

**AMENDMENT NO. 5
TO THE STANDARD CONSULTANT AGREEMENT #A3345A
BETWEEN THE SANTA CLARA VALLEY WATER DISTRICT
AND MOTT MACDONALD, LLC**

This Amendment No. 5 (Amendment), retroactively effective as of August 1, 2018, amends the terms and conditions of the Standard Consultant Agreement #A3345A (Agreement) dated February 9, 2010, as amended by Amendment No. 1 dated August 31, 2012, Amendment No. 2 dated December 29, 2014, Amendment No. 3 retroactively effective February 1, 2015, and Amendment No. 4 retroactively effective April 26, 2016 for purposes of documenting the Consultant's firm name change and May 9, 2017 for all other amended items, between SANTA CLARA VALLEY WATER DISTRICT (District) and MOTT MACDONALD, LLC (Consultant), collectively, the Parties.

RECITALS

WHEREAS, the Consultant is currently performing engineering design services for the District's Permanente Creek Flood Protection Project – McKelvey Park and Rancho San Antonio Detention Basin (Project) and is the Engineer-of-Record for the Project; and

WHEREAS, the Agreement currently expires on June 28, 2019, at which time construction of the Project will not be completed. The Parties desire to amend the Agreement to extend its term to be commensurate with the anticipated Project construction duration; and

WHEREAS, the Parties desire to amend the Agreement to modify the scope of services; update standard Agreement language; increase the total not-to-exceed compensation limit; reallocate existing task budgets; modify the Project Schedule; and extend the term of the Agreement.

NOW, THEREFORE, in consideration of the mutual promises and agreements contained herein and notwithstanding any provision to the contrary stated in the Agreement, Amendment No. 1, Amendment No. 2, Amendment No. 3, or Amendment No. 4, District and Consultant hereby agree to amend the Agreement as follows:

1. Revised Appendix One, Scope of Services, is amended as set forth in the attached Revised Appendix One, Scope of Services, and incorporated herein by this reference.
2. Revised Attachment One to Revised Appendix One, Consultant's Key Staff and Subconsultants, is amended as set forth in the attached Revised Attachment One to Revised Appendix One, Consultant's Key Staff and Subconsultants, and incorporated herein by this reference.
3. Attachment Two to Revised Appendix One, Dispute Resolution, is amended as set forth in the attached Revised Attachment Two to Revised Appendix One, Dispute Resolution, and incorporated herein by this reference.
4. Attachment Four to Revised Appendix One, Task Order Template, is amended as set forth in the attached Revised Attachment Four to Revised Appendix One, Task Order Template, and incorporated herein by this reference.
5. Revised Appendix Two, Fees and Payments, is amended as set forth in the attached Revised Appendix Two, Fees and Payments, and incorporated herein by this reference.

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6. Revised Appendix Three, Schedule of Completion, is amended as set forth in the attached Revised Appendix Three, Schedule of Completion, and incorporated herein by this reference.
7. All other terms and conditions of Agreement #A3345A, Amendment No. 1, Amendment No. 2, Amendment No. 3, and Amendment No. 4, not 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. 5 TO AGREEMENT #A3345A THROUGH THE SIGNATURES OF THEIR DULY AUTHORIZED REPRESENTATIVES.

SANTA CLARA VALLEY WATER DISTRICT
District

MOTT MACDONALD, LLC
Consultant

By: _____
Richard P. Santos
Chair, Board of Directors

By: _____
Chris Metzger, P.E.
Senior Vice President

Date: _____

Date: _____

ATTEST:

Firm Address:

Michele L. King, CMC
Clerk, Board of Directors

2077 Gateway Place, Suite 550
San Jose, CA 95110

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REVISED APPENDIX ONE
SCOPE OF SERVICES**

This Revised Appendix One describes the tasks to be undertaken by Consultant in providing professional design services for the Permanente Creek Flood Protection Project (Project).

- I. PROJECT OVERVIEW (UNCHANGED)**
- II. GENERAL ASSUMPTIONS AND REQUIREMENTS (UNCHANGED)**
- V. PROJECT TASKS (REVISED)**

A. Services to be provided by the Consultant are described by task categories described below. Refer to Revised Appendix Two, Fees and Payments, and Revised Appendix Three, Schedule of Completion that correlate with the tasks listed below. A detailed description of each task follows this list and describes the task objectives and desired outcomes, approach, assumptions, tools used in executing the task, and a list of deliverables.

B. The 8 major tasks in the Project include:

- TASK 1—PROJECT MANAGEMENT DURING DESIGN (UNCHANGED)**
- TASK 2—DESIGN CONCEPT REVIEW/APPROVAL (UNCHANGED)**
- TASK 3—GEOTECHNICAL INVESTIGATION (UNCHANGED)**
- TASK 4—DETAILED PROJECT DESIGN AND PLANS, SPECIFICATIONS, AND ESTIMATES (PS&E) (UNCHANGED)**
- TASK 5—ENGINEERING SUPPORT DURING BIDDING PROCESS (UNCHANGED)**
- TASK 6—OPTIONAL SERVICES DURING DESIGN AND BIDDING PROCESS (UNCHANGED)**
- TASK 7—ENGINEERING SUPPORT DURING CONSTRUCTION (REVISED)**
- TASK 8—SUPPLEMENTAL SERVICES DURING CONSTRUCTION (UNCHANGED)**

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TASK 1—PROJECT MANAGEMENT DURING DESIGN (UNCHANGED)

TASK 2—DESIGN CONCEPT REVIEW/APPROVAL (UNCHANGED)

TASK 3—GEOTECHNICAL INVESTIGATIONS (UNCHANGED)

TASK 4—DETAILED PROJECT DESIGN AND PLANS, SPECIFICATIONS, AND ESTIMATES (PS&E) (UNCHANGED)

TASK 5—ENGINEERING SUPPORT DURING BIDDING PROCESS (UNCHANGED)

TASK 6—OPTIONAL SERVICES DURING DESIGN AND BIDDING PROCESS (UNCHANGED)

TASK 7—ENGINEERING SUPPORT DURING CONSTRUCTION (REVISED)

Consultant will provide engineering services during construction of the Project. Such services will include attending the preconstruction meeting, reviewing the District's construction Contractor's technical submittals, and responding to technical questions and requests for information.

Task 7.1—Project Management Services During Construction (UNCHANGED)

Task 7.2—Preconstruction Conference (UNCHANGED)

Task 7.3—Meetings and Site Visits (REVISED)

1. Attend progress and other meetings as requested by District, or Consultant with District's approval, coordination meetings and telephone conference calls with the District's construction Contractor, District, and other parties as determined by District, in order to discuss and coordinate the construction progress, resolve technical issues, concerns, and related activities.
2. Perform site visits as requested by the District, or requested by Consultant and approved by District.
3. Attendance at meetings and any follow-up reports to meetings beyond the limits specified in the Deliverables below will be considered Supplemental Services in accordance with Task 8 Supplemental Services During Construction.

Task 7.3—Deliverables

1. Written responses to issues raised during all meetings, including the pre-construction meeting.

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2. Attendance at meetings and/or conference calls as required to respond to issues.
3. *McKelvey Park site:* The Consultant will attend forty-one (41) meetings or site visits and prepare field reports (once every two weeks for six months is assumed). An additional five (5) conference call coordination meetings and six (6) agency (District and/or City of Mountain View) meetings are assumed.
4. *Rancho San Antonio Park site:* The Consultant will attend nine (9) project meetings/conference calls during construction prior to installation of landscape items, including irrigation, planting (excluding mitigation plantings—seasonal wetland, riparian area, basin slope tree plantings to be carried out by District biologist), fencing, and signage (excluding traffic signs). Six to nine (6-9) months is assumed for this phase.
5. The Consultant will also attend fourteen (14) limited on-site construction reviews, followed by written field reports and/or meeting minutes for the Rancho San Antonio site. Six (6) months construction is assumed for landscape items noted above, plus sixty (60) days establishment maintenance for parking lot and concurrently one-hundred and twenty (120) days landscape maintenance for hydroseed areas per specifications. Construction reviews to include the following:
 - a. Substantial Completion Review—at start of landscape maintenance
 - b. Deficiency List Check—during landscape maintenance
 - c. Final Review—at end of landscape maintenance
6. For the irrigation well at the Rancho San Antonio Park site, the Consultant will provide construction oversight of the drilling, review the logs, sampling, and prepare final field design, which lays out exactly where the screen should be set and the final depth. During drilling, samples will be captured at regular intervals and e-logs will be performed to determine the geologic formation changes from, for example, a clay to a water bearing formation. The screen is set at the water bearing formation, which is typically slightly different from the design. A figure is then prepared with final elevations.
7. Onsite field and meeting recommendations and assessments.

Task 7.4—Submittal Review (REVISED)

1. Consultant will review the submittals provided by the Contractor as required in the construction Contract Documents prepared by the Consultant. Consultant will create and maintain a submittal log of all submittals required by the construction contract.
2. The submittal schedule will be coordinated with the Contractor's approved construction schedule so that sufficient time is allowed for the review process.

