



STANDARD ON-CALL CONSULTANT AGREEMENT

Terms and Conditions Template (On-Call Capital)
1/1/2024 – 12/31/2024

This agreement (Agreement) is effective once fully executed (Effective Date), by and between SANTA CLARA VALLEY WATER DISTRICT (Valley Water or District), CARNEGHI-NAKASAKO & ASSOCIATES, a California corporation (Consultant), individually the Party or collectively the Parties.

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

NOW, THEREFORE, Valley Water 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). Valley Water 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, Miscellaneous Provisions, subsection 13. Task Orders and in the Standard On-Call Consultant Agreement, Appendix Three, 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 Valley Water staff in engineering, asset management, operations, and maintenance units to be made aware of Valley Water 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 Valley Water 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 Section Two, Duties of Consultant, subsection 11. Standard of Care. Examples of such Services include those performed by: California State Licensed Contractors, Professional Engineers and Architects, Inspectors, and Surveyors. Consultant shall make available upon Valley Water's request documentation of qualifications and licensing of personnel performing Services described herein. Consultant must be registered with the California Department of Labor Standards Enforcement if the Services or a portion thereof is determined to be "Public Works" pursuant to California Labor Code §1720(a)(1).

4. Valley Water's Approval of Deliverables

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

5. Errors and Omissions

The Services may include preparation of deliverables by Consultant to be implemented in a public works construction project. Consultant is responsible for any direct or actual damages incurred by Valley Water which Valley Water determines result from Consultant's errors or omissions in Consultant's deliverables, including, but not limited to, any increase in the Valley Water's payment(s) due to its construction contractor, which increase is directly attributable to required revisions to the construction Contract Documents to the extent caused by Consultant's negligent acts, errors, or omissions.

6. Valley Water Standardization Requirements

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

(for blocks, etc., used in the drawings) and that the standards are retained during the conversion process used by Consultant.

7. Consultant's Key Staff and Subconsultants

- A. Consultant's Key Staff and firms subcontracted by Consultant (Subconsultants) assigned to perform the Services are identified in the Schedule(s), Scope of Services, Attachment Three, Consultant's Key Staff and Subconsultants.
- B. The Project team organization chart and delegated responsibilities of each team member will be submitted to Valley Water 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 Valley Water's approval of all Subconsultants. Upon Valley Water'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 Valley Water, on written notice from Valley Water, Consultant will have 15 calendar days to remove that person from the Project and provide a replacement acceptable to Valley Water.
- F. Consultant will not charge Valley Water for the time it takes Consultant's replacement personnel to obtain Valley Water-specific Project knowledge in the possession of the person(s) being replaced.
- G. Consultant's Key Staff: Valley Water's Project Manager (Valley Water Project Manager) or authorized representatives 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) Valley Water's authorized representatives 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 Consultant; such approval will be confirmed in writing.
 - 2) Valley Water'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 Valley Water 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; governmental requirements applicable to state and federal compliance with the Professional Land Surveyors Act; state and federal Endangered Species Act; state and federal water quality laws; and all other state and federal laws or regulations regarding environmental protection and compliance, health, safety, wages, hours, equal employment opportunity, nondiscrimination, working conditions, and transportation. In the event that Valley Water's assistance is necessary to achieve such compliance, Consultant shall promptly notify Valley Water.
- B. Consultant shall provide, at Valley Water's request, documentation demonstrating Consultant's compliance with all laws as described herein. After reasonable notice and according to reasonable conditions, Valley Water 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 Valley Water in the event of any personal injury accident or occurrence occurring during the performance of the Services. Upon Valley Water's request, Consultant shall provide Valley Water 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 Valley Water. 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 Valley Water. Except as expressly provided in this

Agreement, Valley Water 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 VALLEY WATER

1. Available Data

Valley Water 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. Valley Water will actively aid and assist Consultant in obtaining such information from other agencies and individuals as it deems necessary. Valley Water is not responsible for providing data and information that it does not possess.

