti-harassment provisions of this Agreement. Consultant must conduct a fair, prompt, and thorough investigation of all allegations directed to Consultant by Valley Water. In cases where such investigation results in a finding of discrimination, harassment, or hostile work environment, Consultant must take prompt, effective action against the offender.”

8. Standard On-Call Consultant Agreement, Section Twelve, subsection 22. Appendices, is amended to state as follows:

“22. Appendices

The following list of Revised Standard On-Call Consultant Agreement Appendices are incorporated herein by this reference as though set forth in full:

Appendix One - Additional Legal Terms (UNCHANGED)
Appendix Two – Dispute Resolution (UNCHANGED)
Appendix Three – Task Order Template (UNCHANGED)
Appendix Four – Insurance Requirements (REVISED).”

9. Standard On-Call Consultant Agreement, Section Twelve, subsection 23. Schedules and Attachments, is amended to state as follows:

“23. Schedules and Attachments. Schedule OC, Scope of Services, and the following list of Attachments are incorporated herein by this reference as though set forth in full:

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Attachment One - Fees and Payments (REVISED)
Attachment Two - Schedule of Completion (REVISED)
Attachment Three - Consultant's Key Staff and Subconsultants (REVISED)
Attachment Four - Reference Materials (REVISED).”

10. Standard On-Call Consultant Agreement, Revised Appendix Four, Insurance Requirements, is amended as stated in Revised Standard Consultant Agreement, Revised Appendix Four, Insurance Requirements, attached hereto and incorporated herein by this reference.
11. Schedule OC, Scope of Services, Section 1. Representatives is amended to state as follows:

“1. Representatives

- A. Valley Water's representatives are as listed below. Unless otherwise provided in this Agreement, all correspondence to Valley Water must be addressed to Valley Water's Project Manager (VWPM).

Tony Leonardo (VWPM)
Facilities Unit Manager
General Services Division
Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, CA 95118-3638

Phone: 408-630-2248
Email: tleonardo@valleywater.org

Tony Ndah
Deputy Administrative Officer
General Services Division
Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, CA 95118-3638

Phone: 408-630-2208
Email: tndah@valleywater.org

- B. Consultant's Project Manager is as listed below. All Valley Water questions and correspondence pertaining to this Agreement shall be referred to the Consultant's Project Manager.

Peter Vorametsanti
Project Executive
Swinerton Management Consulting
2880 Lakeside Drive, Suite 300
Santa Clara, CA 95054
Phone: 650-740-7368
Email: peterv@swinerton.com

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- C. Consultant's Principal Officer for this Agreement is as listed below. As per the Agreement, Section Twelve, Miscellaneous Provisions, subsection 18. Notices, all notices pertaining to this Agreement must be submitted to the Consultant's Principal Officer.

Jeffrey S. Gee
Vice President/General Manager, Principal in Charge
Swinerton Management Consulting
260 Townsend Street
San Francisco, CA 94107

Phone: 415-984-1239
Email: jgee@swinerton.com

12. Schedule OC, Scope of Services, Section 5. Assumptions and Requirements, is amended to state as follows:

“5. Assumptions and Requirements

A. General Assumptions and Requirements

- 1) **Manage Scope of Services.** The Consultant shall manage the Scope of Services such that the work is completed within the Not-to-Exceed Fees limit and in accordance with the Project schedule, and ensure that all services and deliverables meet Valley Water and Project requirements.
- 2) **Deliverable Format.** Consultant shall submit deliverables in both electronic and hardcopy format, if requested. Deliverables shall be submitted in PDF and native (editable) format, including Word documents, Excel spreadsheets, PowerPoint files, Autodesk files, etc. The hard copy deliverables shall be printed in professional quality presentation and submitted in 5 (five) copies, if requested. Valley Water may require original copies of signed documents and/or scanned (Adobe PDF) versions.