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3. Consultant will check submittals to ensure that they are complete and contain the correct references before being entered into the system. Consultant will track through its submittal log the status of all submittals and make all parties aware of the need to maintain the review and Project construction schedule. The submittals will be reviewed for conformance with the design.
4. Consultant will review, respond and return all Contractor Submittals and re-submittals as promptly as possible, but in no case shall contractor submittals be returned later than ten (10) days from receipt of the Contractor's submittals by District.
5. Consultant will review, respond and return unacceptable or incomplete Contractor's submittals within ten (10) days from receipt of Contractor's submittals by District.
6. Consultant will notify District immediately of any potential delays in meeting the response times stated above.
7. Consultant will notify District of any submittal review comment that could result in a Change Order.
8. If the Consultant makes notes on the Contractor's Submittal that constitutes a change to the requirements of the Contract Documents, Consultant must state in Consultant's Submittal response that a Change Order request will be issued and immediately notify District in writing of the need to issue a Change Order request.
9. Consultant will create and maintain the submittal log for the duration of the Project construction until completion and acceptance by the District.

Assumptions:

1. Consultant will review and respond to up to three hundred and seventy-nine (379) shop drawing submittals for the McKelvey Park site and one hundred and eighty-three (183) shop drawing submittals for the Rancho San Antonio Park site.
2. Review of submittals in addition to the estimated number stated herein will be compensated in accordance with Task 8 Supplemental Services During Construction.

Task 7.4—Deliverables

1. Memoranda in PDF or Microsoft Word presenting Consultant's evaluation of submittals.
2. Written notification via email of potential change orders due to submittal review comments by Consultant.

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3. E-mails and verbal responses for input as requested by the District's Project Manager with email follow-up documentation for all verbal responses.

Task 7.5—Requests for Information (RFI) (REVISED)

1. During construction, the Contractor may submit to District questions on details of the design, the construction contract, substitutions, and alternative approaches, etc. If the Contractor's inquiry is related to the Consultant's Project design or an issue having the potential to impact the Project design, and cannot be readily answered from the construction contract, District may require Consultant to respond to the inquiry with written clarifications and return their response back to the District for District to address with its construction Contractor.
2. If the Consultant's response to an RFI appears to have the potential to impact the contract schedule or cost, the issue will be immediately addressed with the District. Where appropriate, alternatives will be suggested and explored.
3. Consultant will coordinate notification of any changes or potential changes given by the Contractor with the District and then respond on both the condition cited for the request and possible impacts on the Contractor's operations. In this manner, information will be gathered that will allow for a determination of merit on the request and quantification of the Contractor's losses, if any. Consultant will make a preliminary assessment of the situation to identify whether additional resources or measures will be necessary for the process. These might include such activities as testing for hazardous waste or additional compaction testing. All issues that have the potential to impact the time and cost of the Project will be given issue status and be addressed.
4. Consultant shall respond to requests for information received from the District.
5. Consultant shall respond to the District's request for evaluation of proposed substitutions of equipment, materials, or methods, and minor design changes.
6. Consultant shall render written decisions within ten (10) work days unless otherwise agreed between Consultant and the District. Consultant must notify District immediately if more time is required to respond to RFI's. The District may approve an extension of time and will document approval in writing.
7. Consultant will evaluate whether its RFI response will result in a change to the requirements of the Contract Documents. If the Consultant's response to a RFI will change the requirement of the Contract Documents, Consultant must:
 - a. State in writing in Consultants' response to the RFI that the response to the RFI is a change to the requirements of the Contract Documents; and
 - b. Promptly notify the District that the Consultant's response to the RFI is a change to the requirements of the Contract Documents.

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8. Upon District request, Consultant may be required to assist the District in ascertaining any adjustment in the Contract time or Contract Sum with the General Contractor resulting from Contract modifications based on Consultant's response to a RFI.

Assumptions:

1. Consultant will review and respond to up to two hundred and eight (208) RFI's for the McKelvey Park site and seventy-five (75) RFI's for the Rancho San Antonio Park site.
2. Review of RFI's in addition to the estimated number stated herein will be compensated pursuant to Task 8 Supplemental Services During Construction.

Task 7.5—Deliverables

1. Memoranda in PDF or Microsoft Word presenting Consultants responses to RFIs.
2. Written notification of potential change orders due to RFI responses by Consultant.
3. RFI documentation including drawings and specifications.
4. Emails and verbal responses for input as requested by the District's Project Manager with email follow-up documentation for all verbal responses.

Task 7.6—Construction Change Order Assistance (UNCHANGED)

Task 7.7—Project Closeout (REVISED)

1. Consultant will prepare Record Drawings, which are necessary to accurately depict changes resulting from field conditions, design changes, Project scope changes, or other causes since the initial Construction Contract Drawings (or bid set) were adopted by the District's Board of Directors.
2. Consultant will provide support for resolving land rights issues at Rancho San Antonio.
3. Consultant will compile operation and maintenance (O&M) information into one document for each of the two Project sites.

Approach

1. Consultant will prepare and maintain a set of Engineer-of-Record's Project Record Drawings by hand-marking-up on the full-size (22" x 34") conformed drawings from the design phase redlining PDF drawings from the design phase,

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with all changes and clarifications recommended by Consultant and accepted by District's Project Manager during Project construction. Such changes may be the result of information that was approved in RFIs, change orders, or field memoranda written by Consultant.

2. The final Engineer-of-Record's Project Record Drawings (one set) will be submitted to District's Project Manager within fifteen (15) working days of the District Project Manager's issuance of Project Notice of Completion and Acceptance of Contractor's work. Consultant will complete work on this subtask as construction progresses to aid completion of the entire drawing set within the time period stipulated.
3. Consultant support for resolving land rights issues at Rancho San Antonio includes performing an as-built survey of the well and associated conduits and piping, culvert and outfall, trails, roads, ramps, and structures and preparing legal descriptions and plats.
4. Consultant will compile contractor-supplied equipment manufacturer's operations and maintenance information into one document for Rancho San Antonio Park and one document for McKelvey Park. The documents will include a summary which ties the information together and provide a list of flood-related maintenance tasks and ongoing maintenance tasks and delineate maintenance responsibilities of District and owner of each site.

Assumptions:

1. Consultant is not required to produce CAD drawings for the marked-up Engineer-of-Record's Record Drawings.
2. Approximately eighty (80) PDF plan sheets will be prepared by Consultant. Consultant will also label all remaining three hundred and thirty-five (335) PDF sheets not requiring revisions to ensure all sheets accurately reflect Project Record Drawings.
3. Preparation of Record Drawings in addition to the estimated quantity stated herein will be compensated pursuant to Task 8 Supplemental Services.
4. Surveying budget includes sixty-eight (68) hours for a 2-person survey crew at Rancho San Antonio. Eight hours is budgeted for meetings and coordination with the District and Gate of Heaven Cemetery Staff. This work will focus on new easements required for utilities, facilities, and improvements within the Project area. Existing easements for existing facilities not impacted by or relocated due to Project improvements are excluded from this work.
5. Operation and maintenance information will be compiled for the facilities and equipment at Rancho San Antonio Park that includes the irrigation well.

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6. Operation and maintenance information will be compiled for the facilities and equipment at McKelvey Park that includes building manuals, sound system, irrigation and planting, drainage system, and pump station mechanical and electrical items.

Task 7.7—Deliverables

1. Emailed memoranda in Adobe PDF or Microsoft Word presenting Consultant's evaluation of submittals, RFI's, PCO requests, and change order proposals.
2. Written notification (via email) of potential change orders due to submittal review comment(s) by Consultant.
3. RFI, submittal, and change order documentation including drawings, specifications and cost opinions (electronic sent via email).
4. Written comments of review of construction contractor's cost estimates, schedules, and schedules of values (electronic sent via e-mail).
5. Review comments on District's Project Manager analyses of potential change orders (electronic sent via email) and Consultant's own independent analyses of such potential change orders.
6. Emails and verbal responses for input as requested by the District's Project Manager with email follow-up documentation for all verbal responses.
7. Final Engineer-of-Record's Project Record Drawings, signed and stamped, that include engineering changes recommended by Consultant and accepted by District's Project Manager—one (1) full- size copy and one (1) set of DVDs with Adobe PDF copies of these drawings.
8. For Rancho San Antonio, an as-built survey in AutoCAD and Adobe PDF formats, legal description, plat, and map closure for geometry.
9. Binders and Adobe PDFs of compiled contractor-supplied manufacturer's operation and maintenance information for both project sites, including a summary which ties all the information together and lists the maintenance tasks and responsibilities.

Task 7.8—Engineering Support for Dispute Resolution (UNCHANGED)

TASK 8—SUPPLEMENTAL SERVICES DURING CONSTRUCTION (UNCHANGED)

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VI. ADDITIONAL TERMS AND CONDITIONS (REVISED)

A. Plats and Land Descriptions

Where the Consultant's work requires preparation of plats and legal property descriptions, the Consultant shall supply electronic drawings in a format approved by the District, of the Tract Map, Map, or Deed involved along with parcel to be transferred from the District or to the District. This file shall be submitted to the District's Land Surveying and Mapping Unit.