2. Review of Deliverables

- A. Valley Water will designate a Project Manager (Valley Water Project Manager or Authorized Representative) for purposes of administering and managing this Agreement.
- B. Consultant's progress in completing the Services will be reviewed by Valley Water Project Manager at each milestone identified in an executed Task Order or at such other time(s) at the discretion of Valley Water.
- C. Consultant must notify Valley Water in writing when it completes and has submitted to Valley Water each deliverable as per an executed Task Order. Deliverables deemed satisfactory and in compliance with this Agreement are subject to approval by Valley Water. Within 30 calendar days of receipt of each deliverable, Valley Water will either (1) notify Consultant that Valley Water accepts the deliverable, or (2) notify Consultant that the deliverable is not acceptable and must be revised.

- D. If Valley Water advises Consultant that a deliverable must be revised due to errors or omissions by Consultant, Consultant must correct, at no cost to Valley Water, those deficiencies as soon as possible and shall notify Valley Water upon completion of the revised deliverable and submit to Valley Water.
- E. Valley Water will then review the revised deliverable and within 30 calendar days of receipt, advise Consultant if the revised deliverable is acceptable. All deficient deliverables will be revised at no cost to Valley Water and this process will continue until Consultant has corrected all deficiencies identified by Valley Water.
- F. None of the proposed changes or revisions or anything else in this Agreement will be construed to relieve 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 Valley Water, will not result in additional costs or expenses to Valley Water.

3. Access to Valley Water Facilities

Valley Water will facilitate access to Valley Water facilities as required for Consultant to perform the Services.

SECTION FOUR

FEES AND PAYMENTS

1. Total Fixed Not-to-Exceed Fees

- A. Payment for all Services performed by Consultant to the satisfaction of Valley Water, as described in the Schedule will be based on the hourly rates, subject to the Total Fixed Not-to-Exceed (NTE) Fees stated in the Schedule, Attachment One, Fees and Payments. Valley Water will make payments to Consultant according to the terms provided for herein and in the Schedule, Attachment One, Fees and Payments. Payments made by Valley Water to Consultant for Services rendered will be considered full compensation for all personnel, materials, supplies, Subconsultant(s), equipment, and reimbursable expenses, incurred by Consultant to perform the Services. All Service requests will be made by Valley Water on an as-needed basis, subject to future Task Order(s) executed by Valley Water and Consultant.
- B. It is understood and agreed that there is no guarantee, either expressed or implied, as to the actual dollar amount, if any, of services that will be authorized under this Agreement, and that Valley Water is not obligated to request any service(s) from Consultant at all. However, in valuable consideration for Consultant's agreement to be on-call to perform services for Valley Water upon request with no minimum guaranteed amount of work, Valley Water will pay Consultant Five Hundred Dollars (\$500) on or before the expiration of this Agreement if Valley Water has not requested to utilize Consultant's services during the agreement term.

- C. The Schedule, Attachment One, Fees and Payments, sets forth the hourly rates and NTE fee, if any, for Services Consultant may perform pursuant to an executed Task Order.
- D. Services to be performed pursuant to a Task Order will commence only after written approval by both Valley Water's authorized representative referenced in the Standard On-Call Consultant Agreement, Appendix One, Additional Legal Terms, and Consultant's authorized representative.
- E. Notwithstanding any other provision of this Agreement, Valley Water agrees to pay Consultant in accordance with the terms set forth in an executed Task Order. Consultant represents and warrants that the amounts charged to Valley Water for Services do not exceed the amounts normally charged by Consultant to other customers for similar Services.
- F. Upon the written approval of Valley Water, the Services described in a Task Order task may be reduced, revised, or deleted.
- G. Automobile travel mileage expenses will be paid at the current Internal Revenue Service (IRS) rate. Valley Water will not reimburse Consultant nor its Subconsultants for mileage nor travel time to and from Valley Water Headquarters and surrounding campus located at 5700 Almaden Expressway, San Jose, California. However, Valley Water will reimburse Consultant and its Subconsultants for mileage incurred from Valley Water Headquarters or Consultant's and Subconsultants' firm addresses, whichever is closer to the destination, to Project site(s) and, if directed or authorized by Valley Water, to meeting locations such as with regulatory agencies, for community outreach activities and meetings, for partnering meetings, and Dispute Review Board meetings.