a. Valley Water Standardization Requirements

- (1) Consultant shall perform the Services utilizing Valley Water nomenclature, standardized forms, software requirements, documented procedures, and best management practices. Consultant shall use Microsoft Office software and Autodesk Civil 3D software that is compatible with Valley Water's current Microsoft Office software and Autodesk software used at the time(s) Valley Water issues a Notice to Proceed pursuant to this Agreement.
- (2) Engineering drawings prepared by Consultant must be in compliance with Valley Water's CADD and drafting standards including line types, line weights, text sizes, text orientation, dimensioning, labeling/numbering system for detailed plan views and detailed section views. Drawings prepared using different CADD software and versions

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must be converted to be compatible with Valley Water's CADD software at no additional cost to Valley Water. Prior to acceptance, Valley Water reserves the right to test the submitted CADD files to verify that the files are not corrupted or missing linkages (for blocks, etc., used in the drawing) and that the standards are retained during the conversion process used by the Consultant.

- 3) **Review of Deliverables.** Valley Water will review and comment on all Project deliverables and forward to the Consultant for revision and preparation of final versions as determined by Valley Water, some of the deliverables may also be subject to review and comment from regulatory agencies and stakeholders following Valley Water review process.
- 4) **Valley Water Quality Environmental Management System.** Valley Water maintains a Quality Environmental Management System (QEMS) which has procedures, guidelines, and work instructions for the performance of various Valley Water work. If requested, the Consultant will perform the applicable Agreement tasks and/or sub-tasks in accordance with the QEMS framework. In such situations, the VWPM will provide the Consultant with the specific QEMS procedure, guideline, and/or work instruction prior to the preparation of such deliverables.
- 5) **Consultant Responsibility.** Consultant, with its expertise in performing the services described herein is responsible for making the appropriate assumptions in each task to complete each task's deliverables and to achieve the Project objectives of this Agreement as described in Section 3. Project Objectives.
- 6) **Document Control.** Consultant is responsible for establishing and maintaining its own document control system to execute this Scope of Services. An internal document control system for this Project is maintained by Valley Water.
- 7) **File Exchange Service.** Consultant will provide a file exchange service, accessible to all parties as designated by Valley Water, to facilitate communications; particularly of large files over three megabytes. Difficulties in using and transmitting information with this exchange service shall be resolved by the Consultant. In the event that transmitting or receiving information does not occur in a timely manner, Valley Water will not be responsible for delays in completing Project work. Consultant may need to coordinate with Valley Water's Information Technology Division to address any firewall issues and/or permissions required to allow for these communications.
- 8) **Completeness**
 - a. The completeness of a design set is determined primarily by the substance of the materials on the set, including the adequacy of background and relevant information. Three levels of completeness of a design set are defined using these four terms: Partially Complete; Substantially Complete; Virtually Complete; and Complete.

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- b. A Complete Design Set must include all the information required for a constructible set of plans and specifications; include a project cost estimate; and provide sufficient direction to enable the construction to be performed. The set must be ready for engineering certification (stamping, signing and dating) by a Registered Professional Engineer(s). The set must show the work with complete details and dimensions; identify all constraints; include all background information and provide dimensions, and comply with all drafting, specifications and cost estimating standards.

B. Project-Specific Assumptions and Requirements

- 1) Firms performing Design Engineering services, are precluded from providing Construction Management or Design Review Services.
- 2) On-Call Service Response Requirement

Consultant must have the resources and staff to respond to requests for services and must respond to the Valley Water PM within 72 hours via phone and/or email. If needed, Consultant may be required to arrive onsite at a Valley Water location, at the Valley Water PM's discretion, within 24 hours' notice via phone or email.

