



## STANDARD ON-CALL CONSULTANT AGREEMENT

(For GEN-ADMIN Consultant Agreements)

Terms and Conditions Template  
Rev. B [7/1/2018-06/30/2019]

This agreement (Agreement) is effective once fully executed (Effective Date), by and between SANTA CLARA VALLEY WATER DISTRICT (District), and VENA SOLUTIONS USA, INC., a Delaware Corporation (Consultant), individually the Party or collectively the Parties.

WHEREAS, the District desires certain services hereinafter described and Consultant affirms it has the requisite experience and expertise, and desires to provide such services.

NOW, THEREFORE, the District and Consultant, for the consideration and upon the Terms and Conditions specified, agree as follows:

### SECTION ONE

#### SCOPE OF SERVICES

The Scope of Services (Services) to be performed pursuant to this Agreement is described in the Schedule, Scope of Services, attached hereto and incorporated herein by this reference (Schedule). The District may require Consultant to provide all or a portion of these services (Services) through subsequently executed task orders (Task Orders). Task Orders will be in the form of the template described in Section Twelve, subsection 13, Task Orders and in Appendix Three of the Standard On-Call Consultant Agreement, Task Order Template. These Services will be provided on an on-call basis (On-Call).

### SECTION TWO

#### DUTIES OF CONSULTANT

##### 1. Performance

- A. Each Scope of Service described in an attached Schedule must be performed by Consultant, or at its direction, to meet the purposes specified in this Agreement. References to "Consultant" herein include those performing any portion of the Services at its direction such as Subconsultants, vendors, suppliers, subcontractors, and other business entities and individuals. Consultant will collaborate with District staff in engineering, asset management, operations, and maintenance units to be made aware of District operational constraints, procedures, or preferences relevant to Consultant's performance of the Services described in the attached Schedule.
- B. Unless the requirements for the Services described in the attached Schedule are specifically modified in writing, Consultant must perform Services and provide all deliverables as required.

- C. Consultant shall not undertake any Services not described in the attached Schedule unless authorized in writing by the District prior to the performance of such Services by issuance of a Task Order or pursuant to an amendment to this Agreement signed by both Parties.

## **2. Consultant Controlled Areas**

Consultant is responsible for the security and safety of the area(s) it controls wherein it is required to perform field operations pursuant to the Scope of Services.

## **3. Licensing**

Services performed by Consultant will be undertaken only by persons appropriately licensed, certified, or registered in California, as applicable to the Services described herein, when required by statutes or regulations, as well as pursuant to the relevant standard of care as described in subsection 11 Standard of Care. Consultant shall make available upon District's request documentation of qualifications and licensing of personnel performing Services described herein.

## **4. District's Approval of Deliverables**

Deliverables prepared by Consultant, notwithstanding acceptance and approval by District, which District determines must subsequently be modified due to errors or omissions, will be corrected at no additional cost to District.

## **5. Errors and Omissions**

Consultant is responsible for any direct or actual damages incurred by District which District determines result from Consultant's errors or omissions in Consultant's deliverables.

## **6. District Standardization Requirements**

- A. Consultant shall perform the Services utilizing District nomenclature, standardized forms, software requirements, documented procedures, and best management practices. Consultant shall use Microsoft Office software that is compatible with the District Microsoft Office software used at the time(s) the District issues a Notice to Proceed pursuant to this Agreement.

## **7. Consultant's Key Staff and Subconsultants**

- A. Consultant's and firms subcontracted by the consultant (Subconsultants) assigned to perform the Services are identified in Attachment Three to the Scope of Services, Consultant's Key Staff and Subconsultants.
- B. The Project team organization chart and delegated responsibilities of each team member will be submitted to the District for concurrence.

- C. Consultant may utilize Subconsultants, subcontractors, suppliers, or vendors it deems appropriate to the complexity and nature of the required Services.
  - 1) Consultant must obtain the District's approval of all Subconsultants. Upon the District's request, Consultant must provide copies of all Subconsultant agreements.
  - 2) Consultant must require its delegates or Subconsultants to agree, in writing, to adhere to Terms and Conditions of this Agreement.
- D. Any delegation or use of Subconsultants by Consultant will not operate to relieve Consultant of its responsibilities as described in this Agreement.
- E. If any of Consultant's designated key staff persons or Subconsultants fail to perform to the satisfaction of the District, on written notice from the District, Consultant will have 15 calendar days to remove that person from the Project and provide a replacement acceptable to the District.
- F. Consultant will not charge the District for the time it takes Consultant's replacement personnel to obtain the District-specific Project knowledge in the possession of the person(s) being replaced.
- G. Consultant's Key Staff: The District Project Manager may approve any revisions to Consultant's list of key staff assigned to the Project as an administrative modification to this Agreement, and such approval will be confirmed in writing.
- H. Consultant's Subconsultants
  - 1) 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.
  - 2) 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.

**8. Compliance with All Laws**

- A. Consultant's performance must be in compliance with the most current versions of any and all laws relevant to the Services it performs pursuant to this Agreement, including, but not limited to adherence to: all applicable governmental laws, statutes, ordinances, rules, codes, regulations, orders, and other requirements.
- B. Consultant shall provide, at District's request, documentation demonstrating Consultant's compliance with all laws as described herein. After reasonable notice and according to

reasonable conditions, the District has the right to inspect and copy any records of Consultant regarding such compliance.

- C. Consultant represents and warrants that neither Consultant nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal government department or agency.

## **9. Occupational Safety and Health**

- A. Consultant will perform the Services in compliance with the most current versions of all laws, standards, rules, and regulations of the Occupational Safety and Health Act, and all state and federal laws and regulations relating to safety and health standards. Consultant shall perform the Services in compliance with, will furnish only supplies, articles, and equipment that comply with such laws, standards, and regulations.
- B. Consultant shall immediately notify the District in the event of any personal injury accident or occurrence occurring during the performance of the Services. Upon the District's request, Consultant shall provide the District with documentation fully describing the accident and injury and the actions implemented to prevent similar occurrences.

## **10. Consultant as Independent Contractor**

Consultant will perform all Services as an independent contractor and not an agent or employee of District. Consultant represents and warrants that it and its contractors who are performing any of the Services as Subconsultants will perform such Services as an independent contractor, and neither Consultant nor Subconsultants nor their employees are the servants, agents or employees of the District. Except as expressly provided in this Agreement, the District exercises no direction, supervision or control over Consultant, its employees, agents, or Subconsultants.

## **11. Standard of Care**

- A. Consultant must possess and maintain during the term of this Agreement all certifications, licenses, permits, and qualifications to perform the Services and prepare all deliverables. Consultant must perform all Services and prepare all deliverables in accordance with those standards and practices of care, skill, and diligence that are generally recognized and customarily observed by competent persons in Consultant's area of specialty in the State of California at the time such Services are rendered.
- B. Consultant shall perform the Services and prepare all deliverables without any errors or omissions, and in accordance with Section Two Duties of Consultant, subsection 8. Compliance with All Laws.
- C. Consultant and its Subconsultants must perform the 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 as per the provisions of Section Two Duties of Consultant, subsection 8. Compliance with All Laws.

### **SECTION THREE**

#### **DUTIES OF DISTRICT**

##### **1. Available Data**

The District will make available to Consultant all data and information in its possession and control and which it deems necessary to the preparation of the deliverables specified in the Schedule. The District will actively aid and assist Consultant in obtaining such information from other agencies and individuals as it deems necessary. The District is not responsible for providing data and information that it does not possess.