B. Consultant as Independent Contractor.

1. Consultant will perform all Services as an independent contractor and not an agent or employee of District.
2. The expertise and experience of Consultant are material considerations for District's award and execution of this Agreement. Consultant will not assign or transfer any interest in this Agreement nor the performance of any of Consultant's obligations hereunder, without prior written consent of District, in the form of an Amendment executed by both Parties, and any attempt to so assign this Agreement, or any rights, duties or obligations arising hereunder, will be void and of no effect. Any assignment of moneys due or to become due in accordance with this Agreement, will be to the extent permitted by law, and will be subject to all proper set-offs, deductions, and withholdings in favor of the District.

C. Consultant's General Responsibilities.

1. Standard of Care
 - a. Consultant and its subconsultants must perform Services in accordance with those standards of care that are generally recognized as being used by competent persons in Consultant's area of specialty in the State of California.
 - b. Consultant and its subconsultants must perform Services in compliance with all applicable written federal, state and local codes, statutes, laws, regulations and ordinances, including, but not limited to, environmental, energy conservation, and disabled access requirements.
2. Unless the requirements for the Scope of Services described in this Agreement are specifically modified in writing, Consultant must provide its Services and deliverables as required.
3. Consultant shall provide staff designated in Revised Attachment One to Revised Appendix One, Consultant's Key Staff and Subconsultants. Any

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designated staff changes proposed by Consultant are subject to approval at the administrative staff level by the District Representative.

D. Confidentiality.

1. Due to the nature of the services the Consultant will provide under the Agreement, there may be disclosure to the Consultant of detailed information about the District's operations, including on a need-to-know basis information which may be protected from public disclosure by confidentiality laws, the attorney-client privilege, and/or other provisions of law which govern the nature and timing of disclosure of public information.
2. Consultant understands and acknowledges that District staff members providing information to the Consultant do so with the understanding that such information will be handled appropriately. In the event the Consultant receives such restricted or confidential information, the Consultant will limit access to the information to only those of the Consultant's employees, its subcontractors, and its subconsultants authorized by the District to have the information.
3. Consultant will notify the District's Project Manager immediately of any request by any third party to have access to the information, and will not disclose the requested information without first receiving express written authorization from the District's Project Manager. The requirements of this section will survive completion, termination, suspension, and expiration of the Agreement.

E. Project Management.

1. The Project Manager for the District is Lotina Nishijima, Associate Engineer.
2. The Project Manager for Consultant is as indicated in Revised Attachment One to Revised Appendix One, Consultant's Key Staff and Subconsultants.
3. The District's Project Manager or his designee is the only person authorized to accept Consultant's deliverables on behalf of the District.

F. Task Orders.

1. Supplemental Services will be assigned to the Consultant through issuance of Task Orders. After Supplemental Services to be performed under this Agreement are identified and communicated to Consultant by the District Project Manager, the Consultant will prepare a proposed Task Order. The proposed Task Order must identify the following:

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- a. Description of the services, including deliverables.
 - b. The total not-to-exceed amount for Consultant to complete the services, including estimated number of hours per assigned staff to complete the services.
 - c. Proposed staff that will be assigned to complete the services, including resumes if not previously provided to the District Project Manager.
 - d. Estimated cost of each reimbursable expense, including any applicable fees.
 - e. Time schedule for completing the services.
 - f. Copies of applicable state, federal, and local permits required to complete the services, unless previously provided to the District Project Manager.
2. Consultant agrees that the not-to-exceed amount specified in a proposed Task Order will be the product of a good faith effort in exercising its professional judgment. After an agreement has been reached on the negotiable items, the finalized Task Order will be signed by authorized representatives of both Parties.
3. Consultant must not commence performance of services on a Task Order until it has been approved by authorized representatives of both Parties and notice to proceed has been issued by the District. No payment will be made for any services performed prior to approval or after the period of performance of the Task Order. The period of performance for Task Orders will be in accordance with dates specified in the Task Order. No Task Order will be written which extends beyond the expiration date of this Agreement. The total amount payable by the District for an individual Task Order will not exceed the amount agreed to in the Task Order.
- G. Conflict of Interest.
1. Consultant represents that there exists no actual or potential conflict of interest concerning the services to be performed under this Agreement.
 2. Consultant represents that Consultant's performance under the Agreement does not require the breach of any agreement or obligation to keep in confidence the proprietary information of another party.
 3. Consultant will not bring to the District or use in the performance of Consultant's duties under the Agreement any materials or documents of another party considered confidential or proprietary unless Consultant

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has obtained written authorization from such party, and the informed consent of the District, for the possession and use of such materials.

4. Consultant represents and warrants that during the term of the Agreement, Consultant, Consultant's parent company, Consultant's subsidiaries, or any affiliated entity sharing substantially similar ownership of or control with Consultant will not act as a consultant or expert for any party in support of any potential or active claim or legal action against the District by such party.
5. Consultant, Consultant's parent company, Consultant's subsidiaries, or any affiliated entity sharing substantially similar ownership of or control with Consultant will not submit a proposal: (i) for any contract to be awarded for planning, design, or the construction of any Project that is related to the services provided in accordance with this Agreement; (ii) in response to any request for proposal or District solicitation developed or prepared by or with the assistance of Consultant, Consultant's parent company, Consultant's subsidiaries, or any affiliated entity sharing substantially similar ownership of or control with Consultant; or (iii) for any single or sole source products/services related to the services under this Agreement, or have a financial stake in any single or sole source products/services resulting from this Agreement.

H. Term & Termination.

This paragraph H. Term and Termination and the following paragraph I. Consultant's Compensation Upon Termination or Suspension, of Article VI. Additional Terms and Conditions, replaces paragraph two stated in the Standard Consultant Agreement portion of this Agreement, at SECTION VI CHANGES IN WORK.

1. Term & Automatic Termination.

This Agreement encompasses all services for which Consultant is responsible to provide within the time limits and not-to-exceed amount set forth herein. Consultant will not undertake to provide services where it reasonably appears that the services cannot be provided and expenses cannot be incurred within said total compensation limit and the applicable not-to-exceed amount of any Task Order.

2. District's Rights.

- a. Suspension: District may, by written notice to Consultant, suspend any or all services pursuant to this Agreement or to any individual Task Order. District may subsequently terminate this Agreement or any Task Order for convenience, or determine to proceed. If a decision to proceed is not made within 90 days from the date of the

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notice of suspension, any decision to proceed must be conditioned upon execution of a new Notice-To-Proceed or Task Order.

- b. Termination for Convenience: District may, by written notice to Consultant, terminate all or part of this Agreement or any Task Order at any time for District's convenience. Upon receipt of such notice, Consultant will immediately cease all work as specified in the notice. If this Agreement or any Task Order is so terminated, Consultant will be compensated as set forth in section H., Consultant's Compensation Upon Termination or Suspension, referenced below.
 - c. Termination for Breach: If Consultant violates any of the covenants, agreements or stipulations of this Agreement or a Task Order, or if Consultant fails to fulfill in a timely and proper manner its obligations pursuant to this Agreement or any Task Order, and does not cure such failure or violation within 30 days (or a reasonable extension thereof, if requested, which extension will not be unreasonably withheld) after receipt of written notice from District specifying such failure or violation, District will thereupon have the right to terminate this Agreement and any or all uncompleted Task Orders by giving written notice to Consultant of such termination. Such notice will specify the effective date thereof, and Consultant will not be entitled to compensation for services or expenses beyond the specified termination date.
 - d. If, after notice of termination for breach of this Agreement or any Task Order, it is determined that Consultant did not breach the Agreement or Task Order, the termination will be deemed to have been effected for District's convenience, and Consultant will receive payment that is allowed by this Agreement for a termination for convenience.
 - e. The rights and remedies provided herein to District are in addition to any other rights and remedies provided by law, this Agreement, or a Task Order.
- I. Consultant's Compensation Upon Termination or Suspension.
- 1. In the event of termination of this Agreement or any Task Order, or suspension of services by District, Consultant shall receive compensation based on satisfactory performance, accepted by the District Project Manager, as follows:
 - a. For Direct Labor—Consultant shall be entitled to receive compensation for all authorized direct labor performed prior to termination pursuant to the provisions of this Agreement or Task Order and all authorized labor expenses incurred to demobilize from the Project after the date of termination.