13. Schedule OC, Scope of Services Tasks, Section 7. Attachments, is amended to state as follows:

“7. Attachments

The following Revised Schedule OC, Scope of Services, listed Attachments are incorporated herein by this reference as though set forth in full:

Attachment One - Fees and Payments (REVISED)
Attachment Two - Schedule of Completion (REVISED)
Attachment Three - Consultant's Key Staff and Subconsultants (REVISED)
Attachment Four - Reference Materials (REVISED)”

14. Schedule OC, Scope of Services, Attachment One, Fees and Payments, is amended as set forth in Revised Schedule OC, Revised Attachment One, Fees and Payments, attached hereto and incorporated herein by this reference.
15. Schedule OC, Scope of Services, Attachment Two, Schedule of Completion, is amended as set forth in Revised Schedule OC, Revised Attachment Two, Schedule of Completion, attached hereto and incorporated herein by this reference.
16. Schedule OC, Scope of Services, Attachment Three, Consultant's Key Staff and Subconsultants, is amended as set forth in Revised Schedule OC, Revised Attachment Three, Consultant's Key Staff and Subconsultants, attached hereto and incorporated herein by this reference.

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17. Schedule OC, Scope of Services, Attachment Four, Reference Materials, is amended as set forth in Revised Schedule OC, Revised Attachment Four, Reference Materials, attached hereto and incorporated herein by this reference.


18. All other terms and conditions of the Standard On-Call Consultant Agreement A4480A, not otherwise amended as stated herein remain in full force and effect.

IN WITNESS WHEREOF, THE PARTIES HAVE SET FORTH BELOW THEIR CONSENT TO THE TERMS AND CONDITIONS OF THIS AMENDMENT NO. 1 TO STANDARD ON-CALL CONSULTANT AGREEMENT A4480A THROUGH THE SIGNATURES OF THEIR DULY AUTHORIZED REPRESENTATIVES.

SANTA CLARA VALLEY WATER DISTRICT
Valley Water

**SWINERTON BUILDERS DBA
SWINERTON MANAGEMENT AND
CONSULTING**
Consultant

By: _____
Nai Hsueh
Chair, Board of Directors

By:  _____
Jeffrey S. Gee
VP/GM, Principal-in-Charge

Date: _____

Date: 5/17/2024 _____

ATTEST:

Consultant's Address:
2880 Lakeside Drive, Suite 300
Santa Clara, CA 95054

Michele L. King, CMC
Clerk, Board of Directors

**AMENDMENT NO. 1 TO STANDARD ON-CALL CONSULTANT AGREEMENT A4480A
REVISED STANDARD ON-CALL AGREEMENT
REVISED APPENDIX FOUR
INSURANCE REQUIREMENTS**

Please Note: Failure to comply with the instructions below could result in a delay in receiving the Notice to Proceed. Valley Water will not be responsible for time lost or costs incurred due to failure to comply with these requirements. Please note the check-list of documents needed at the end of this Revised Appendix Four Insurance Requirements.

Without limiting the Consultant's indemnification of, or liability to, the Santa Clara Valley Water District ("Valley Water"), the Consultant must provide and maintain at its own expense, during the term of this Agreement, or as may be further required herein, the following insurance coverages and provisions as listed below.

Consultant must provide its insurance broker(s)/agent(s) with a copy of these requirements and warrants that these requirements have been reviewed by Consultant's insurance agent(s) and/or broker(s), who have been instructed by Consultant to procure the insurance coverage required herein.

In addition to certificates, Consultant must furnish Valley Water with copies of all original endorsements affecting coverage required by this Revised Appendix Four Insurance Requirements. The certificates and endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. **All endorsements and certificates are to be received and approved by District before the Agreement is executed.** In the event of a claim or dispute, Valley Water has the right to require Consultant's insurer to provide complete, certified copies of all required pertinent insurance policies, including endorsements affecting the coverage required by this Revised Appendix Four Insurance Requirements document.

If your insurance broker has any questions about the above requirements, please advise him/her to email Valley Water Risk Manager at riskmanager@valleywater.org.

Certificates of Insurance

Consultant shall furnish Valley Water with a Certificate of Insurance. The certificates will be issued on a standard ACORD Form.