##### **2. Review of Deliverables**

- A. The District will designate a Project Manager (District Project Manager) for purposes of administering and managing this Agreement.
- B. Consultant's progress in completing the Services will be reviewed by the District Project Manager at each milestone identified in an executed Task Order or at such other time(s) at the discretion of the District.
- C. Consultant must notify the District in writing when it completes and has submitted to the District each deliverable as per an executed Task Order. Deliverables deemed satisfactory and in compliance with this Agreement are subject to approval by District. Within 30 calendar days of receipt of each deliverable, the District will either (1) notify Consultant that the District accepts the deliverable, or (2) notify the Consultant that the deliverable is not acceptable and must be revised.
- D. If the District advises Consultant that a deliverable must be revised due to errors or omissions by the Consultant, Consultant must correct, at no cost to the District, those deficiencies as soon as possible and shall notify the District upon completion of the revised deliverable and submit to the District.
- E. The District will then review the revised deliverable and within 30 calendar days of receipt, advise the Consultant if the revised deliverable is acceptable. All deficient deliverables will be revised at no cost to the District and this process will continue until Consultant has corrected all deficiencies identified by the District.
- F. None of the proposed changes or revisions or anything else in this Agreement will be construed to relieve the Consultant of professional or legal responsibility for the performance of the Services as otherwise required by the Terms and Conditions of this Agreement. Corrections to any deliverable as a result of Consultant's errors or

omissions, as determined by the District, will not result in additional costs or expenses to the District.

### **3. Access to District Facilities**

The District will facilitate access to District facilities as required for the Consultant to perform the Services.

## **SECTION FOUR**

### **FEEES AND PAYMENTS**

#### **1. Total Fixed Not-to-Exceed Fees**

- A. Payment for all Services performed by Consultant to the satisfaction of the District, as described in the Schedule will be based on the Total Fixed Not-to-Exceed (NTE) Fees stated in Attachment One to the Schedule, Fees and Payments, for completion of the associated tasks. The District will make payments to the Consultant according to the terms provided for herein and in Attachment One to the Schedule, Fees and Payments. Payments made by the District to the Consultant for Services rendered will be considered full compensation for all personnel, materials, supplies, Subconsultant(s), equipment, reimbursable travel and per diem expenses incurred by the Consultant to perform the Services. All Service requests will be made by the District on an as-needed basis, subject to future Task Order(s) executed by the District and Consultant.
- B. It is understood and agreed that this total is an estimate, and that the actual amount of Services requested by the District may be less. There is no guarantee, either expressed or implied, as to the actual dollar amount that will be authorized under this Agreement.
- C. Attachment One to the Scope of Services, Fees and Payments, sets forth the hourly rates and fixed fee amounts, 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 from the District Deputy Operating Officer.
- E. Notwithstanding any other provision of this Agreement, District 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 the District for Services do not exceed the amounts normally charged by Consultant to other customers for similar Services.
- F. Upon the written approval of the District Deputy Operating Officer referenced herein, the Services described in a Task Order task may be reduced or eliminated.
- G. Automobile travel mileage expenses will be paid at the current IRS rate. District will not reimburse Consultant nor its Subconsultants for mileage nor travel time to and from District Headquarters and surrounding campus located at 5700 Almaden Expressway,

San Jose, California. However, 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 with regulatory agencies, for community outreach activities and meetings, for partnering meetings, and Dispute Review Board meetings.

## **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 District 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 Attachment One to Schedule, 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 the Consultant is adding an administrative, processing, overhead or mark-up fee, the District will not pay for such duplication of costs for both the 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, the Consultant must invoice the District for a Task Order within 30 calendar days of the District accepting the deliverables of that Task Order.
- D. Consultant shall send all invoices to:

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 mailed); and
  - 7) 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 Attachment A to the Task Order(s). Unless otherwise specified in a Task order, Consultant will be paid for the Services as described in an executed Task Order.
- G. District Project Manager will review Consultant's written invoice within five District 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. District will pay undisputed invoice amounts within 30 calendar days from date invoice is received by District Project Manager.
- H. District may in good faith assert a bonafide dispute as to all or a portion of fees specified in any invoice. If any portion of an amount due to Consultant under this Agreement is subject to a bonafide dispute between the Parties, within 30 calendar days of Consultant's delivery of the invoice on which a disputed amount appears, District will notify Consultant in writing of the specific items in dispute, and will describe the District's reason(s) for disputing each such item. Consultant and the District Project Manager must act in good faith to resolve this dispute in a timely manner. If the dispute is not resolved by the Consultant and District Project Manager within 30 calendar days of Consultant receiving District's written notice of dispute, Consultant and the District will attempt to resolve the Dispute pursuant to Appendix Two to the Standard On-Call Consultant Agreement, 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.



### 3. Prevailing Wages – NOT USED

- 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.
- B. Labor Code §1720 includes “Inspection and Land Surveying” in its definition of “Public Works.” If Consultant’s Services includes such work, Consultant and its Subconsultants must comply with all Labor Codes applicable to prevailing wages.
- C. The 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.
- 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, the 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 to verify statutory compliance with the prevailing wage requirement, such as certified payroll records, 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.
- G. **California State Department of Industrial Relations Contractor and Sub-Contractor Registration Requirements**

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

### 4. Retention

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 invoices for that Task Order will be withheld by the District and not paid to Consultant until 30 calendar days after the assigned District representative signs the final approval for all Services/deliverables as stated in the executed Task Order, consistent with Section Three Duties of District, subsection 2. Review of Deliverables. Provided that at any

time after 50% of the work has been completed, the District may, at its sole discretion, determine that satisfactory progress is being made in the completion of the Agreement, and prospectively make the remaining progress payments in full. The retention previously withheld on the first 50% of the work will continue to be withheld until final contract close out.

## **SECTION FIVE**

### **SCHEDULE OF COMPLETION**

#### **1. Performance of Tasks**

Consultant will commence performing the tasks described in the Scope of Services of an executed Task Order upon receipt of the Task Order Notice to Proceed (NTP) issued by the District.

#### **2. Task Order Schedule**

Consultant will perform and complete the Services in accordance with the schedule (Schedule) as described in each Task Order. 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.

#### **3. Project Delays**

Consultant will make all reasonable efforts to comply with the Schedule as stated in a Task Order. In the event the Task Order Schedule will be delayed, Consultant will notify the District Project Manager 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, at its discretion, grant a reasonable adjustment in the Schedule.

#### **4. Changes to the Schedule.**

District's Project Manager and Consultant may agree to modify the Schedule specified for Consultant's performance in an executed Task Order as an administrative modification to the Task Order and will confirm such modifications in writing.

## **SECTION SIX**

### **AGREEMENT MODIFICATIONS**

The Parties may agree to modify the Terms and Conditions of this Agreement by executing a written amendment hereto.

## **SECTION SEVEN**

### **TERM AND TERMINATION**

## **1. Term & Automatic Termination.**

No Task Order will be written which extends beyond the expiration date of this Agreement. Consultant will not undertake to provide Services where it reasonably appears that the Services cannot be performed and completed within the Term of this Agreement. Uncompleted and/or unfinished Task Orders will co-terminate with this Agreement.

## **2. District 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 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 subsection 3. Consultant's Compensation upon Termination or Suspension.
- 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.

## **3. Consultant's Compensation upon Termination or Suspension**

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, as follows:

- A. 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;
- B. Other Direct Costs and Expenses: Consultant shall be entitled to receive compensation for all authorized other direct costs and 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 Agreement or applicable Task Order for that item of Service.

**4. Survival**

The Terms and Conditions of this Agreement, that by their context and a standard of reasonableness, are intended to survive termination, suspension, completion, and expiration of this Agreement, shall survive, including but not limited to, the following Sections and subsections: Independent Contractor Status, Confidentiality, Indemnification, Insurance Requirements, and Dispute Resolution, as well as any Consultant representations and warranties.

**SECTION EIGHT**

**INDEMNIFICATION**

Notwithstanding any other provision of this Agreement, 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 the Consultant's negligence, recklessness, or willful misconduct. The foregoing does not limit any strict liability imposed onto the Consultant by law. The rights, duties, and obligations of the Parties as set forth above in this Section Eight, Indemnification, survive termination, expiration, completion, and suspension of this Agreement.