2. Consultant Invoices

- A. Consultant's invoices will be prepared in accordance with the terms of this Agreement, Section Four, Fees and Payments, and represent Services performed and reimbursable costs incurred during the identified billing period. Invoices must be consistent with Scope of Services and executed Task Orders; and include the following:
 - 1) Employee classification and name itemized with all labor charges by Service task;
 - 2) Summary of the amount Consultant has been billed by their Subconsultants and further detailed by Service task;
 - 3) A description of the site where Services were performed, if applicable;
 - 4) The name of Valley Water staff requesting Services;
 - 5) The dates when Services were performed;
 - 6) Other direct charges and reimbursable expenses by Task Order task;
 - 7) Other direct charges and expenses must reflect actual fees versus the Task Order not-to-exceed fees as stated in the Schedule(s), Attachment One, Fees and Payments, and/or Task Orders;

- 8) Level of Small Business (SB) participation, if applicable, documenting the level of SB participation for each Task Order;
 - 9) 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; and
 - 10) To the extent that Consultant is adding an administrative, processing, overhead or mark-up fee, Valley Water will not pay for such duplication of costs for both Consultant and its Subconsultants.
- B. Before submitting monthly invoices, a draft invoice (in Adobe PDF format) will be provided in electronic format by the Consultant for preliminary review by Valley Water Project Manager. Upon preliminary approval by Valley Water, Consultant will email the complete, signed, and dated electronic copy invoice, including all supporting documentation. Valley Water's preliminary review of the draft invoice does not represent final approval of the electronic copy invoice, but is intended to reduce potential for re-submittals of electronic copy invoice by Consultant.
- C. 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.
- D. Notwithstanding language to the contrary in an executed Task Order, Consultant must invoice Valley Water for a Task Order within 30 calendar days of Valley Water accepting the deliverables of that Task Order.
- E. Consultant shall email all invoices to: APinvoice5750@valleywater.org
- Valley Water mailing address for invoices, if needed:
- Santa Clara Valley Water District
Attention: Accounts Payable
P.O. Box 20670
San Jose, CA 95160-0670
- F. Consultant must also ensure that each invoice and corresponding attachments contain the following information:
- 1) Agreement number;
 - 2) Task Order number;
 - 3) Full legal name of Consultant/Firm;
 - 4) Payment remit-to address;
 - 5) Invoice number;
 - 6) Invoice date (the date invoice is emailed);

- 7) Detailed description of Services provided, including the “distribution account(s)” for those Services;
 - 8) Number of hours spent by each person performing services and a brief description of the Services performed by each person; and
 - 9) Beginning and end date for billing period that services were provided.
- G. Consultant shall invoice for its performance of the Services as stated in an executed Task Order on a monthly basis consistent with the task fee breakdown stated in the Task Order(s), Attachment A. Unless otherwise specified in a Task order, Consultant will be paid for the Services as described in an executed Task Order.
- H. Valley Water Project Manager will review Consultant’s written invoice within five Valley Water business days of receipt, address any questions with Consultant’s Contact/Principal Officer and approve the undisputed amount of the invoice within ten working days of receipt of the invoice. Valley Water will pay undisputed invoice amounts within 30 calendar days from date invoice is received by Valley Water Project Manager.
- I. Invoice Disputes
- 1) Valley Water may in good faith assert a bona fide dispute as to all or a portion of fees specified in any invoice. If any portion of an amount due to Consultant pursuant to this Agreement is subject to a bona fide dispute between the Parties, within 30 calendar days of Consultant’s submission of an invoice in which a disputed amount is included, Valley Water will notify Consultant in writing of the specific items in dispute, and will describe Valley Water’s reason(s) for disputing each such item.
 - 2) Consultant and Valley Water Project Manager must act in good faith to resolve the dispute in a timely manner. If the dispute is not resolved by Consultant and Valley Water Project Manager within 30 calendar days of Consultant receiving Valley Water’s written notice of dispute, Consultant and Valley Water will attempt to resolve the dispute pursuant to the Standard On-Call Consultant Agreement, Appendix Two, Dispute Resolution.
- J. 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.
- F. Consultant shall ensure that its personnel performing services pursuant to this Agreement document their time doing so.