Consultant shall instruct their insurance broker/agent to submit all insurance certificates and required notices electronically in PDF format to the designated Valley Water Contract Administrator and email a copy to: valleywater@ebix.com.

The certificates will:

1. Identify the underwriters, the types of insurance, the insurance limits, the deductibles and the policy term;
2. Include copies of all the actual policy endorsements required herein; and
3. In the "Certificate Holder" box include:

**Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, CA 95118
Agreement A4480A/CAS No. 5123**

IMPORTANT: The Agreement or CAS number must be included.

**AMENDMENT NO. 1 TO STANDARD ON-CALL CONSULTANT AGREEMENT A4480A
REVISED STANDARD ON-CALL AGREEMENT
REVISED APPENDIX FOUR
INSURANCE REQUIREMENTS**

In the Description of Operations/Locations/Vehicles/Special Items Box:

1. Certificate Holder shall be named as Additional Insured;
2. Valley Water agreement or project number shall appear;
3. The list of policies scheduled as underlying on the Umbrella policy shall be listed; and
4. Waiver of Subrogation must be indicated as endorsed to all policies.

If Consultant receives any notice that any of the insurance policies required by this Revised Appendix Four Insurance Requirements may be cancelled or coverage reduced for any reason whatsoever, Consultant or insurer shall immediately provide written notice to the designated Valley Water Contract Administrator that such insurance policy required by this Revised Appendix Four Insurance Requirements is canceled or coverage is reduced.

Maintenance of Insurance

If Consultant fails to maintain such insurance as is called for herein, Valley Water, at its option, may suspend payment for work performed and/or may order Consultant to suspend all Consultant's work at Consultant's expense until a new policy of insurance is in effect.

Renewal of Insurance

Consultant will provide Valley Water with a current Certificate of Insurance and endorsements within thirty (30) business days from the expiration of insurance.

Consultant shall instruct its insurance broker/agent to:

1. Submit all renewals of insurance certificates and required notices electronically in PDF format to: valleywater@ebix.com
2. Provide the following information in the "Certificate Holder" box:

**Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, CA 95118
Agreement A4480A/CAS No. 5123**

IMPORTANT: The Agreement or CAS number must be included.

Consultant must, at its sole cost and expense, procure and maintain during the entire period of this Agreement the following insurance coverage(s).

**AMENDMENT NO. 1 TO STANDARD ON-CALL CONSULTANT AGREEMENT A4480A
REVISED STANDARD ON-CALL AGREEMENT
REVISED APPENDIX FOUR
INSURANCE REQUIREMENTS**

Required Coverages

A. Commercial General/Business Liability Insurance with coverage as indicated:

\$2,000,000 per occurrence / **\$2,000,000** aggregate limits for bodily injury and property damage

General Liability insurance must include:

- a. Coverage at least as broad as found in standard ISO form CG 00 01.
- b. Contractual Liability expressly including liability assumed under this contract.
- c. If Consultant must be working within fifty (50) feet of a railroad or light rail operation, any exclusion as to performance of operations within the vicinity of any railroad bridge, trestle, track, roadbed, tunnel, overpass, underpass, or crossway must be deleted, or a railroad protective policy in the above amounts provided.
- d. Severability of Interest.
- e. Broad Form Property Damage liability.

B. Business Auto Liability Insurance with coverage as indicated:

\$2,000,000 combined single limit for bodily injury and property damage per occurrence, covering all owned, non-owned and hired vehicles.

C. Professional/Errors and Omissions Liability with coverage as indicated:

\$2,000,000 per claim/ **\$2,000,000** aggregate

Professional/Errors and Omission Liability appropriate to the Consultant's profession, and must include:

- a. If coverage contains a deductible, or self-insured retention, it shall not be greater than one hundred thousand dollars (\$100,000) per occurrence/event.
- b. Coverage shall include contractual liability
- c. If coverage is claims-made:
 - i. Certificate of Insurance shall clearly state that the coverage is claims-made.
 - ii. Policy retroactive date must coincide with or precede the Consultant's start of work (including subsequent policies purchased as renewals or replacements).
 - iii. Policy must allow for reporting of circumstances or incidents that might give rise to future claims.
 - iv. Insurance must be maintained and evidence of insurance must be provided for at least three (3) years after completion of the contract of work.