**SECTION NINE**

**INSURANCE REQUIREMENTS**

Insurance requirements applicable to this Agreement are set forth in the Standard On-Call Consultant Agreement, Appendix Four Insurance Requirements. Consultant must provide and maintain at its own expense, during the term of this Agreement, or as may be further required

herein, all insurance coverages as detailed in the Standard On-Call Consultant Agreement, Appendix Four Insurance Requirements, and comply with all provisions stated therein.

## **SECTION TEN**

### **OWNERSHIP AND REUSE OF DELIVERABLES**

#### **1. District Ownership**

All deliverables and other materials prepared by Consultant, including computer programs and media developed by the Consultant, to perform the Services, during the term of this Agreement, will be and remain the property of the District following payment in full to Consultant for each task or portion of a completed task, or in accordance with Section Seven Term and Termination. In the event the work is not completed, the completed portions thereof will become the property of the District. Consultant will provide the District with such deliverables and material at appropriate times during this Agreement. Consultant may retain a copy for its records. Consultant does not convey, assign, or transfer the intellectual property rights it has so as to limit its ability or right to develop, design, or provide services on other projects of or for its other clients.

#### **2. Reuse of Instruments of Service**

If the District desires to reuse the completed plans, specifications, or other deliverables, in total or in part, on project sites associated with this Agreement, or any other site, or to complete any incomplete portion of construction documentation which the District has already paid Consultant, the District will release Consultant from any liability incurred by the District from reusing said deliverables.

#### **3. Copies of Data**

Copies of data exchanged by, through, and between the District and Consultant that may be relied upon are limited to printed copies. Computer-generated files, disks, or tapes of text, data or graphics that are furnished are only for the mutual convenience of the Parties.

#### **4. Computer-Generated Material**

Any risk of translation or reliance on information obtained or derived from computer-generated material is at the user's sole risk, and no representations are made, either express or implied, as to the long-term performance of data thus transferred.

#### **5. Work for Hire**

Any and all original correspondence, memoranda, reports, designs, plans, specifications, data compilations, computer programs, or drawings delivered to the District by Consultant according to the Terms of this Agreement, in or by any medium is deemed to be "work for hire" according to the copyright laws of the United States and the copyright belongs to the District.

## **6. Copyright Claims**

Co-venturers, subcontractors, Subconsultants, suppliers, and vendors to Consultant are likewise bound by these copyright terms. The District makes no copyright claim and requires no release for copyrighted material or trademarked names used incidentally by Consultant.

## **SECTION ELEVEN**

### **EQUAL OPPORTUNITY**

#### **1. Equal Opportunity Employer**

The Santa Clara Valley Water District 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, the 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, 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**

The Consultant's policy must conform with applicable state and federal guidelines including the Federal Equal Opportunity Clause, "Section 60-1.4 of Title 41, Part 60 of the Code of Federal Regulations," Title VII of the Civil Rights Act of 1964 as amended; the Americans with Disabilities Act of 1990; the Rehabilitation Act of 1973 (Sections §503 and 504); the Age Discrimination Act of 1975 (42 U.S.C. sec. 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 assuring nondiscrimination and non-harassment as provided in this Agreement. Consultant must investigate all complaints directed to it by District. District will refer complaints in writing and Consultant will advise District in writing when such investigations are concluded. The scope of such investigations must include all appropriate officers, employees, and agents of

the Consultant, as well as all subcontractors, Subconsultants, and material suppliers of the Consultant. In cases where such investigation results in a finding of discrimination, harassment, or hostile work environment, Consultant must take prompt, effective disciplinary action against the offender.

## **SECTION TWELVE**

### **MISCELLANEOUS PROVISIONS**

#### **1. Entire Agreement**

This Agreement, which includes the Terms and Conditions, Appendices, the Schedule Attachments to the Schedule, and all executed Task Orders, represents the entire understanding between the Parties hereto relating to the Services described in this Agreement and its executed Task Orders incorporated herein by this reference hereto and supersedes any and all prior proposals or agreements, whether written or oral, that may exist between the Parties. This Agreement may not be modified or amended except in writing as stated herein. To the extent that any Schedule conflicts with this Agreement, this Agreement shall control.

#### **2. Formation of Agreement**

- A. No agreement between the Parties is formed until all applicable actions have been completed to the satisfaction of District. The District Project Manager will not issue a Notice to Proceed until all required documents have been submitted and accepted by the District.
- B. Formation of this Agreement between the Parties requires accomplishment of the following, as applicable:
  - 1) Execution of the Agreement by Consultant;
  - 2) Submission by the Consultant, and acceptance by the District, of evidence of all required insurance coverages and documents;
  - 3) Submission by the Consultant, and acceptance by the District, of evidence of all required Form 700 documents, if applicable;
  - 4) Submission by the Consultant, and acceptance by the District, of all required Non-Disclosure Agreements (NDA) documents as provided in Attachment Four to the Schedule, Reference Materials, if applicable;
  - 5) Submission by the Consultant, and acceptance by the District, of a Health and Safety Plan, if applicable;
  - 6) Any other requirements that are deemed necessary by the District; and
  - 7) Execution of the Agreement by the District.

### **3. No Assignment**

- A. 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 obligations hereunder, without prior written consent of District in the form of an amendment executed by the 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 monies 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.
  
- B. In no event shall an assignment of any interest in this Agreement release the Consultant from its duties and responsibilities as described in this Agreement nor shall the Consultant be released from liability created by the provision of Services as described in this Agreement until such assignment takes effect. Any attempted or purported assignment without the District's written consent in the form of an amendment executed by the Parties is null and void.

### **4. Reasonableness**

Discretionary actions or approvals to be performed by the Parties will be exercised in a reasonable manner.

### **5. Gifts**

Consultant hereby acknowledges that District policy prohibits the acceptance by District personnel of gifts of any kind from its contractors, consultants, suppliers or vendors. Consultant shall honor this policy by not sending or bringing gifts to the District.

### **6. Audits**

Consultant agrees that the District and its agent(s) have the right to review, obtain, and copy all records pertaining to performance of this Agreement. Consultant agrees to provide the District and its agent(s) with any relevant information requested and will permit the District and its agent(s) access to its premises, upon reasonable notice, during normal business hours for the purpose of interviewing employees and inspecting or copying books, records, accounts, computerized records, and other materials that may be relevant to the matter under investigation or subject to audit, such as by a government agency, providing the District with grant funds to pay for Consultant's services for the purpose of determining compliance with this Agreement. Consultant further agrees to maintain such records for a period of three years after final payment as provided for in this Agreement.

### **7. Force Majeure**

Neither Party will be held responsible for delays caused by acts beyond its control, such as acts of God or public enemies, utility or communication delays, or failures not caused by



such Party's negligence or fault, accidents not caused by such Party's negligence or fault, labor disputes, war, or failure of the other Party to provide data as required pursuant to this Agreement.

## **8. Binding Effect**

This Agreement is binding on the heirs, executors, administrators, successors and assigns of the Parties.

## **9. Choice of Law and Venue**

The Parties agree that this Agreement is to be governed, construed and enforced in accordance with the laws of the State of California. The Parties also agree that the venue of any litigation arising out of or connected with this Agreement will lie exclusively in the state trial court or Federal District Court located in Santa Clara County in the State of California, and the Parties consent to jurisdiction over their persons and over the subject matter of any such litigation in such courts, and consent to service of process issued by such courts.

## **10. Confidentiality**

- A. Due to the nature of the services Consultant will provide pursuant to this Agreement, there may be disclosures made to 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.
- B. 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.
- C. In the event Consultant receives such restricted or confidential information, Consultant will limit access to the information to only those of Consultant's employees, its subcontractors and its Subconsultants authorized by the District to have the information.
- D. Consultant will notify the District immediately of any request by any third party to have access to confidential information and will not disclose the requested information without first receiving express written authorization from the District.
- E. Notwithstanding the aforementioned Confidentiality requirements, upon the request of the District Project Manager Consultant and its Subconsultants shall execute the District's most current Non-Disclosure Agreement in effect at that time.
- F. The requirements stated herein will survive completion, expiration, suspension, and termination of this Agreement.