3. Prevailing Wages - NOT USED

4. Retention - NOT USED

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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 Valley Water.

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 Valley Water 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 Valley Water 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, Valley Water may, at its discretion, grant a reasonable adjustment in the Schedule.

4. Changes to the Schedule

Valley Water'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. Valley Water Rights

- A. **Suspension:** Valley Water may, by written notice to Consultant, suspend any or all Services pursuant to this Agreement or to any individual Task Order. Valley Water 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:** Valley Water may, by written notice to Consultant, terminate all or part of this Agreement or any Task Order at any time for Valley Water's convenience. Upon receipt of such notice, Consultant will immediately cease all work as specified in the notice. If this Agreement or any Task Order is so terminated, Consultant will be compensated as set forth in Section Seven, Term and Termination, 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 Valley Water specifying such failure or violation, Valley Water 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 Valley Water'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 Valley Water 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 Valley Water, Consultant shall receive compensation based on satisfactory performance, accepted by Valley Water, 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; and
- 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 Valley Water, its agents, officers, directors, and employees from and against any and all demands, claims, damages, losses and reasonable expenses, including but not limited to liabilities, obligations, claims, costs, reasonable expenses (including, without limitation, interest, penalties and reasonable attorney's fees), fines, taxes, levies, imposts, assessment, demands, damages or judgments of any kind or nature, whether in law or equity (including, without limitation, death or injury to any person, property damage, administrative and judicial orders and consents, or any other loss) to the extent they arise out of, pertain to, or relate to Consultant's negligence, recklessness, or willful misconduct. The foregoing does not limit any strict liability imposed on 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.

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SECTION TEN

OWNERSHIP AND REUSE OF DELIVERABLES

1. Valley Water Ownership

All deliverables and other materials prepared by Consultant, including computer programs and media developed by Consultant, to perform the Services, during the term of this Agreement, will be and remain the property of Valley Water 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 Valley Water. Consultant will provide Valley Water 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 Valley Water 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 Valley Water has already paid Consultant, Valley Water will release Consultant from any liability incurred by Valley Water from reusing said deliverables.

3. Copies of Data

Copies of data exchanged by, through, and between Valley Water 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 Valley Water 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 Valley Water.

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6. Copyright Claims

Co-venturers, subcontractors, Subconsultants, suppliers, and vendors to Consultant are likewise bound by these copyright terms. Valley Water 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

Valley Water is an equal opportunity employer and requires its consultants to have and adhere to a policy of equal opportunity and non-discrimination. In the performance of the Agreement, Consultant will comply with all applicable federal, state, local laws and regulations, and will not discriminate against any subcontractor, employee, or applicant for employment in the recruitment, hiring, employment, utilization, promotion, classification or reclassification, transfer, recruitment advertising, evaluation, treatment, demotion, layoff, termination, rates of pay or other forms of compensation, and selection for professional development training (including apprenticeship), or against any other person, on the basis of sex (which includes pregnancy, childbirth, breastfeeding and medical conditions related to pregnancy, childbirth or breastfeeding), race, religion, color, national origin (including language use restrictions), ancestry, religious creed (including religious dress and grooming practices), political affiliation, disability (mental and physical, including HIV or AIDS), medical condition (cancer and genetic characteristics), genetic information, marital status, parental status, gender, age (40 and over), pregnancy, military and veteran status, sexual orientation, gender identity and gender expression, the exercise of family and medical care leave, the exercise of pregnancy disability leave, or the request, exercise, or need for reasonable accommodation.