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- b. For Reimbursable Expenses—Consultant shall be entitled to receive compensation for all authorized Reimbursable Expenses incurred prior to termination and all authorized expenses incurred to demobilize from the Project after the date of termination.
 - c. In no event shall the total compensation paid for any item of service exceed the payment specified in the applicable Task Order for that item of service.
- J. CALIFORNIA FAIR POLITICAL PRACTICES COMMISSION STATEMENT OF ECONOMIC INTEREST FORM 700 (“FORM 700”): Upon District’s request, Consultant employees, officers, agents, subconsultants, and subcontractors shall complete, execute, and submit a Form 700 as follows:
- 1. Consultant employees, officers, agents, subconsultants, and subcontractors assigned to perform services pursuant to this Agreement, shall file in a manner prescribed by the District, an Assuming Office Statement. The Assuming Office Statement shall be filed:
 - a. Within 30 calendar days of the effective date of this Agreement; and
 - b. Within 30 calendar days of Consultant hiring, adding or promoting to a designated filer position employees, officers, agents, subconsultants, and subcontractors to perform services pursuant to this Agreement.
 - 2. Consultant’s employees, officers, agents, subconsultants, and subcontractors assigned to perform services pursuant to this Agreement, that filed an Assuming Office Statement, shall file in a manner prescribed by the District, an amendment to their Form 700 any time there is a change to their disclosure information.
 - 3. Consultant’s employees, officers, agents, subconsultants, and subcontractors assigned to perform services pursuant to this Agreement, that filed an Assuming Office Statement, an Annual Statement in a manner prescribed by the District during the District’s annual filing season as determined by the District;
 - 4. Consultant’s employees, officers, agents, subconsultants, and subcontractors assigned to perform services pursuant to this Agreement, that filed an Assuming Office Statement, shall file in a manner prescribed by the District, a Leaving Office Statement with the District when one of the following occurs:
 - a. Upon termination of this Agreement.
 - b. Within 30 calendar days of Consultant employees, officers, agents, subconsultants, and subcontractors vacating a designated filing

**AMENDMENT NO. 5
TO THE STANDARD CONSULTANT AGREEMENT #A3345A
REVISED APPENDIX ONE
SCOPE OF SERVICES**

position (i.e., removed from the Project, promotion, demotion, transfer to non-designated position, end of employment, or as a result of changes in designated filer positions in the District's Conflict of Interest Code).

5. Consultant understands and agrees that its employees, officers, agents, subconsultants, and subcontractors may be disqualified from providing services to the District pursuant to the California Political Reform Act, Gov. Code Sections 81000 et. seq. and Government Code Section 1090. If any of Consultant's employees, officers, agents, subconsultants, and subcontractors are disqualified from providing services, on written notice from District's Project Manager, Consultant will have 15 calendar days to remove that employee(s), officer(s), agent(s), subconsultant(s), and subcontractor(s) employee(s) from the Project and provide a replacement acceptable to the District.
 6. Further, the failure of Consultant's employees, officers, agents, subconsultants, and subcontractors to file an Assuming Office, Annual, Amended, or Leaving Office Statement within the time prescribed by the District is deemed a material breach and may result in termination of the Agreement for cause.
- K. District Quality and Environmental Management System (QEMS) Fact Sheet (See Attachment Six to Revised Appendix One)

As an on-site provider of services that has the potential to result in significant environmental impacts, Consultant is required to review the QEMS Fact Sheet, incorporated herein by this reference hereto, with any of the employee(s), sub-contractor(s), and/or subconsultant(s) ("Staff") performing services on behalf of the District, and make Staff aware of the District's Quality and Environmental Policy and their role and responsibility in achieving conformity with the expectations.

- L. Release of Information Prohibited.

Consultant is not permitted to provide any information concerning the Project to the media nor anyone other than authorized District personnel. Consultant will not release any information pertinent to the Project under design or construction for publication, public disclosure, or in any other manner without first obtaining clearance and a release in writing from the District. Any media inquiry at any time to Consultant relating to any matter concerning services provided or requested to be provided under this Agreement will be referred immediately to the District. Consultant will not communicate with the media regarding any such matter.

**AMENDMENT NO. 5
TO THE STANDARD CONSULTANT AGREEMENT #A3345A
REVISED APPENDIX ONE
SCOPE OF SERVICES**

M. Formation of Agreement.

1. No contract between the Parties is formed until all eight actions items have been accomplished to the satisfaction of the District. The District will not issue a Notice-to-Proceed until all required documents have been submitted and accepted by the District, if applicable.
2. Formation of an Agreement between the Parties requires accomplishment of the following:
 - a. Execution of the Agreement by Consultant.
 - b. Submission by the Consultant, and acceptance by the District, of evidence of all required insurance coverages and documents.
 - c. Submission by the Consultant, and acceptance by the District, of evidence of all required Form 700 documents, if applicable.
 - d. Submission by the Consultant, and acceptance by the District, of evidence of the QEMS Awareness and Training certification (See Attachment Six to Revised Appendix One).
 - e. Submission by the Consultant, and acceptance by the District, of all required Non-Disclosure Agreements (“NDA”) or Personal Non-Disclosure Agreements (“PNDA”) documents, if applicable.
 - f. Submission by the Consultant, and acceptance by the District, of a Health and Safety Plan, if applicable.
 - g. Any other requirements that are deemed necessary by the District.
 - h. Execution of the Agreement by the District.

N. Notices.

All notices will be deemed to have been given when made in writing and when delivered or mailed to the representatives of the District and Consultant at their respective addresses as follows:

District:

Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, CA 95118-3638

**AMENDMENT NO. 5
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SCOPE OF SERVICES**

Attention: Ngoc Nguyen, Deputy Operating Officer
Watersheds Design and Construction Division
Email: NNguyen@valleywater.org
Phone: (408) 630-2632

Consultant:

Mott MacDonald
2077 Gateway Place, Suite 550
San Jose, CA 95110

Attention: Chris Metzger, Senior Vice President
Email: Chris.Metzger@mottmac.com
Phone: (408) 876-6039

O. Good Neighbor.

The District always strives to be a good neighbor to the community adjacent to its facility. The Consultant will ensure that disturbance to neighbors is minimized. The Consultant, its staff, and sub-consultants will always interact with the members of the public in a polite and professional manner.

P. Revised Appendix One - Scope of Services Attachments.

The following listed Attachments referred to herein are incorporated in this Revised Appendix One, Scope of Services as though set forth in full:

Revised Attachment One - Consultant's Key Staff and Sub-Consultants (REVISED)
Revised Attachment Two - Dispute Resolution (REVISED)
Revised Attachment Three - Project Description (UNCHANGED)
Revised Attachment Four - Task Order Template (REVISED)
Attachment Five - Non-Disclosure Agreement (NDA) (UNCHANGED)
Revised Attachment Six - Quality and Environmental Management System (QEMS) Fact Sheet (UNCHANGED)

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**AMENDMENT NO. 5 TO AGREEMENT #A3345A
REVISED ATTACHMENT ONE TO REVISED APPENDIX ONE
CONSULTANT'S KEY STAFF AND SUBCONSULTANTS**

1. Consultant's Key Staff and Subconsultants assigned to the Project are as follows:

Name	Title	Project Role
Chris Metzger 2077 Gateway Place, Suite 550 San Jose, CA 95110 (408) 876-6039 chris.metzger@mottmac.com	Senior Vice President	Project Director
Tracie Sakakihara 2077 Gateway Place, Suite 550 San Jose, CA 95110 (408) 572-8797 Tracie.Sakakihara@mottmac.com	Principal Project Manager	Senior Project Manager
Renee Crawford 2077 Gateway Place, Suite 550 San Jose, CA 95110 (408) 876-6078 Renee.Crawford@mottmac.com	Senior Project Manager	Senior Project Engineer

2. Consultant will employ Subconsultants it deems appropriate to the complexity and nature of the required services and said Subconsultants must, if their specialty is licensable, be licensed by the State of California to perform their specific services. Consultant must obtain District's approval of all Subconsultants. Upon District's request, Consultant must provide copies of all Subconsultant contract agreements.
3. The following Subconsultants are authorized to perform Services on the Project.

Firm	Project Role	Contact Information
Bellinger Foster Steinmetz	Landscape Design	Adit Pal 425 Pacific Street, Suite 201 Monterey, CA 93940 (831) 646-1383 adit@bfscla.com
ICF	Environmental Compliance	Kevin McKay 75 E. Santa Clara St., Suite 300 San Jose, CA 95134 (408) 216-2816 Kevin.MacKay@icfi.com
NV5	Permits	Jill Sylvester 2025 Gateway Place, Suite 156 San Jose, CA 95110 (408) 392-7232 jill.sylvester@nv5.com

**AMENDMENT NO. 5 TO AGREEMENT #A3345A
REVISED ATTACHMENT ONE TO REVISED APPENDIX ONE
CONSULTANT'S KEY STAFF AND SUBCONSULTANTS**

Firm	Project Role	Contact Information
EETS Inc.	Electrical Support for Well & Pump Station	Mike Bregar, Koosha Toofan 6060 Sunrise Vista, Suite 3450 Citrus Heights, CA 95610 (926) 339-9691 mbregar@eetsinc.com
Exaro Technologies Corp.	Potholing	Jose Dominguez, Alex Rodriguez 1831 Bayshore Highway Burlingame, CA 94010 (650) 777-4324 jd@exarotec.com
Geoconsultants, Inc.	Geohydrologist	Jeremy Wire 1450 Koll Circle, Suite 114 San Jose, CA 95112-4612 (408) 453-2541 jewire@geo-consultants.com
Parikh Consultants, Inc.	Geotechnical Services	Gary Parikh, Alston Lam 2360 Qume Drive, Suite A San Jose, CA 95131 (408) 452-9000, ext. 101 gparikh@parikhnet.com
R.E.Y. Engineers, Inc.	Surveying and Mapping	Mike Shoup 701 North Shoreline Blvd. Mountain View, CA 94043 (408) 219-3236 mshoup@reyengineers.com
RHAA	Park & Ballfield Landscape Designs	James Ingels 323 Geary Street, Suite 602 San Francisco, CA 94102 (415) 861-7900 james@rhaa.com
Dilworth Eliot Studio	Park Building(s) Architect	Amy Eliot 1211 Folsom Street, 4 th Floor San Francisco, CA 94103 (415) 255-9740 amy@dilwortheliot.com
MHC Engineers	Building Mechanical, Electrical, & Plumbing	Meng Chang 150 8 th Street San Francisco, CA 94103 (415) 512-7141 general@mhcengr.com