## **11. 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 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 pursuant to this Agreement will be referred immediately to the District. Consultant will not communicate with the media regarding any such matter.

## 12. Conflict of Interest

- A. Consultant represents that there exists no actual or potential conflict of interest concerning the services to be performed pursuant to this Agreement.
- B. Consultant represents that Consultant's performance required as stated in this Agreement does not require the breach of any agreement or obligation to keep in confidence the proprietary information of another party. Consultant will not bring to the District, or use in the performance of Consultant's duties as described in this Agreement, any materials or documents of another party considered confidential or proprietary unless Consultant has obtained written authorization from such party, and the informed consent of the District, for the possession and use of such materials.
- C. 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 shall 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.
- D. 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 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 employees, officers, agents, Subconsultants, and subcontractors assigned to perform services pursuant to this Agreement, that filed an Assuming Office Statement, shall file an Annual Statement in a manner prescribed by the District, during the District's annual filing season as determined by the District;
- 4) Consultant 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; and
  - b. Within 30 calendar days of Consultant employees, officers, agents, Subconsultants, and subcontractors vacating a designated filing 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 §81000 et. seq. and Government Code §1090. If any of Consultant's employees, officers, agents, Subconsultants, and subcontractors are disqualified from providing services, on written notice from District Project Manager, Consultant will have 15 calendar days to remove said 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) 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.

### 13. Task Orders

- A. Some tasks and Services will be assigned to the Consultant through issuance of Task Orders. After the tasks and Services are identified and communicated to the Consultant by the District Project Manager, Consultant will prepare a proposed Task Order (See the Standard On-Call Consultant Agreement, Appendix Three Task Order Template).

The proposed Task Order must identify the following:

- 1) Description of the services, including deliverables;
- 2) The total Not-to-Exceed Fees for Consultant to complete the services, including estimated number of hours per assigned staff to complete the services;

- 3) Proposed staff that will be assigned to complete the services, including resumes if not previously provided to the District's Project Manager;
  - 4) Estimated cost of each other direct cost and reimbursable expense, including any applicable fees;
  - 5) Schedule for completing the services; and
  - 6) Copies of applicable state and federal permits required to complete the services, unless previously provided to the District.
- B. Consultant agrees that the Not-to-Exceed Fees 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 both the District's authorized representative referenced in the Standard On-Call Consultant Agreement, Appendix One Additional Legal Terms and the Consultant's authorized representative.
- C. Consultant must not commence performance of work or services on a Task Order until it has been approved by the District's authorized representative and Notice to Proceed has been issued by the District Project Manager. 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.
- D. Prevailing Wage Requirements: The Scope of Services may be considered by the District to be "Public Works" requiring the payment of prevailing wages. See the Standard Consultant Agreement Section Four Fees and Payments, subsection 3. Prevailing Wages, and Appendix Three Task Order Template.

#### **14. Good Neighbor**

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

#### **15. Governmental Permits and Notifications**

Unless otherwise expressly stated herein or in an executed Task Order, Consultant represents and warrants that it has investigated the need for, and has or will procure, at its cost, and in its own name to the extent allowed by law, all governmental permits, notifications, approvals and inspections required for the performance of the Services. Consultant shall promptly notify the District if any such permit or approval lapses or is modified or revoked. If, pursuant to applicable law, any such permits or approvals must be

procured in the District's name, Consultant shall promptly so inform the District and assist the District in obtaining such permits or approvals.

## **16. Taxes and Benefits**

Consultant has full and exclusive liability for the payment of, and Consultant will pay, any and all taxes and contributions for unemployment insurance, retirement benefits, workers' compensation insurance or benefits, life insurance, pensions, annuities and similar benefits and any other employment-related costs, obligations, and duties that may now or hereafter be imposed by law, collective bargaining agreements or otherwise with respect to persons employed by Consultant for the performance of Services pursuant to this Agreement.

## **17. Nonwaiver of Rights**

The failure of either Party to this Agreement to object to or to take affirmative action with respect to any conduct of the other Party that is in violation of the terms of this Agreement will not be construed as a waiver thereof, or as waiver of any future breach or subsequent wrongful conduct.

## **18. Notices**

Unless otherwise specified in this Agreement, all requests for written approval or legal notices must be sent to the representatives below. All notices are 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:

Deputy Officer, as listed in section 1. Representatives, of the attached Schedule, Scope of Services.

CONSULTANT:

Consultant Principal Officer, as listed in section 1. Representatives, of the attached Schedule, Scope of Services.

## **19. Appendices**

Standard On-Call Consultant Agreement, and the following listed Appendices incorporated herein by this reference as though set forth in full:

Appendix One - Additional Legal Terms  
Appendix Two - Dispute Resolution  
Appendix Three - Task Order Template  
Appendix Four - Insurance Requirements

## **20. Schedule and Attachments**

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

Attachment One - Fees and Payments

Attachment Two - Schedule of Completion

Attachment Three - Consultant's Key Staff and Subconsultants

Attachment Four - Reference Materials

*(SIGNATURES FOLLOW ON NEXT PAGE)*

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IN WITNESS WHEREOF, THE PARTIES HAVE SET FORTH BELOW THEIR CONSENT TO THE TERMS AND CONDITIONS OF THIS AGREEMENT THROUGH THE SIGNATURES OF THEIR DULY AUTHORIZED REPRESENTATIVES.

**SANTA CLARA VALLEY WATER DISTRICT**  
District


By:

  
Linda J. LeZotte  
Chair, Board of Directors

Date: 10/08/19

**VENA SOLUTIONS USA, INC.**  
Consultant

By:

  
Neil Thomas  
Chief Revenue Officer

Date: 9/26/19

Consultant's Address:

2 Fraser Solutions, Suite 200  
Toronto, ON M6K1Y6

ATTEST:

  
Michele L. King, CMC  
Clerk, Board of Directors

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**STANDARD ON-CALL CONSULTANT AGREEMENT  
APPENDIX ONE  
ADDITIONAL LEGAL TERMS**

**1. Conflict of Interest for Future Services**

Consultant, Consultant's parent company, Consultant's subsidiaries, or any affiliated entity sharing substantially similar ownership of or control with Consultant shall not submit a proposal:

- A. For any agreement to be awarded for any project that is related to the Services provided pursuant to this Agreement;
- B. 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
- C. For any single or sole source products/services related to the Services pursuant to this Agreement, or have a financial stake in any single or sole source products/services resulting from this Agreement.

**2. Dispute Resolution**

If a dispute occurs between the Parties as a result of this Agreement, then the Parties agree to use the Dispute Resolution process outlined in the Standard On-Call Consultant Agreement, Appendix Two Dispute Resolution.

**3. Small Business Enterprise (SBE) Participation**

This Agreement provides for the Consultant to include California Department of General Services certified Small/Micro Businesses in the performance of the Services, estimated to be 0% or more of the Total Not-to-Exceed Fees stated in the Standard On-Call Consultant Agreement, Schedule OC, Attachment One Fees and Payments, and Consultant agrees to use its best efforts to meet this goal.

**4. Task Order Approvals**

- A. Services to be performed pursuant to a Task Order may only commence once a specific Notice to Proceed for that Task Order has been issued by the District.
- B. Task Orders are subject to approval by the District's Deputy Operating Officer unless delegated to the Unit Manager.
- C. District Unit Manager(s) is authorized to approve individual Task Orders in an amount not-to-exceed \$60,000.
- D. The total not-to-exceed amount for any one Task Order shall not exceed \$ [NOT-TO-EXCEED AMOUNT]. [NOT USED]



**STANDARD ON-CALL CONSULTANT AGREEMENT  
APPENDIX TWO  
DISPUTE RESOLUTION**

**1. Consultant's Questions and Concerns**

Questions regarding the Terms, 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

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

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

B. Request for Mediation

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.