**AMENDMENT NO. 1 TO STANDARD ON-CALL CONSULTANT AGREEMENT A4480A
REVISED STANDARD ON-CALL AGREEMENT
REVISED APPENDIX FOUR
INSURANCE REQUIREMENTS**

D. Workers' Compensation and Employer's Liability Insurance

Statutory California Workers' Compensation coverage covering all work to be performed for Valley Water.

Employer Liability coverage for not less than \$1,000,000 per occurrence.

General Requirements

With respect to all coverages noted above, the following additional requirements apply:

1. **Additional Insured Endorsement(s):** Consultant must provide an additional insured endorsement for Commercial General/Business Liability (for both on-going and completed operations) and Business Automobile liability coverage naming the **Santa Clara Valley Water District, its Directors, officers, employees, and agents, individually and collectively**, as additional insureds, and must provide coverage for acts, omissions, etc. arising out of the named insureds' activities and work. Other public entities may also be added to the additional insured endorsement as applicable and the Consultant will be notified of such requirement(s) by Valley Water. **NOTE:** This section does not apply to the Workers' Compensation and Professional Liability policies.

(**NOTE:** Additional insured language on the Certificate of Insurance is **NOT** acceptable without a separate endorsement such as Form CG 20 10, CG 2033, CG 2037, or CG 2038. Editions dated 07/04 are not acceptable.)

2. **Primacy Clause:** Consultant will provide evidence (either through the Certificate of Insurance, endorsement or language in the insurance contract) that consultant's insurance is primary with respect to any other insurance which may be carried by Valley Water, its Directors, its officers, agents and employees, and Valley Water's coverage must not be called upon to contribute or share in the loss. **NOTE:** This section does not apply to the Workers' Compensation policies.
3. **Cancellation Clause:** Consultant will provide endorsements for all policies stating that the policy will not be cancelled without 30 days prior notification to Valley Water.
4. **Acceptability of Insurers:** All coverages must be issued by companies admitted to conduct business in the State of California, which hold a current policy holder's alphabetic and financial size category rating of not less than A- V, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by Valley Water's Risk Manager. Non-Admitted companies may be substituted on a very limited basis at the Risk Manager's sole discretion.

AMENDMENT NO. 1 TO STANDARD ON-CALL CONSULTANT AGREEMENT A4480A
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5. **Self-Insured Retentions or Deductibles:** Any deductibles or self-insured retentions must be declared to and approved by Valley Water. At the option of Valley Water, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects Valley Water, its officers, officials, employees and volunteers; or the Consultant shall provide a financial guarantee satisfactory to the Entity guaranteeing payment of losses and related investigations, claim administration, and defense expenses. Consultant agrees that in the event of a claim they will pay down any agreed upon SIR in a prompt manner as soon as bills are incurred in order to trigger the insurance related to the SIR.
6. **Subconsultants:** The Consultant shall secure and maintain or shall be responsible for ensuring that all subconsultants performing the Contract Services secure and maintain all insurance coverages appropriate to their tier and scope of work in a form and from insurance companies reasonably acceptable to Valley Water.
7. **Amount of Liability not Limited to Amount of Insurance:** The insurance procured by Consultant for the benefit of Valley Water must not be deemed to release or limit any liability of Consultant. Damages recoverable by Valley Water for any liability of Consultant must, in any event, not be limited by the amount of the required insurance coverage.
8. **Coverage to be Occurrence Based:** Except for Professional Liability, all coverage must be occurrence-based coverage. Claims-made coverage is not allowed.
9. **Waiver of Subrogation:** Consultant agrees to waive subrogation against Valley Water to the extent any loss suffered by Consultant is covered by any Commercial General Liability policy, Automobile policy, Workers' Compensation policy described in **Required Coverages** above. Consultant agrees to advise its broker/agent/insurer and agrees to provide evidence (either through the Certificate of Insurance, endorsement or language in the insurance contract) that subrogation has been waived by its insurer.
10. **Non-compliance:** Valley Water reserves the right to withhold payments to the Consultant in the event of material noncompliance with the insurance requirements outlined above.