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 REVISED ATTACHMENT ONE TO REVISED APPENDIX ONE
 CONSULTANT'S KEY STAFF AND SUBCONSULTANTS**

O'Mahoney & Myer	Field/Site Lighting	Pieter Colenbrander 4340 Redwood Highway, #245 San Rafael, CA 94903 (415) 492-0420 pcolenbrander@ommconsulting.com
Ware Associates	Park Building Structural Engineers	John Ware 130 Webster Street, Suite 105 Oakland, CA 94607 (510) 922-9888 mehri@john@ware-associates.com
Charles M. Salter Associates, Inc.	Audio Consulting Services	Ethan Salter 130 Sutter Street, 5 th Floor San Francisco, CA 94104 (415) 397-0442 ethan.salter@cmsalter.com
Schaaf & Wheeler	Hydraulic Analysis/Modeling	Chuck Anderson 1171 Homestead Road, Suite 225 Santa Clara, CA 95050 (408) 246-4848 canderson@swsv.com

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**AMENDMENT NO. 5 TO AGREEMENT #A3345A
REVISED ATTACHMENT ONE TO REVISED APPENDIX ONE
CONSULTANT'S KEY STAFF AND SUBCONSULTANTS**

4. None of the above-named staff or Subconsultants can be replaced without the approval of the District's Project Manager. If Consultant's Project Manager or any other designated key staff person, or Subconsultant fails to perform to the satisfaction of the District, on written notice from District's Project Manager, Consultant will have fifteen (15) calendar days to remove that person from the Project and provide a replacement acceptable to the District.
 - a. The Consultant shall not charge District the time it takes the Consultant's replacement personnel to obtain the District specific Project knowledge in the possession of the person or persons being replaced.
 - b. The Project team organization chart and delegated responsibilities of each team member will be revised accordingly and submitted to the District for concurrence.
5. The District's Project Manager may approve any revisions to Consultant's key personnel staffing or designated Subconsultant list or staffing as an administrative modification to this Agreement and will confirm such approval in writing.
6. Consultants Subconsultants.
 - a. The District Project Manager may approve any revisions to Consultant's list of authorized Subconsultants when the Subconsultant is deleted from the list and the scope of services is deleted from the Agreement or such services are assumed by the Consultant; such approval will be confirmed in writing.
 - b. The District's authorized representative may approve any revisions to Consultant's list of authorized Subconsultants when a listed Subconsultant is replaced (to perform the same scope) or a new Subconsultant is added (to perform new scope), provided the firm complies with all insurance requirements established by the District for such work; such approval will be confirmed in writing.

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AMENDMENT NO. 5 TO AGREEMENT #A3345A

REVISED ATTACHMENT TWO TO REVISED APPENDIX ONE DISPUTE RESOLUTION

1. Consultant's Questions and Concerns

Questions regarding the Terms and Conditions, and Services relating to this Agreement will be decided by the District who will furnish the decisions to Consultant in writing within 30 days after receiving a written request from Consultant.

2. Dispute Resolution

A. Alternate Dispute Resolution

- 1) District intends to use Alternate Dispute Resolution (ADR) techniques including partnering and mediation to resolve disputes relating to the Project.

B. Consultant and its Subconsultants are expected to participate in all ADR efforts.

C. The cost of partnering training facilities and facilitator will be borne by District.

3. Negotiations Before and During Mediation

Negotiations to resolve disputes before and during mediation are initiated for settlement purposes only and are not binding unless otherwise agreed by District and Consultant.

4. Voluntary Mediation

A. Initiation of Mediation

- 1) Any Party to a dispute or claim may initiate mediation by notifying the other Party or Parties in writing.

B. Request for Mediation

- 1) A request for mediation must contain a brief written statement of the nature of the dispute or claim, and the names, addresses, and phone numbers of all parties to the dispute or claim, and those who will represent them, if any, in the mediation.

C. Selection of Mediator

- 1) Upon receipt of a written request for mediation, unless otherwise agreed by the Parties, within 14 days, the Parties will confer to select an appropriate mediator agreeable to all Parties.
- 2) If the Parties cannot agree on a mediator, they hereby agree to accept a mediator appointed by a recognized association such as the American Arbitration Association.

D. Qualifications of a Mediator

- 1) Any mediator selected must have expertise in the area of the dispute and be knowledgeable in the mediation process.

AMENDMENT NO. 5 TO AGREEMENT #A3345A

REVISED ATTACHMENT TWO TO REVISED APPENDIX ONE DISPUTE RESOLUTION

- 2) No person shall serve as a mediator in any dispute in which that person has any financial or personal interest in the result of the mediation.
- 3) Before accepting an appointment, the prospective mediator must disclose any circumstances likely to create a presumption of bias or prevent a prompt meeting with the Parties. Upon receipt of such information, the Parties will confer and decide whether to select another mediator.

E. Vacancies

- 1) If any mediator becomes unwilling or unable to serve, another mediator will be selected unless the Parties agree otherwise.

F. Representation

- 1) Any Party may be represented by person(s) of their choice who must have full authority to negotiate.
- 2) The names and addresses of such person(s) must be communicated in writing to both Parties and to the mediator.

G. Time and Place of Mediation

- 1) The mediator will set the time of each mediation session.
- 2) The mediation will be held at a convenient location agreeable to the mediator and the Parties, as determined by the mediator.
- 3) All reasonable efforts will be made by the Parties and the mediator to schedule the first session within 60 days after selection of the mediator.

H. Identification of Matters in Dispute

- 1) Parties shall comply with the process as required by the mediator with regard to providing the mediator with a memorandum setting forth its position with regard to the issues that need to be resolved. At the discretion of the mediator, or otherwise agreed by the Parties, the Parties may mutually exchange such memoranda.
- 2) At the first session, the Parties will be expected to produce all information reasonably required for the Mediator to understand the issue(s) presented. The mediator may require each Party to supplement such information.

I. Authority of Mediator

- 1) The mediator does not have authority to impose a settlement on the Parties but will attempt to assist the Parties in reaching a satisfactory resolution of their dispute.

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REVISED ATTACHMENT TWO TO REVISED APPENDIX ONE DISPUTE RESOLUTION

- 2) The mediator is authorized to conduct joint and separate meetings with the Parties and to make oral and written recommendations for settlement.
- 3) Whenever necessary, the mediator may also obtain expert advice concerning technical aspects of the dispute, provided the Parties agree and assume the expenses of obtaining such advice. Arrangements for obtaining such advice will be made by the mediator or the Parties, as determined by the mediator.
- 4) The mediator is authorized to end the mediation whenever, in the mediator's judgment, further efforts at mediation would not contribute to a resolution of the dispute between the Parties.

J. Privacy

- 1) Mediation sessions are private.
- 2) The Parties and their representatives may attend mediation sessions.
- 3) Other persons may attend only with the permission of the Parties and with the consent of the mediator.

K. Confidentiality

Except as provided by California or federal law or regulation:

- 1) The mediator will not divulge any confidential information disclosed by the Parties or by witnesses in the course of the mediation.
- 2) All records, reports, or other documents received by a mediator while serving as mediator, are confidential.
- 3) The mediator must not be compelled to divulge such records or to testify in regard to the mediation in any adversary proceeding or judicial forum.
- 4) The Parties must maintain the confidentiality of the mediation and must not rely on, or introduce as evidence in any arbitration, judicial or other proceedings:
 - a. Views expressed, or suggestions made by the other Party with respect to a possible settlement of the dispute;
 - b. Statements made by the other Party in the course of the mediation proceedings;
 - c. Proposals made or views expressed by the mediator; and

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**REVISED ATTACHMENT TWO TO REVISED APPENDIX ONE
DISPUTE RESOLUTION**

- d. Whether the other Party had or had not indicated willingness to accept a proposal for settlement made by the mediator.
- L. No Stenographic Record
 - 1) There shall be no stenographic record of the mediation.
- M. Termination of Mediation
 - 1) The mediation shall be terminated:
 - a. By the execution of a Settlement Agreement by the Parties;
 - b. By a written declaration of the mediator to the effect that further efforts at mediation are no longer worthwhile; or
 - c. By a written declaration of a Party or Parties to the effect that the mediation proceedings are terminated.
 - 2) No mediator shall be a necessary Party in judicial proceedings related to the mediation.
- N. Exclusion of Liability
 - 1) No mediator shall be a necessary Party in judicial proceedings related to the mediation.
- O. Interpretation and Application of These Mediation Provisions
 - 1) The mediator will interpret and apply these mediation provisions insofar as they relate to the mediator's duties and responsibility.
- P. Expenses
 - 1) The expenses of witnesses for each Party must be paid by the Party producing the witnesses.
 - 2) All other expenses of the mediation, including required travel and other expenses of the mediator, and the expenses of any witness called by the mediator, or the cost of any proofs or expert advice produced at the direct request of the mediator, will be apportioned as the mediator finds appropriate or as otherwise agreed to by the Parties.