**STANDARD ON-CALL CONSULTANT AGREEMENT  
APPENDIX TWO  
DISPUTE RESOLUTION**

**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.
- 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**

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

**STANDARD ON-CALL CONSULTANT AGREEMENT  
APPENDIX TWO  
DISPUTE RESOLUTION**

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.
- 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 confidential information disclosed to a mediator 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;

**STANDARD ON-CALL CONSULTANT AGREEMENT  
APPENDIX TWO  
DISPUTE RESOLUTION**

- b. Statements made by the other Party in the course of the mediation proceedings;
- c. Proposals made or views expressed by the mediator; and
- 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**

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**

No mediator shall be a necessary Party in judicial proceedings related to the mediation.

**O. Interpretation and Application of These Mediation Provisions**

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.

**STANDARD ON-CALL CONSULTANT AGREEMENT  
APPENDIX TWO  
DISPUTE RESOLUTION**

**5. Compensation for Participation in Mediation**

Neither Consultant nor the District is entitled to compensation for time spent in or for negotiations or mediation to resolve questions or disputes between Consultant and District arising out of this Agreement.

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**STANDARD ON-CALL CONSULTANT AGREEMENT  
APPENDIX THREE  
TASK ORDER TEMPLATE**

Task Order No. \_\_\_\_\_

Title: \_\_\_\_\_

Agreement: Standard On-Call Consultant Agreement \_\_\_\_\_ (Agreement) by and 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 the Standard On-Call Consultant Agreement, Section Twelve Miscellaneous Provisions, subsection 13. 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; and
  - D. Project schedule for completing the Scope of Services.
3. Consultant shall be compensated at fixed fees or at the hourly rates established in Attachment One to the Schedule, Fees and Payments, of the Agreement. Consultant agrees that it will provide all equipment, furnish all materials, except as may be otherwise noted in the Attachment A.

**STANDARD ON-CALL CONSULTANT AGREEMENT  
APPENDIX THREE  
TASK ORDER TEMPLATE**

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].
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. 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 the Standard On-Call Consultant Agreement, Section Four Fees and Payments, subsection 3. 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: \_\_\_\_\_ DATE \_\_\_\_\_  
                  [NAME OF CONSULTANT FIRM]  
                  [PRINT NAME]  
                  [PRINT TITLE]

Signature: \_\_\_\_\_ DATE \_\_\_\_\_  
                  SANTA CLARA VALLEY WATER DISTRICT  
                  [PRINT NAME]  
                  [PRINT TITLE]

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**STANDARD ON-CALL CONSULTANT AGREEMENT  
APPENDIX FOUR  
INSURANCE REQUIREMENTS**

**Please Note: Failure to comply with the instructions below could result in a delay in receiving the Notice to Proceed. The District 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 Appendix IV insurance requirement.**

Without limiting the Consultant's indemnification of, or liability to, the Santa Clara Valley Water District ("District"), 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 District with copies of all original endorsements affecting coverage required by this Appendix. 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, District 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 Appendix insurance document.

If your insurance broker has any questions about the above requirements, please advise him/her to call Mr. David Cahen, District Risk Manager at (408) 630-2213.

**Certificates of Insurance**

Consultant shall furnish the District 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 District Contract Administrator and email a copy to **Insurance.Certificates@valleywater.org**.

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/CAS No. 5027**



**STANDARD ON-CALL CONSULTANT AGREEMENT  
APPENDIX FOUR  
INSURANCE REQUIREMENTS**

**IMPORTANT: The agreement or CAS number must be included.**

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

1. Certificate Holder shall be named as Additional Insured;
2. District 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 Appendix IV Insurance may be cancelled or coverage reduced for any reason whatsoever, Consultant or insurer shall immediately provide written notice to the designated District Contract Administrator that such insurance policy required by this Appendix IV Insurance is canceled or coverage is reduced.**

**Maintenance of Insurance**

If Consultant fails to maintain such insurance as is called for herein, District, 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 the District 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:

**[Insurance.Certificates@valleywater.org](mailto:Insurance.Certificates@valleywater.org)**

2. Provide the following information in the "Certificate Holder" box:

**Santa Clara Valley Water District  
5750 Almaden Expressway  
San Jose, CA 95118  
Agreement/CAS No. 5027**

**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).

**STANDARD ON-CALL CONSULTANT AGREEMENT  
APPENDIX FOUR  
INSURANCE REQUIREMENTS**

**Required Coverages**

- 1. 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.

- 2. 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.

- 3. Professional/Errors and Omissions Liability** with coverage as indicated:

**\$5,000,000** per claim/ **\$5,000,000** 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.

- 4. Workers' Compensation and Employer's Liability Insurance**

Statutory California Workers' Compensation coverage covering all work to be performed for the District.

**STANDARD ON-CALL CONSULTANT AGREEMENT  
APPENDIX FOUR  
INSURANCE REQUIREMENTS**

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 the District. **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 the District, its Directors, its officers, agents and employees, and the District'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 the District.
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 the District's Risk Manager. Non-Admitted companies may be substituted on a very limited basis at the Risk Manager's sole discretion.
5. **Self-Insured Retentions or Deductibles:** Any deductibles or self-insured retentions must be declared to and approved by the District. At the option of the District, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the District, its officers, officials, employees and volunteers; or the Consultant shall provide a financial guarantee satisfactory to the Entity guaranteeing payment of losses

**STANDARD ON-CALL CONSULTANT AGREEMENT  
APPENDIX FOUR  
INSURANCE REQUIREMENTS**

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 the District.
7. **Amount of Liability not Limited to Amount of Insurance:** The insurance procured by Consultant for the benefit of the District must not be deemed to release or limit any liability of Consultant. Damages recoverable by the District 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 the District 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:** The District 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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**STANDARD ON-CALL CONSULTANT AGREEMENT  
APPENDIX FOUR  
INSURANCE REQUIREMENTS**

**CHECK LIST OF DOCUMENTS NEEDED**

<b>General Liability:</b>	A.	Limits <b>(\$2,000,000)</b>	
	B.	Additional Insured (Endorsement)	
	C.	Waiver of Subrogation (COI, Endorsement or policy language)	
	D.	Primacy (COI, Endorsement or policy language)	
	E.	Cancellation Endorsement	
<b>Auto Liability:</b>	A.	Limits <b>(\$2,000,000)</b>	
	B.	Additional Insured (Endorsement)	
	C.	Waiver of Subrogation (COI, Endorsement or policy language)	
	D.	Primacy (COI, Endorsement or policy language)	
	E.	Cancellation Endorsement	
<b>Umbrella:</b>	A.	Limits (\$)	
	B.	Primacy (Endorsement or policy language)	
<b>Workers Comp:</b>	A.	Limits <b>(\$1,000,000)</b>	
	B.	Waiver of Subrogation (Endorsement or policy language)	
	C.	Cancellation Endorsement	
<b>Professional Liability:</b>	A.	Limits <b>(\$5,000,000)</b>	

Appendix IV ConsultantGL2AL2PL5\_rev. 10.23.18

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**SCHEDULE OC  
ON-CALL SCOPE OF SERVICES**

**1. Representatives**

- A. The District's representatives are as listed below. Unless otherwise provided in this Agreement, all correspondence to the District must be addressed to the District's Project Manager (DPM).