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**AMENDMENT NO. 1 TO STANDARD ON-CALL CONSULTANT AGREEMENT A4480A
REVISED STANDARD ON-CALL AGREEMENT
REVISED APPENDIX FOUR
INSURANCE REQUIREMENTS**

CHECK LIST OF DOCUMENTS NEEDED

General Liability:	A.	Limits (\$2,000,000)	
	B.	Additional Insured (Endorsement)	
	C.	Waiver of Subrogation (COI, Endorsement or policy language)	
	D.	Primacy (COI, Endorsement or policy language)	
	E.	Cancellation Endorsement	
Auto Liability:	A.	Limits (\$2,000,000)	
	B.	Additional Insured (Endorsement)	
	C.	Waiver of Subrogation (COI, Endorsement or policy language)	
	D.	Primacy (COI, Endorsement or policy language)	
	E.	Cancellation Endorsement	
Umbrella:	A.	Limits (\$)	
	B.	Primacy (Endorsement or policy language)	
Workers Comp:	A.	Limits (\$1,000,000)	
	B.	Waiver of Subrogation (Endorsement or policy language)	
	C.	Cancellation Endorsement	
Professional Liability:	A.	Limits (\$2,000,000)	
	B.	Cancellation Endorsement	

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**AMENDMENT NO. 1 TO STANDARD ON-CALL CONSULTANT AGREEMENT A4480A
REVISED SCHEDULE OC
REVISED ATTACHMENT ONE
FEES AND PAYMENTS**

1. Total Authorized Funding (REVISED)

Total payment for Services performed, to the satisfaction of Valley Water, as described in the Schedule and in all approved Task Orders will not exceed a total amount of **\$700,000.00** (Not-to-Exceed Fees or NTE). Under no conditions will the total compensation to the Consultant exceed this NTE payment amount without prior written approval in the form of an amendment to this Agreement executed by Valley Water's Board of Directors (Board), or Chief Executive Officer, or designee, as authorized by the Board. It is understood and agreed that this total is an estimate, and the total amount of Services to be requested by Valley Water may be less. **There is no guarantee, either expressed or implied, as to the actual dollar amount that will be authorized pursuant to this Agreement.** However, in valuable consideration for Consultant's agreement to be on-call to perform services for Valley Water upon request with no minimum guaranteed amount of work, Valley Water will pay Consultant Five Hundred Dollars (\$500) on or before the expiration of this Agreement if Valley Water has not requested to utilize Consultant's services during the agreement term.

2. Terms and Conditions (REVISED)

- A. Payments for Services performed, as described in each Task Order, which applies to the specific Services, will be based on the following terms:
- 1) Valley Water will pay for Services provided by the Consultant according to the rates for professional, technical, and administrative personnel, as well as materials and supplies as listed below in the Hourly/Unit Rate Schedule.
 - 2) The stated hourly rates are effective for the term of this Agreement unless otherwise revised as indicated. After 12 months from the date this Agreement is entered into by parties ("anniversary date"), and each 12 months thereafter, these hourly rates may be negotiated by the Consultant and Valley Water, provided Consultant submits written notice to Valley Water of Consultant's request to revise the hourly rates 90 calendar days prior to the anniversary date of this Agreement. Both parties will use as a benchmark for negotiations the percent change for the previous 12 months of the "Employment Cost Index (ECI), for total compensation for private industry workers, for the San Francisco-Oakland-San Jose, CA CSA Census region and metropolitan area (not seasonally adjusted)" as published by the U.S. Department of Labor, Bureau of Labor Statistics, or 2.5%, whichever is less. A negative index will result in rates remaining the same. Such rate revisions are subject to written approval by Valley Water's Deputy Operating Officer.