5. Compensation for Participation in Mediation

Neither Consultant nor the District is entitled to compensation for time spent in or for

AMENDMENT NO. 5 TO AGREEMENT #A3345A

**REVISED ATTACHMENT TWO TO REVISED APPENDIX ONE
DISPUTE RESOLUTION**

negotiations or mediation to resolve questions or disputes between Consultant and District arising out of this Agreement.

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AMENDMENT NO. 5 TO AGREEMENT #A3345A

**REVISED ATTACHMENT FOUR TO REVISED APPENDIX ONE
TASK ORDER TEMPLATE**

Task Order No. _____

Title: _____

Agreement: Standard Consultant Agreement _____ (“Agreement”) Between the Santa Clara Valley Water District (“District”) and _____ (“Consultant”), dated _____.

District: _____

Consultant: _____

Dollar Amount of Task Order: Not-to-Exceed \$ _____

1. Upon full execution of this Task Order No. _____, as set forth in Revised Appendix One, Scope of Services, Article VI. Additional Terms and Conditions, paragraph F. Task Orders, and the issuance of a Notice to Proceed by the District Project Manager, the Consultant is hereby authorized to perform the Services described in Attachment A to this Task Order. Any costs incurred, Services performed or expenditures by the Consultant before this Task Order is executed or before the issuance of the Notice to Proceed will be considered outside the contracted Scope of Services and will not be eligible for payment.
2. Both the Scope of Services to be performed and the deliverables to be provided in accordance with this Task Order are described in Attachment A which is attached hereto and incorporated by this reference. Attachment A shall include at a minimum the following:
 - a. The Consultant personnel to be assigned to perform the Services, including resumes if not previously provided to the District.
 - b. The total not-to-exceed fees amount for Consultant to complete the Services, including estimated number of hours required to perform the Services assigned to each Consultant classification.
 - c. Estimated cost of each other direct cost and reimbursable expense, including any applicable fees.
 - d. Project schedule for completing the Scope of Services.
3. The Consultant shall be compensated at fixed fees or at the hourly rates established in Revised Appendix Two, Fees and Payments, of the Agreement. The Consultant agrees that it will provide all equipment, furnish all materials, except as may be otherwise noted in the Attachment A.
4. This Task Order will become effective on the date of full execution by authorized representatives of the Parties and remain in effect until the earlier of: completion of the tasks set forth in Attachment A or [expected completion date].

AMENDMENT NO. 5 TO AGREEMENT #A3345A

**REVISED ATTACHMENT FOUR TO REVISED APPENDIX ONE
TASK ORDER TEMPLATE**

- 5. Copies of applicable local, state and federal permits required to perform the Services described in Attachment A are attached to this Task Order, unless the Consultant previously provided the appropriate permits to the District.
- 6. The Consultant shall perform all Services described in Attachment A to this Task Order in accordance with the Terms and Conditions of the Agreement.
- 7. Prevailing Wage Requirements [NOT USED]
 - A. The Scope of Services described in this Task Order is considered by the District to be "Public Works" requiring the payment of prevailing wages. See Revised Appendix Two, Fees and Payments, Article IV. Terms and Conditions, paragraph L. Prevailing Wages.
 - B. 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 the District'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>.

8. Signatures:

Signature:

NAME OF CONSULTANT FIRM
[PRINT NAME]
[PRINT TITLE]

DATE

Signature:

SANTA CLARA VALLEY WATER DISTRICT
[PRINT NAME]
[PRINT TITLE]

DATE

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**AMENDMENT NO. 5 TO AGREEMENT #A3345A
REVISED APPENDIX TWO
FEES AND PAYMENTS**

I. GENERAL

Payment for Services performed, to the satisfaction of the District, as described in Appendix One and Revised Appendix One, Scope of Services, for this Agreement will be based upon the Total Fixed Not-to-Exceed (NTE) Fees stated in this Revised Appendix Two for the completion of the associated tasks. The District will make payments to the Consultant according to the terms provided for in this Revised Appendix Two. Payments made by the District to the Consultant for services rendered will be considered full compensation for all personnel, materials, supplies, Subconsultant(s), and equipment including, reimbursable travel and per diem expenses incurred by the Consultant to complete the work.

II. TOTAL AUTHORIZED FUNDING

Total payment for Services performed, as described in Appendix One and Revised Appendix One, Scope of Services, will not exceed a total amount of **\$6,890,158** during the term of this Agreement. Under no conditions will the total compensation to the Consultant exceed this NTE amount without prior written approval in the form of an amendment to this Agreement executed by the District's Board of Directors (Board) or the Chief Executive Officer, as authorized by the Board. The Consultant guarantees that it will complete the contracted Scope of Services for the Total NTE amount stated herein.

III. COST BREAKDOWN

The not-to-exceed total compensation of this Agreement consists of the following task fee breakdown. No services will be performed or fees paid by the District to the Consultant for Optional Services During Design and Bidding Services, and Supplemental Services During Construction without prior written authorization by the District as stated in Appendix One and Revised Appendix One of this Agreement.

COST BREAKDOWN

Task	Description	Original Agreement NTE Fee	Amendment No. 3 NTE Fee	Amendment No. 5 NTE Fee	Revised TOTAL NTE Fee
1	Project Management During Design	\$633,942	\$100,000	-	\$733,942
2	Design Concept Review/Approval	\$620,646	-\$69,652	-	\$550,994
3	Geotechnical Investigations	\$425,926	-\$78,000	-	\$347,926
4	Detailed Project Design and PS&E	\$2,188,929	\$500,000	-	\$2,688,929
5	Engineering Support During Bidding Process	\$101,763	\$0	-	\$101,763
6	Optional Services During Design and Bidding Process	\$380,000	\$0	-	\$380,000
7	Engineering Support During Construction	-	\$791,837	\$897,115	\$1,688,952

**AMENDMENT NO. 5 TO AGREEMENT #A3345A
REVISED APPENDIX TWO
FEES AND PAYMENTS**

Task	Description	Original Agreement NTE Fee	Amendment No. 3 NTE Fee	Amendment No. 5 NTE Fee	Revised TOTAL NTE Fee
8	Supplemental Services During Construction		\$97,652	\$300,000	\$397,652
Total Not-to-Exceed Amount		\$4,351,206	\$1,341,837	\$1,197,115	\$6,890,158

Note: Amendments No. 1, 2, and 4 did not revise the Cost Breakdown nor the Agreement Total-Not-to-Exceed Amount.

IV. TERMS AND CONDITIONS

- A. Payments for Services performed, as described in Appendix One and Revised Appendix One, Scope of Services, will be based on the following terms:
1. District will pay for services provided by the Consultant according to the schedule of rates for professional, technical, and administrative personnel as listed below in the Hourly Rate Schedule and unit rate.
 2. The stated hourly and unit 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 and unit rates may be negotiated by the Consultant and the District, provided Consultant submits written notice to District of Consultant’s request to revise the hourly and unit 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 2.6% whichever is less. A negative index will result in rates remaining the same. Such rate revisions are subject to written approval by the District’s Watersheds Design and Construction Division Deputy Operating Officer.

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**AMENDMENT NO. 5 TO AGREEMENT #A3345A
REVISED APPENDIX TWO
FEES AND PAYMENTS**