Jennifer Martin (District Project Manager)  
Senior Management Analyst  
Planning and Analysis Unit  
Santa Clara Valley Water District  
5750 Almaden Expressway  
San Jose, CA 95118-3638

Phone: (408) 630-3724  
Email: [jmartin@valleywater.org](mailto:jmartin@valleywater.org)

Beth Redmond (District Unit Manager)  
Planning and Analysis Unit  
Santa Clara Valley Water District  
5750 Almaden Expressway  
San Jose, CA 95118-3638

Phone: (408) 630-2682  
Email: [bredmond@valleywater.org](mailto:bredmond@valleywater.org)

Darin Taylor (Chief Financial Officer)  
Santa Clara Valley Water District  
5750 Almaden Expressway  
San Jose, CA 95118-3126

Phone: (408) 630-3068  
Email: [dtaylor@valleywater.org](mailto:dtaylor@valleywater.org)

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

Justin Chiu  
Director, Solution Services  
Vena Solutions  
2 Fraser Ave, Toronto, ON, M6K 1Y6 Suite #200

Phone: (416) 450-8808  
Email: [jchiu@venacorp.com](mailto:jchiu@venacorp.com)

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

**SCHEDULE OC  
ON-CALL SCOPE OF SERVICES**

Mark Barrese  
Customer Success Manager  
Vena Solutions  
2 Fraser Ave, Toronto, ON, M6K 1Y6 Suite #200

Phone: (416) 207-1770, ext. 339  
Email: [mbarrese@venacorp.com](mailto:mbarrese@venacorp.com)

**2. Scope of Services**

The objective of this Agreement for on-call services is for Consultant to perform general and specialized programming and Vena support services on an "as-requested" or "as-needed basis", to assist the Santa Clara Valley Water District (District) in accomplishing its capital improvement program (CIP) and annual budget development and reporting in an effective and timely manner. Requests for the services of qualified software staff from the Consultant's team may come at any time and may require different level of staff experience, and expertise to perform the requested tasks.

**3. Project Background**

- A. The Santa Clara Valley Water District (District) is a public agency providing water supply, flood protection and stream stewardship throughout Santa Clara County. It serves approximately two million people in all 15 cities and the unincorporated areas in the county. The District also manages the groundwater basins, which is the source of nearly half of the county's water supply. Groundwater basins are replenished with local surface water and imported water conveyed through the Sacramento-San Joaquin Delta. Imported water and local surface water also supply the District's three water treatment plants. The District collaborates and coordinates with local agencies and recycled water producers on recycled water development and use.
- B. The District's CIP and Budget Office staff routinely provides support for capital projects as well as annual budget development process. The on-call services under this agreement will augment the services of District staff and provide additional Vena software programming and support services as needed.
- C. Agreement A4020A, enacted on 9/13/2016, with Vena Solutions, USA, Inc., was for the design and implementation of a new CIP system, with improved long-term (15 year) planning and forecasting and integration with PeopleSoft Financial system and the Budget Office to improve data accuracy and reduce data redundancy.
- D. To help further this improvement process, enhancements, upgrades and improvements to data transfer, depiction and presentation, along with improvements to technical requirements, will be required on an as-needed basis. Specialized support will be required on a regular basis to help support further improvements to the District's CIP and budget development processes.

**4. Assumptions and Requirements**

**A. General Assumptions and Requirements**

On-Call Vena Enhancements and Support Services  
Standard On-Call Consultant Agreement for GEN-ADMIN Consultant  
Agreements  
Ver. 09-20-19

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**SCHEDULE OC  
ON-CALL SCOPE OF SERVICES**

- 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 the District 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, AutoCAD files, etc. The hard copy deliverables shall be printed in professional quality presentation and submitted in five copies, if requested. District may require original copies of signed documents and/or scanned (Adobe PDF) versions.
- 3) **Review of Deliverables.** The District will review and comment on all Project deliverables and forward to the Consultant for revision and preparation of final versions. As determined by the District, some of the deliverables may also be subject to review and comment from regulatory agencies and stakeholders following the District review process.
- 4) **District Quality Environmental Management System.** The District maintains a Quality Environmental Management System (QEMS) which has procedures, guidelines and work instructions for the performance of various District work. Consultant will perform the Agreement tasks and/or sub-tasks in accordance with the QEMS framework.
- 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 Background.
- 6) **Document Control.** The 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 the District.
- 7) **File Exchange Service.** Consultant will provide a file exchange service, accessible to all parties as designated by the District, 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, the District will not be responsible for delays in completing Project work. Consultant may need to coordinate with District's Information Technology Division to address any firewall issues and/or permissions required to allow for these communications.

**B. Project-Specific Assumptions and Requirements.**

- 1.) Services provided as part of this Agreement will be for the District's CIP and Budget Office Teams and will be provided on a task order basis.



**SCHEDULE OC  
ON-CALL SCOPE OF SERVICES**

2.) Response time for services under Tasks 2 and 3 will be under one business day. Turn-around time for deliverables under Tasks 2 and 3 will be mutually agreed upon but no longer than 10 business days (unless otherwise stated). Turn-around times for services provided on a Task Order basis will be negotiated as part of each Task Order.

3) The Consultant employees assigned to District Tasks will be familiar with all current Vena elements provided to the District and qualified to address questions and changes that do not require major changes to the architectural design.

4.) Deliverables provided based on Task Orders issued from this Agreement require due diligence on the part of the Consultant with regard to project management for each Task Order Scope of Services, functional testing, startup and implementation.

5.) Standard upgrades and updates of Vena software currently in use by the District is assumed to be required as part of the Software as a Service (SaaS) Master Subscription Agreement, enacted 9/13/2016 and will not be covered in this Agreement. Consultant is required to inform District Project Manager if deliverable(s) specified in any Task Order are being delivered in a current or future Vena update – whether in part or in full.

**5. Scope of Services Tasks**

The On-Call Scope of Services will generally include, but is not limited to the following:

**Task 1 – Project Management**

The purpose of Task 1 is to require the Consultant to manage the Scope of Services such that the work is completed within the NTE fee limit and according to the schedule stated in each Task Order, while ensuring that all services and deliverables by the Consultant meet these Scope of Services requirements. The Consultant will perform all Subtasks in the outlined Tasks unless otherwise specified.

This Task includes all project management efforts required to organize Consultant's team, assign and control work, and report progress to the District in the form of monthly progress reports. The Consultant shall be available for meetings with additional parties as requested by the District on matters concerning a Task Order.

**1.1 Monthly and Biweekly Progress Reports.** Each monthly invoice must be accompanied by a monthly Progress Report, unless otherwise directed by the District's Project Manager. In the event there is no invoice, a Progress Report must nonetheless be sent in. Upon request, Consultant must provide a biweekly Progress Report. All Progress Reports must document the work completed, along with the execution of the tasks charged, so as to enable the District to evaluate the Consultant's progress and performance of the work. The Progress Reports shall include:

1.1.1 Assessment of actual versus planned progress with regard to the Project Schedule, including a description of the Tasks, and deliverables completed to date;

**SCHEDULE OC  
ON-CALL SCOPE OF SERVICES**

- 1.1.2 Upon request, Consultant will provide a biweekly progress report detailing the actual versus planned progress with regard to the Project Schedule, including a description of the Tasks and deliverables completed to date;
- 1.1.3 For each task, the percentage of Services performed versus the percentage of Agreement NTE fees incurred for such task, and explanation of any significant variances in percentage of services performed compared to percentage of fees incurred;
- 1.1.4 The fees incurred for each task compared to dollar amount allocated to each task;
- 1.1.5 For each task, identify costs to date and forecast to complete, including staffing by task;
- 1.1.6 For Task Order-based services: A summary of performed tasks to date, an updated Task Order work plan including estimate of level of effort required to complete the Task Order, explanation of any major variances in percentage of Services to be completed compared to percentage of the Task Order NTE fees remaining, and any anticipated changes to the Task Order that may be necessary to complete the Scope of Services; and
- 1.1.7 Any changes in Consultant's key staff or subconsultants.