**AMENDMENT NO. 1 TO STANDARD ON-CALL CONSULTANT AGREEMENT A4480A
REVISED SCHEDULE OC
REVISED ATTACHMENT ONE
FEES AND PAYMENTS**

HOURLY/UNIT RATE SCHEDULE

CLASSIFICATION	ORIGINAL HOURLY/ UNIT RATE EFFECTIVE 6/8/21	HOURLY/ UNIT RATES EFFECTIVE 6/8/24
Consultant: Swinerton Management & Consulting		
Project Executive	\$218.33	\$224.00
Senior Project Manager	\$185.53	\$191.00
Project Manager	\$154.78	\$159.00
Senior Project Engineer	\$104.55	\$108.00
Senior Project Engineer	\$104.55	\$108.00
Senior Construction Inspector	\$152.73	\$157.00
Senior Construction Inspector	\$152.73	\$157.00
Senior Construction Inspector	\$152.73	\$157.00
Estimator	\$189.63	\$195.00
Project Scheduling	\$266.50	\$274.00
Subconsultant: Quincy		
Senior Project Manager	\$294.36	\$302.00
Construction Inspector	\$246.48	\$253.00
Construction Inspector	\$246.48	\$253.00
Subconsultant: Dabri		
Project Manager - Estimating	\$252.73	\$260.00

B. Reimbursable Expenses

- 1) All reimbursable expenses not already covered in overhead may include, but are not limited to, mapping, rendering, printouts, leased equipment, mailing and delivery services, printing services, film and processing, plotting, and supplies. These other direct expenses as approved by VWPM will be billed on a monthly basis at actual cost linked to each Agreement Task, provided that the Task total NTE amount is not exceeded. Consultant shall provide receipts for each other direct expense item(s) with monthly invoices submitted.
- 2) Equipment purchased on behalf of Valley Water that costs \$50 or more must receive the prior written approval of VWPM. All equipment purchased on behalf of Valley Water and paid for by Valley Water shall become the property of Valley Water and be delivered to Valley Water prior to expiration of this Agreement.
- 3) Travel expenses are reimbursed at actual costs. Travel and overnight accommodations, including per diem, required for performance of this Agreement will be paid at reasonable cost not to exceed the U.S. General Services Agency Per

**AMENDMENT NO. 1 TO STANDARD ON-CALL CONSULTANT AGREEMENT A4480A
REVISED SCHEDULE OC
REVISED ATTACHMENT ONE
FEES AND PAYMENTS**

Diem Rates for Sunnyvale/Palo Alto/San Jose, California area, provided prior approval has been obtained from VWPM. For air travel, Valley Water will pay the cost of a coach class or equivalent ticket. Where air travel is required, Valley Water will pay the total cost of taxi, rideshare, public transportation, or a rental car, which may include insurance, gas, car fee, and taxes and will be paid at the actual costs incurred. Vehicle rental is limited to a compact or economy model, unless prior approval has been obtained from VWPM for a different type of vehicle.

- 4) No markup will apply for Consultant to manage Subconsultants, subcontractors and vendors, including lab services.
- 5) For staff with rates exceeding the rate of \$300/hr., the Consultant must obtain written approval from the VWPM as to the numbers of hours per task prior to that individual working on the Project.