REVISED HOURLY RATE SCHEDULE

Firm	Classification	Hourly Rates From 6/26/2016	Hourly Rates From 3/4/2017	Hourly Rate From 4/1/2018
MM	Project Director	\$278.94	\$284.52	\$290.21
MM	Principal Project Manager	\$278.94	\$284.52	\$290.21
MM	Senior Project Manager	\$250.48	\$255.49	\$260.60
MM	Project Manager	\$213.78	\$218.06	\$222.42
MM	Senior Project Engineer	\$189.76	\$193.55	\$197.42
MM	Senior Engineer	\$164.49	\$167.78	\$171.14
MM	Project Engineer	\$139.53	\$142.32	\$145.17
MM	Junior Engineer	\$111.63	\$113.87	\$116.15
MM	Draftsperson	\$94.87	\$96.77	\$98.71
MM	Administrative Staff	\$83.72	\$85.40	\$87.10
Bellinger Foster Steinmetz (Sub)	Principal	\$205.39	\$209.49	\$213.68
Bellinger Foster Steinmetz (Sub)	Associate	\$162.97	\$166.23	\$169.55
Bellinger Foster Steinmetz (Sub)	Project Manager	\$132.83	\$135.49	\$138.20
Bellinger Foster Steinmetz (Sub)	Landscape Architect	\$114.97	\$117.27	\$119.62
Bellinger Foster Steinmetz (Sub)	Assistant	\$107.16	\$109.30	\$111.49
Bellinger Foster Steinmetz (Sub)	Designer	\$94.88	\$96.78	\$98.71
Bellinger Foster Steinmetz (Sub)	Administrative Staff	\$78.14	\$79.70	\$81.29
ICF Jones & Stokes (Sub)	Senior Project Director	\$273.48	\$278.94	\$284.52
ICF Jones & Stokes (Sub)	Project Director	\$256.73	\$261.87	\$267.10
ICF Jones & Stokes (Sub)	Technical Director	\$234.41	\$239.10	\$243.88
ICF Jones & Stokes (Sub)	Managing Consultant/Senior Technical Analyst	\$212.08	\$216.32	\$220.65
ICF Jones & Stokes (Sub)	Senior Consultant III	\$189.76	\$193.55	\$197.42
ICF Jones & Stokes (Sub)	Senior Consultant II	\$161.85	\$165.09	\$168.39
ICF Jones & Stokes (Sub)	Senior Consultant I	\$150.69	\$153.70	\$156.78
ICF Jones & Stokes (Sub)	Associate Consultant III	\$139.53	\$142.32	\$145.17
ICF Jones & Stokes (Sub)	Associate Consultant II	\$128.37	\$130.93	\$133.55
ICF Jones & Stokes (Sub)	Associate Consultant I	\$117.20	\$119.55	\$121.94
ICF Jones & Stokes (Sub)	Assistant Consultant	\$94.88	\$96.78	\$98.71
ICF Jones & Stokes (Sub)	Technician/Administrative Technician	\$66.97	\$68.31	\$69.68
ICF Jones & Stokes (Sub)	Intern	\$61.39	\$62.62	\$63.87

**AMENDMENT NO. 5 TO AGREEMENT #A3345A
REVISED APPENDIX TWO
FEES AND PAYMENTS**

Firm	Classification	Hourly Rates From 6/26/2016	Hourly Rates From 3/4/2017	Hourly Rate From 4/1/2018
NV5 (Sub)	Senior Project Manager/Engineer Manager	\$221.01	\$225.43	\$229.94
NV5 (Sub)	Project Manager	\$209.85	\$214.05	\$218.33
NV5 (Sub)	Senior Engineer/Planner	\$183.06	\$186.72	\$190.46
NV5 (Sub)	Associate Engineer/ Planner	\$167.43	\$170.78	\$174.20
NV5 (Sub)	Assistant Engineer/ Planner	\$139.53	\$142.32	\$145.17
NV5 (Sub)	Junior Engineer/Planner	\$133.95	\$136.63	\$139.36
NV5 (Sub)	Project Assistant	\$107.16	\$109.30	\$111.49
EETS, Inc (Nolte Sub)	Senior Engineer	\$156.27	\$159.40	\$162.58
EETS, Inc (Nolte Sub)	Associate Engineer	\$117.20	\$119.55	\$121.94
EETS, Inc (Nolte Sub)	CAD	\$94.88	\$96.78	\$98.71
EETS, Inc (Nolte Sub)	Administrative Staff	\$66.97	\$68.31	\$69.68
Exaro Technologies Corp. (Nolte Sub)	Potholing/Hot Asphalt Paving/Slurry Backfill	\$2,676/day	\$2,730/day	\$2,785/day
Geoconsultants, Inc. (Nolte Sub)	Principal Hydro geologist	\$178.60	\$182.17	\$185.81
Geoconsultants, Inc. (Nolte Sub)	Senior Hydro geologist	\$145.11	\$148.01	\$150.97
Geoconsultants, Inc. (Nolte Sub)	Drafting	\$66.97	\$68.31	\$69.68
Geoconsultants, Inc. (Nolte Sub)	Administrative Staff	\$55.81	\$56.93	\$58.07
Parikh Consultants, Inc. (Sub)	Project Manager	\$238.82	\$243.59	\$248.46
Parikh Consultants, Inc. (Sub)	Senior Project Engineer— D Wang	\$167.23	\$170.58	\$173.99
Parikh Consultants, Inc. (Sub)	Senior Project Engineer— A Lam	\$149.96	\$152.96	\$156.02
Parikh Consultants, Inc. (Sub)	Senior Project Engineer— P Sircar	\$143.42	\$146.29	\$149.22
Parikh Consultants, Inc. (Sub)	Project Engineer	\$120.41	\$122.82	\$125.27
Parikh Consultants, Inc. (Sub)	Field Engineer	\$109.07	\$111.25	\$113.47
Parikh Consultants, Inc. (Sub)	Staff Engineer II/Draftsperson	\$91.73	\$93.57	\$95.44
Parikh Consultants, Inc. (Sub)	Contracts Manager	\$147.63	\$150.58	\$153.60
Parikh Consultants, Inc. (Sub)	Senior Lab Technician	\$120.88	\$123.29	\$125.76
R.E.Y. Engineers, Inc. (Sub)	Principal/OM	-	-	\$270.00
R.E.Y. Engineers, Inc. (Sub)	Senior Surveyor	-	-	\$220.00

**AMENDMENT NO. 5 TO AGREEMENT #A3345A
REVISED APPENDIX TWO
FEES AND PAYMENTS**

Firm	Classification	Hourly Rates From 6/26/2016	Hourly Rates From 3/4/2017	Hourly Rate From 4/1/2018
R.E.Y. Engineers, Inc. (Sub)	Associate Surveyor	-	-	\$169.00
R.E.Y. Engineers, Inc. (Sub)	2 Man Survey Crew	-	-	\$280.00
RHAA (Sub)	Principal	\$206.50-	\$210.63-	\$214.84
RHAA (Sub)	Project Manager	\$173.01-	\$176.48-	\$180.00
RHAA (Sub)	Assistant Project Manager	\$139.53-	\$142.32-	\$145.17
RHAA (Sub)	Technical Staff	\$111.62-	\$113.86-	\$116.13
RHAA (Sub)	Administrative Staff	\$83.72	\$85.39	\$87.10
Dilworth Eliot Studio (RHAA Sub)	Managing Principal	\$206.94	\$211.07	\$215.30
Dilworth Eliot Studio (RHAA Sub)	Principal	\$185.71	\$189.43	\$193.21
Dilworth Eliot Studio (RHAA Sub)	Associate	-	-	\$160.00
Dilworth Eliot Studio (RHAA Sub)	Project Manager	\$132.65	\$135.30	\$138.01
Dilworth Eliot Studio (RHAA Sub)	Project Architect	\$132.65	\$135.30	\$138.01
Dilworth Eliot Studio (RHAA Sub)	Senior Designer	\$132.65	\$135.30	\$138.01
Dilworth Eliot Studio (RHAA Sub)	Intermediate Designer	\$122.04	\$124.48	\$126.97
Dilworth Eliot Studio (RHAA Sub)	Junior Designer	\$100.81	\$102.83	\$104.89
Dilworth Eliot Studio (RHAA Sub)	Administrative Staff	\$47.75	\$48.71	\$49.68
MHC Engineers (DE Sub)	Principal	-	-	\$270.61
MHC Engineers (DE Sub)	Project Manager	-	-	\$162.36
MHC Engineers (DE Sub)	Associate Engineer	-	-	\$119.07
O'Mahoney & Myer (RHAA Sub)	Principal	\$201.63	\$205.66	\$209.78
O'Mahoney & Myer (RHAA Sub)	Project Electrical/Lighting Engineer	\$132.65	\$135.30	\$138.01
O'Mahoney & Myer (RHAA Sub)	Electrical/Lighting Designer	\$ 116.73	\$119.07	\$121.45
O'Mahoney & Myer (RHAA Sub)	CAD Supervisor	\$100.81	\$102.83	\$104.89
O'Mahoney & Myer (RHAA Sub)	CAD Technician	\$90.20	\$92.01	\$93.85
O'Mahoney & Myer (RHAA Sub)	Administrative Staff	\$ 68.98	\$70.36	\$71.77
Ware Associates (RHAA Sub)	Principal	\$191.02	\$194.84	\$198.73
Ware Associates (RHAA Sub)	Project Manager/Engineer/Architect	\$169.79	\$173.19	\$176.65
Ware Associates (RHAA Sub)	Designer	\$143.26	\$146.13	\$149.05
Ware Associates (RHAA Sub)	CAD Draftsperson	\$111.43	\$113.66	\$115.93
Ware Associates (RHAA Sub)	Administrative Staff	\$79.59	\$81.18	\$82.81
Charles M. Salter (RHAA Sub)	President and Senior Vice President	\$291.83	\$297.67	\$303.62