**Task 2 – Expert Managed Services**

The purpose of this Task is to provide the District expert feedback and support in order to assist with and optimize the District CIP and Budget processes. Support will be provided to District staff at a maximum of 12 hours per month. Services provided under this Task will include but not be limited to:

- 2.1 Problem Definition and Concept Development Report** Consultant will perform investigations, evaluation, and recommendations for enhancement design based on District's existing infrastructure and hardware. Report will include:
  - 2.1.1 Identification of bugs and weak points in existing platform;
  - 2.1.2 Suggestions for bug fixes and patches;
  - 2.1.3 Design of new tools which will improve interface performance;
  - 2.1.4 Programming and implementation of new tools to improve speed and interface performance; and
  - 2.1.5 Recommendations for infrastructure enhancements and improvements.
- 2.2 Implementation** of identified bug fixes and patches.
- 2.3. Technical support** provided via telephone, conference call or email, as needed.
- 2.4 Improvement/optimization** of existing elements, including but not limited to reports, architectural design and templates.

**SCHEDULE OC  
ON-CALL SCOPE OF SERVICES**

- 2.5 Training** will be provided to District staff as necessary to assist with any upgrades/enhancements/improvements to Vena platform.

**Task 2 – Deliverables**

1. Problem Definition and/or Concept Development Report.
2. 12 hours per month of remote support (i.e. GoTo meetings, conference calls).
3. Monthly status reports detailing all Expert Managed Services provided to District staff.

**Task 2 – Assumptions**

1. The District will communicate clear requirements.
2. Unused service hours will not carry forward.
3. Services and deliverables will be provided in English on weekdays (excluding Canadian Holidays) during the following hours:
  - a. During CIP and Budget active phase October 1 to Dec 31 and January 1 to April 30 - 9:00am PST to 5:00 pm PST (12pm to 8pm EST)
  - b. May 1 to September 30 - 6:00 am to 2:00 pm PST (9:00 am - 5:00 pm EST, North America).
4. Services will be provided remotely.
5. If onsite is required, travel costs will be additional and charged to the District.
6. The fees specified for Task 2 are based on a subscription service.
7. The District shall not be invoiced for excess fees in the event that more than twelve (12) hours are used in a single month.

**Task 3 – Extended Expert/Hypercare Services**

The purpose of this Task is for the Consultant to provide additional Expert Managed Services support for eight hours per week, as necessary, during CIP and Budget active phase between October and ~~March~~ April in order to assist with last-minute or emergency requests within a more rapid turn-around time of at least six hours.

- 3.1 Problem Definition and Concept Development Report** Consultant will perform investigations, evaluation, and recommendations for enhancement design based on District's existing infrastructure and hardware. Report will include:
- 3.1.1 Identification of bugs and weak points in existing platform;
  - 3.1.2 Suggestions for bug fixes and patches;
  - 3.1.3 Design of new tools which will improve interface performance;
  - 3.1.4 Programming and implementation of new tools to improve speed and interface performance; and
  - 3.1.5 Recommendations for infrastructure enhancements and improvements.
- 3.2 Implementation** of identified bug fixes and patches.

**SCHEDULE OC  
ON-CALL SCOPE OF SERVICES**

- 3.3. Technical support** provided via telephone, conference call or email, as needed.
- 3.4 Improvement/optimization** of existing elements, including but not limited to reports, architectural design and templates.
- 3.5 Training** will be provided to District staff as necessary to assist with any upgrades/enhancements/improvements to Vena platform.

**Task 3 – Deliverables**

- 1. Problem Definition and/or Concept Development Report.
- 2. 8 hours per week of remote support (i.e. GoTo meetings, conference calls) between the months of October and April.
- 3. Monthly status reports detailing all Expert Managed Services provided to District staff.

**Task 3 – Assumptions**

- 1. Upon receipt of a request for Hypercare services, provide Client with an effort estimation and proposed schedule immediately, within 6 hours.
- 2. For items prioritized as “High”/“Urgent”, Vena will make every effort to perform the requested services as quickly as possible during the same day(s) in which they were scheduled
- 3. For items prioritized as “Medium”/“Low”, Vena and Client will coordinate a mutually agreeable schedule to perform the services
- 4. The fees specified for Task 3 are based on a subscription service.
- 5. Any unused hours may not be carried over into the following month(s).

**Task 4 – Supplemental Services**

The purpose of this Task is to provide the District additional services not defined in Tasks 1 through 3. Additional tasks will be issued on a Task Order basis and will include, but not be limited to:

- 4.1 Additional Enhancements for CIP purposes.** These tasks may include:
  - 4.1.1 Template and Report Design Assistance and modification. During CIP development time.
  - 4.1.2 Data modeling assistance.
  - 4.1.3 Data Integration/SQL view related changes
  - 4.1.4 Vena Server/Add-in upgrade and installation assistance.
  - 4.1.5 Troubleshooting of software issues/bug fixes to Vena software to resolve, during budget development time, within the same business day.
  - 4.1.6 Additional coaching/knowledge transfer or formal training from the Vena consulting team, includes unique system functionalities not commonly utilized.

**SCHEDULE OC  
ON-CALL SCOPE OF SERVICES**

- 4.1.7 Create system or template customizations as needed to meet CIP requirements.
- 4.1.8 Other support, as requested by CIP staff.
- 4.2 Additional Enhancements for Budget purposes.** These tasks may include:
  - 4.2.1 Template and Report Design Assistance and modification during Budget development time.
  - 4.2.2 Data modeling assistance.
  - 4.2.3 Data Integration/SQL view related changes.
  - 4.2.4 Vena Server/Add-in upgrade and installation assistance.
  - 4.2.5 Troubleshooting of software issues/bug fixes to Vena software to resolve, during budget development time, within the same business day.
  - 4.2.6 Additional coaching/knowledge transfer or formal training from the Vena consulting team, includes unique system functionalities not commonly utilized.
  - 4.2.7 Create system or template customizations as needed to meet Budget Office requirements.
  - 4.2.8 Other support, as requested by Budget Office staff.
- 4.3 Additional Enhancements** the Vena software based on Task Order requests in order to improve user interface, multidirectional flow of data, up and download speed of project plans and depiction of data. Such requests may include, but will not be limited to, the following tasks:
  - 4.3.1 Consultant will perform investigations, evaluation, and recommendations for optimizations to user interface;
  - 4.3.2 Consultant will design, program and implement improvements to optimize existing interface applications with Vena and other software in order to:
  - 4.3.3 Improve flow of and auto-population of data from Vena to other programs used by the District (i.e. Microsoft Excel); and
  - 4.3.4 Improve flow of and auto-population of data from other programs into Vena project plans.
  - 4.3.5 Consultant will develop tools to improve the display and presentation of data on user platform, publication onto second-party applications and publication on District website, as needed;

**SCHEDULE OC  
ON-CALL SCOPE OF SERVICES**

- 4.3.6 Consultant will create enhancements to improve functions of CIP Project Pages and implement new tools for Project Pages as needed; and
- 4.3.7 Speed optimization: Consultant will create enhancements to improve download and upload rates for project pages.
- 4.4 IT Infrastructure Assessment** At the District's request, the Consultant shall provide an independent assessment of the District's existing IT infrastructure and provide suggestions for improvements with regard to optimally meeting the requirements of the Vena applications in use
  - 4.4.1 Contract submittals and other documents relating to the progress, tracking, reporting, payment, and scheduling of work
  - 4.4.2 Engineering analysis of work performed or proposed by the Consultant
- 4.5 Updates** Consultant will provide updates to software in order to improve usability and speed
- 4.6 Additional Services.** Consultant shall provide additional quantities of previously identified services as requested by the District. Additional Services can include, but are not limited to:
  - 4.6.1 Additional meetings
  - 4.6.2 Additional status/progress reports
  - 4.6.3 Additional enhancements or reports

**Task 4 – Deliverables**

1. Deliverables will be based on a case-by-case Task assignment. Specific Task Order deliverables will be listed in the specific Task Order issued to the Consultant.

**Task 4 – Assumptions**

1. The District will provide data requirements and support on data extraction (as necessary).
2. The District will provide written definition of requirements where deemed necessary to clearly articulate requirement.
3. The District will be responsible for validation and reconciliation of all data loaded into the solution to ensure accuracy and address any data quality issues.
4. The District will be responsible for the user testing of the configured solution.
5. The District shall be invoiced on a monthly basis based on actual time for work performed, payable based on the fee schedule in Attachment One.