C. Prevailing Wage Requirements

- 1) The Scope of Services described in a Task Order may be considered by Valley Water to be "Public Works" requiring the payment of prevailing wages. See the Standard On-Call Consultant Agreement, Section Four, Fees and Payments, subsection 3. Prevailing Wages, to ascertain whether any other Task/s would include "Prevailing Wage Requirements."
- 2) In accordance with prevailing wage laws, the Director of the California Department of Industrial Relations (Director) has ascertained the general prevailing rate of wages and employer payments for health and welfare, pension, vacation, and similar purposes available to the particular craft, classification, or type of workers employed on the Project. These rates are set forth in the latest determination obtained from the Director, which is on file in Valley Water's Office of the Clerk of the Board of Directors and incorporated herein by reference the same as though set forth in full. The rates are also available on the State of California Department of Industrial Relations website at <http://www.dir.ca.gov>.

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**AMENDMENT NO. 1 TO STANDARD ON-CALL CONSULTANT AGREEMENT A4480A
REVISED SCHEDULE OC
REVISED ATTACHMENT TWO
SCHEDULE OF COMPLETION**

1. This Agreement commences on the Effective Date, subject to accomplishment of all of the conditions to formation of an agreement listed in the Agreement at Section Twelve, Miscellaneous Provisions, subsection 2., Formation of Agreement.
2. This Agreement expires December 31, 2027, unless its term is modified by a written amendment hereto, signed by both Parties.
3. Each Task Order will state the schedule for Consultant's performance of that Task Order.
4. Valley Water and Consultant may agree to modify the schedule for Consultant's performance specified in an executed Task Order, as an administrative modification to the Agreement, and Valley Water will confirm such modification in writing.

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**AMENDMENT NO. 1 TO STANDARD ON-CALL CONSULTANT AGREEMENT A4480A
REVISED SCHEDULE OC
REVISED ATTACHMENT THREE
CONSULTANT'S KEY STAFF AND SUBCONSULTANTS**

1. Consultant's key staff assigned to the Project are as follows:

Team Member	Classification	Project Role	Contact Information
S. Peter Vorametsanti	Project Executive	Project Executive	2880 Lakeside Dr, Suite 300 Santa Clara, CA 95054 M 650.740.7368 peterv@swinerton.com
Wanda Wong	Project Manager	Project Manager	2880 Lakeside Dr, Suite 300 Santa Clara, CA 95054 M 408-702-8450 wanda.wong@swinerton.com
Luis Guiulfo	Senior Project Engineer	Senior Project Manager	2880 Lakeside Dr, Suite 300 Santa Clara, CA 95054 M 415-710-4318 luis.guiulfo@swinerton.com
Matthew MacKenzie	Project Engineer	Project Engineer/ Inspector	2880 Lakeside Dr, Suite 300 Santa Clara, CA 95054 M 925-536-7095 matthew.mackenzie@swinerton.com
Ayushi Patel	Project Engineer	Project Engineer/ Inspector	2880 Lakeside Dr, Suite 300 Santa Clara, CA 95054 M 913-909-8320 ayushi.patel@swinerton.com

2. The following Subconsultants are authorized to perform Services pursuant to this Agreement:

Firm	Project Role	Contact Information
Quincy Engineering Murrsmith	Project Management and Construction Inspection	Attn: Russ Moore, 2950 Buskirk Avenue, Suite 122 Walnut Creek, CA 94597 925-939-7100 510-289-8243 russm@quincyeng.com
Dabri, Inc.	Construction Cost Estimating and Analysis	1212 Preservation Parkway, Suite 300 Oakland, CA 94612 510-406-7159 213-926-5114 ajay@dabri.com

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**AMENDMENT NO. 1 TO STANDARD ON-CALL CONSULTANT AGREEMENT A4480A
REVISED SCHEDULE OC
REVISED ATTACHMENT FOUR
REFERENCE MATERIALS**

Ref No.	Description
1	Santa Clara Valley Water District Non-Disclosure Agreement (NDA) (FC 1650)
2	Santa Clara Valley Water District (Valley Water) Standards for GIS Products April 2021 version: http://gis.valleywater.org/Download/GIS_PRODUCT_STANDARDS.pdf
3	CADD Standards November 2022 version

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