**AMENDMENT NO. 5 TO AGREEMENT #A3345A
REVISED APPENDIX TWO
FEES AND PAYMENTS**

Firm	Classification	Hourly Rates From 6/26/2016	Hourly Rates From 3/4/2017	Hourly Rate From 4/1/2018
Charles M. Salter (RHAA Sub)	Vice President	\$265.30	\$270.61	\$276.02
Charles M. Salter (RHAA Sub)	Principal Consultant	\$222.85	\$227.31	\$231.86
Charles M. Salter (RHAA Sub)	Senior Consultant	\$175.10	\$178.60	\$182.17
Charles M. Salter (RHAA Sub)	Consultant	\$153.88	\$156.95	\$160.09
Charles M. Salter (RHAA Sub)	Technical Assistant	\$106.12	\$108.24	\$110.41
Schaaf & Wheeler (Sub)	Project Director/Project Manager	\$223.25	\$227.71	\$232.26
Schaaf & Wheeler (Sub)	Project Engineer	\$209.85	\$214.05	\$218.33
Schaaf & Wheeler (Sub)	Senior Engineer	\$189.76	\$193.55	\$197.42
Schaaf & Wheeler (Sub)	Associate Engineer	\$170.78	\$174.20	\$177.68
Schaaf & Wheeler (Sub)	Assistant Engineer	\$149.57	\$152.57	\$155.62
Schaaf & Wheeler (Sub)	Junior Engineer/Designer	\$135.06	\$137.76	\$140.52
Schaaf & Wheeler (Sub)	Technician	\$127.25	\$129.79	\$132.39
Schaaf & Wheeler (Sub)	Engineering Trainee	\$92.65	\$94.50	\$96.39

- B. Unused fees from a completed task may be reallocated to a future task provided that the Agreement Total Not-to-Exceed Amount is not exceeded. Reallocation of fees shall occur only after written approval from the District's Watersheds Design and Construction Division Deputy Operating Office. However, transferring fees from future tasks to current tasks will not be permitted.
- C. Any authorized inter-task transfers will be clearly noted and described in the subsequent monthly Progress Report to the District.
- D. Not-to-exceed fees and services to be performed under Optional Services During Design and Bidding Process, and Supplemental Services During Construction will commence only after written approval from the District's Watersheds Design and Construction Division Deputy Operating Officer pursuant to an issued Task Order.
- E. 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 the District Project Manager will be billed on a monthly basis at actual cost plus 5% linked to each Agreement Task, provided that the Task total NTE amount is not exceeded. Consultant shall provide receipts for each other direct expenses items(s) with monthly invoices submitted.

**AMENDMENT NO. 5 TO AGREEMENT #A3345A
REVISED APPENDIX TWO
FEES AND PAYMENTS**

- F. Automobile travel mileage expenses will be paid at the current IRS rate. District will not reimburse Consultant and its Subconsultants for mileage and travel time to and from District Headquarters and surrounding campus located at 5700 Almaden Expressway, San Jose, California. District will reimburse Consultant and its Subconsultants for mileage incurred from District Headquarters or Consultant's and Subconsultants' firm address, whichever is closer to the destination, to Project site(s) and, if directed or authorized by the District, to meeting locations such as with regulatory agencies, for community outreach activities and meetings, for partnering meetings, and Dispute Review Board meetings.
- G. Consultant's monthly invoices will be prepared in accordance with the terms of this Revised Appendix Two and the Standard Consultant Agreement, SECTION IV, FEES AND PAYMENTS, and represent Services performed and reimbursable costs incurred during the identified billing period and will be consistent with Revised Appendix One and include the following:
1. Personnel Category and employee name itemized with all labor charges by Scope of Service Task.
 2. Direct charges by Scope of Service Task.
 3. Consultant's summary of the amount Consultant has been billed by their Subconsultants and further detailed by Scope of Service Task.
 4. Direct charges must reflect actual fees versus the Agreement not-to-exceed fees in this Revised Appendix Two.
- H. Before submitting monthly invoices, a progress report and draft invoice (in Adobe PDF format) will be provided by the Consultant for preliminary review by the District Project Manager. Upon preliminary approval by the District, the Consultant will mail the complete signed and dated hardcopy invoice, including all supporting documentation. District's preliminary review of the draft invoice does not represent final approval of the hardcopy invoice, but is intended to reduce potential for re-submittals of hardcopy invoice by Consultant.
- I. Each monthly invoice must include a summary of labor expenditures, direct costs, and billed subconsultant charges. Billing statements, transmitted separately from the monthly progress reports, will be organized such that the billing categories correspond with the Scope of Services tasks.
- J. District's Project Manager will review hardcopy invoice within five working days of receipt, address any questions with Consultant's Project Director, and approve the undisputed amount of the invoice within ten working days of receipt of the invoice. District will pay undisputed invoice amounts within 30 calendar days from date invoice is received by District's Project Manager.

**AMENDMENT NO. 5 TO AGREEMENT #A3345A
REVISED APPENDIX TWO
FEES AND PAYMENTS**

- K. Consultant's services will be performed by its staff members and subconsultants' staff members at the lowest hourly rates commensurate with the complexity of the required services.
- L. Prevailing Wages
1. The services to be performed pursuant to this Agreement are considered "Public Works" subject to California Labor Code §1771, et. seq. and the applicable implementing regulations.
 2. Labor Code Section §1720 includes "Inspection and Land Surveying" in its definition of "Public Works." If Consultant's services include such work, Consultant and its Subconsultants must comply with all Labor Codes applicable to prevailing wages.
 3. The Consultant and its Subconsultants shall not engage in the performance of public work, as defined in California Labor Code Section 1771.1, unless currently registered and qualified to perform public work pursuant to California Labor Code Section 1725.5.
 4. 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 be entitled to adjustment in compensation rates in the event there are adjustments to the General Prevailing Wage Rates.
 5. This Agreement is subject to compliance monitoring and enforcement by the State of California Department of Industrial Relations. The Consultant and Subconsultants must furnish the records specified in Labor Code §1776 directly to the Labor Commissioner monthly, in a format prescribed by the Labor Commissioner.
 6. All records or documents required to be kept to verify statutory compliance with the prevailing wage requirement must be made available for audit at no cost to the District, at any time during regular business hours, upon written request by the District.
- M. Small Business Enterprise (SBE) Participation
- Consultant will maintain its to include California Department of General Services (DGS) certification as a Small/Micro business throughout the duration of this Agreement and will use their best efforts to include DGS certified Small/Micro businesses in the performance of the Services., When combined with the Subconsultant services, the SBE participation is estimated to be **40%** of the total not-to-exceed fees and Consultant agrees to use its best efforts to meet this goal.

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AMENDMENT NO. 5 TO AGREEMENT #A3345A

REVISED APPENDIX THREE SCHEDULE OF COMPLETION

1. This Agreement commences on the date specified in the introductory paragraph of the Standard Consultant Agreement portion of this Agreement. The term of this Agreement expires on **March 30, 2020**, unless, prior to its expiration, its term is modified by a written amendment hereto, and signed by both Parties.
2. Consultant will commence Tasks listed in Appendix One and Revised Appendix One of this Agreement upon receipt of the Notice-to-Proceed (NTP) issued by the District.
3. Consultant will perform and complete the Services described in Appendix One and Revised Appendix One, Scope of Services, in accordance with the Project Schedule table as shown below. Consultant will coordinate services with the District to provide the timeline of all tasks and subtasks including the site visits, document review, meetings and Deliverables.
4. The approved Project Schedule will be monitored monthly. Changes to the schedule for performance of Tasks and Deliverables are subject to advance written approval by District. Consultant's attention is directed to District's Standard Consultant Agreement, Section VII DELAYS AND EXTENSIONS.
5. Project Delays - The Consultant will make all reasonable efforts to comply with the Project Schedule as shown here in Revised Appendix Three. In the event the Project Schedule will be delayed, Consultant will notify the District as soon as possible, providing the reason why, the length of the delay, and a description of the actions being taken to address the delay. In the event Consultant is delayed in performance of its services by circumstances beyond its control, District may in its discretion grant a reasonable adjustment in the Project Schedule. This language will prevail should any conflict or discrepancy occur between this provision and SECTION VII DELAYS AND EXTENSIONS.
6. District and Consultant may agree to modify the schedule specified for Consultant's performance as an administrative modification to this Agreement and will confirm such approval in writing.

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AMENDMENT NO. 5 TO AGREEMENT #A3345A

**REVISED APPENDIX THREE
SCHEDULE OF COMPLETION**

PROJECT SCHEDULE

Task	Task Description	Major Deliverable/Milestone	Date of Completion
1	Project Management During Design	N/A	Completed
2	Design Concept Review/Approval	Final Concept Plans, Technical Memos, Hydraulic Models & Designs	Completed
3	Geotechnical Investigations	Geotechnical Report	Completed
4	Detailed Project Design and PS&E	See below	Completed
4.1	30% PS&E Submittal	30% PS&E	Completed
4.2	60% PS&E Submittal	60% PS&E	Completed
4.3	90% PS&E Submittal	90% PS&E	Completed
4.4	100% PS&E Submittal	100% PS&E	Completed
4.5	Finalize Interagency Agreements	Agreements	Completed
5	Engineering Support During Bidding Process	Pre-Bid Meeting, Respond to RFIs, Preparation of Addenda	Completed
6	Optional Services During Design and Bidding Process	TBD	Completed
7	Engineering Support During Construction	N/A	Term of Agreement
8	Supplemental Services During Construction	TBD	Term of Agreement

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