**6. ATTACHMENTS**

On-Call Vena Enhancements and Support Services  
Standard On-Call Consultant Agreement for GEN-ADMIN Consultant  
Agreements  
Ver. 09-20-19

CAS File No. 5027

**SCHEDULE OC  
ON-CALL SCOPE OF SERVICES**

The following listed Attachments are incorporated herein by this reference as though set forth in full:

Attachment One to Schedule OC - Fees and Payments  
Attachment Two to Schedule OC - Schedule of Completion  
Attachment Three to Schedule OC - Consultant's Key Staff and Subconsultants  
Attachment Four to Schedule OC - Reference Materials

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**ATTACHMENT ONE TO  
SCHEDULE OC  
FEES AND PAYMENTS**

**1. Total Authorized Funding**

Total payment for Services performed, to the satisfaction of District, as described in the Schedule and in all approved Task Orders will not exceed a total amount of **\$302,000** (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 the District'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 the District 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.**

**2. Cost Breakdown**

The NTE 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 Supplemental Services without prior written authorization by the District as stated in this Agreement

**COST BREAKDOWN**

Task	Description	Not-to-Exceed Fees
1	Project Management	\$10,000
2	Expert Managed Services	\$72,000
3	Extended Expert/Hypercare Services	\$100,000
4	Supplemental Services	\$120,000
<b>Total Not-to-Exceed Fees</b>		<b>\$302,000</b>

**3. Terms and Conditions**

Payments for Services performed, as defined in each Task Order, which applies to the specific Services, will be based on the following terms:

- A. The District 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 in the Hourly/Unit Rate Schedule and the Cost Breakdown table. In lieu of hourly/unit rates, a flat fee shall apply for all tasks performed under Tasks 2 and 3 for each twelve-month period following the effective date of this Agreement and the issuance of a corresponding task order. The 12-month flat fee for Task 2 shall be \$36,000, and the 12-month flat fee for Task 3 shall be \$50,000 payable at the start of the 12-month period following the issuance of a task order. The District may modify the payment rate structure for Tasks 2 and 3 in accordance with paragraph 3(B) below.



**ATTACHMENT ONE TO  
SCHEDULE OC  
FEES AND PAYMENTS**

B. 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 the District, provided Consultant submits written notice to District 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 the District's Deputy Operating Officer.

**C. 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, and Subconsultant and vendor services. These other direct expenses may be billed at actual cost plus 2.5% percent linked to each Task Order, as approved by the District's Project Manager, provided that the Agreement total NTE amount is not exceeded. Consultant shall provide receipts for each other direct expense item(s) with invoices submitted. The 2.5% markup will be applied only once, either by the Consultant or by its subconsultants, subcontractors, or vendors.
- 2) Equipment purchased on behalf of the District that costs \$50 or more must receive the prior written approval of the District Project Manager. All equipment purchased on behalf of the District and paid for by the District shall become the property of the District and be delivered to District prior to expiration of this Agreement.
- 3) Travel expenses are reimbursed at actual cost. Travel, including air travel, overnight accommodations, and meals, required for performance of this Agreement will be paid per diem at the U.S. General Services Agency Per Diem Rates for Sunnyvale/Palo Alto/San Jose, California area, provided prior approval for such travel has been obtained from the District Project Manager. For air travel, District will pay the cost of a coach class or equivalent ticket. Where air travel is required, District 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 for the actual costs incurred. Vehicle rental is limited to a compact or economy model, unless prior approval has been obtained from the District Project Manager for a different type of vehicle.

D. Expenses incurred by the Consultant for Subconsultants, subcontractors and vendors, including lab services, will be reimbursed at actual cost plus 2.5%. Consultant shall provide invoices for all such services regardless of cost.

**ATTACHMENT ONE TO  
SCHEDULE OC  
FEES AND PAYMENTS**

- E. For staff with rates exceeding the rate of \$/hr., the Consultant must obtain written approval from the District Project Manager as to the numbers of hours per task prior to that individual working on the Project. [NOT USED]

**F. Prevailing Wage Requirements - NOT USED**

- 1) The Scope of Services described in the Task Order; if applicable, is considered by the District 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.
  
- 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 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>.

**ATTACHMENT ONE TO  
SCHEDULE OC  
FEES AND PAYMENTS**

**HOURLY/UNIT RATE SCHEDULE**

CLASSIFICATION	HOURLY/ UNIT RATE
<b>Consultant: Vena Solutions USA, Inc.</b>	
Software technician	\$200/hr
Consultant	\$200/hr
Manager	\$200/hr
Operations Analyst	\$200/hr
Success Advisor	\$200/hr
Director	\$200/hr
Expert Consultant	\$200/hr

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**ATTACHMENT TWO TO  
SCHEDULE OC  
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 24 months after the Effective Date unless, prior to its expiration, its term is modified by a written amendment hereto, and signed by both Parties. Upon agreement, the parties may extend the Agreement for 2 additional 1-year periods.
3. Each Task Order will state the schedule for Consultant's performance of that Task Order.
4. District and Consultant may agree to modify the schedule specified for Consultant's performance in an executed Task Order, as an administrative modification to the Agreement, and will confirm such modification in writing.

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**ATTACHMENT THREE TO  
SCHEDULE OC  
CONSULTANT'S KEY STAFF AND SUBCONSULTANTS**

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

<b>Team Member</b>	<b>Classification</b>	<b>Project Role</b>	<b>Contact Information (Address, Phone and Email)</b>
Justin Chiu	Director	Sponsor	2 Fraser Avenue, Suite 200 Toronto, ON M6K1Y6 <a href="mailto:jchiu@venacorp.com">jchiu@venacorp.com</a> 416-450-8808
Mike Liu	Manager	Advisor/Manager	2 Fraser Avenue, Suite 200 Toronto, ON M6K1Y6 <a href="mailto:mliu@venacorp.com">mliu@venacorp.com</a> 647-669-2823
Mark Barrese	Manager	Advisor	2 Fraser Avenue, Suite 200 Toronto, ON M6K1Y6 <a href="mailto:mbarrese@venacorp.com">mbarrese@venacorp.com</a> 416-207-1770
Tim Szego	Director	Advisor	2 Fraser Avenue, Suite 200 Toronto, ON M6K1Y6 <a href="mailto:tszego@venacorp.com">tszego@venacorp.com</a> 416-207-1770
Vickie Kwan	Expert Consultant	Primary Consultant	2 Fraser Avenue, Suite 200 Toronto, ON M6K1Y6 <a href="mailto:vkwan@venacorp.com">vkwan@venacorp.com</a> 416-720-7661
Josh Tang	Success Advisor	Secondary Consultant	2 Fraser Avenue, Suite 200 Toronto, ON M6K1Y6 <a href="mailto:jtang@venacorp.com">jtang@venacorp.com</a> 647-200-4525
Alex Young	Success Advisor	Secondary Consultant	2 Fraser Avenue, Suite 200 Toronto, ON M6K1Y6 <a href="mailto:ayoung@venacorp.com">ayoung@venacorp.com</a> 647-283-4336

**ATTACHMENT THREE TO  
SCHEDULE OC  
CONSULTANT'S KEY STAFF AND SUBCONSULTANTS**

2. The following Subconsultants are authorized to perform Services on the Agreement:

<b>Firm</b>	<b>Project Role</b>	<b>Contact Information (Address, Phone and Email)</b>
N/A	N/A	N/A

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**ATTACHMENT FOUR TO  
SCHEDULE OC  
REFERENCE MATERIALS**

<b>Ref No.</b>	<b>Description</b>
1	Santa Clara Valley Water District Non-Disclosure Agreement (NDA) and Personal Non-Disclosure Agreement (PNDA)

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