2. Compliance with Applicable Equal Opportunity Laws

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

3. Investigation of Claims

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

SECTION TWELVE

MISCELLANEOUS PROVISIONS

1. Entire Agreement

This Agreement, which includes the Terms and Conditions, Appendices, the Schedule(s), Schedule(s)' Attachments, 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, which are incorporated herein by this reference, 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 Valley Water. Valley Water Project Manager will not issue a Notice to Proceed until all required documents have been submitted and accepted by Valley Water.
- 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 Consultant, and acceptance by Valley Water, of evidence of all required insurance coverages and documents;
 - 3) Submission by Consultant, and acceptance by Valley Water, of evidence of all required Form 700 documents, if applicable;
 - 4) Submission by Consultant, and acceptance by Valley Water, of all required Non-Disclosure Agreements (NDA) as provided in the Schedule(s), Attachment Four, Reference Materials, if applicable;
 - 5) Submission by Consultant, and acceptance by Valley Water, of a Health and Safety Plan, if applicable;
 - 6) Any other requirements that are deemed necessary by Valley Water; and
 - 7) Execution of the Agreement by Valley Water.

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3. No Assignment

- A. The expertise and experience of Consultant are material considerations for Valley Water'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 Valley Water 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 Valley Water.
- B. In no event shall an assignment of any interest in this Agreement release Consultant from its duties and responsibilities as described in this Agreement nor shall 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 Valley Water'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 Valley Water policy prohibits the acceptance by Valley Water 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 Valley Water.

6. Audits

Consultant agrees that Valley Water and its agent(s) have the right to review, obtain, and copy all records pertaining to performance of this Agreement. Consultant agrees to provide Valley Water and its agent(s) with any relevant information requested, in electronic and hard copy format, at Valley Water's discretion, and will permit Valley Water and its agent(s) access to its premises, upon reasonable notice, during normal business hours for the purpose of interviewing employees (alternatively, by phone at Valley Water's discretion) 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 Valley Water 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.

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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. 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 Valley Water'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 Valley Water staff members providing information to 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 Valley Water to have the information.
- D. Consultant will notify Valley Water 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 Valley Water.
- E. Notwithstanding the aforementioned Confidentiality requirements, upon the request of Valley Water Project Manager, Consultant, and its Subconsultants shall execute Valley Water'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 Valley Water 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 Valley Water. 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 Valley Water. 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 Valley Water, 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 Valley Water, 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 Valley Water by such party.
- D. CALIFORNIA FAIR POLITICAL PRACTICES COMMISSION STATEMENT OF ECONOMIC INTEREST FORM 700 ("FORM 700"): Upon Valley Water'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 Valley Water, an Assuming Office Statement. The Assuming Office Statement shall be filed:
 - a. Within 30 calendar days of the effective date of this Agreement; or
 - 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 Valley Water, an amendment to their Form 700 any time there is a need to correct or change 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 Valley Water, during the annual filing season, as determined by Valley Water;
- 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 Valley Water, a Leaving Office Statement with Valley Water when one of the following occurs:
 - a. Upon termination of this Agreement; or
 - 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 Valley Water'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 Valley Water pursuant to the California Political Reform Act, Government Code §81000 et. seq. and §1090. If any of Consultant's employees, officers, agents, Subconsultants, and subcontractors are disqualified from providing services, on written notice from Valley Water 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 Valley Water;
- 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 Valley Water is deemed a material breach and may result in termination of the Agreement for cause.

13. Task Orders

- A. All tasks and Services may be assigned to Consultant through issuance of Task Orders. After the tasks and Services are identified and communicated to Consultant by Valley Water Project Manager, Consultant will prepare a proposed Task Order (see 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 Valley Water'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 Valley Water.
- 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 Valley Water's authorized representative referenced in the Standard On-Call Consultant Agreement, Appendix One, Additional Legal Terms and Consultant's authorized representative.
- C. Consultant must not commence performance of work or services on a Task Order until it has been approved by Valley Water's authorized representative and Notice to Proceed has been issued by Valley Water 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 Valley Water for an individual Task Order will not exceed the amount agreed to in the Task Order.
- D. Prevailing Wage Requirements - NOT USED

14. Good Neighbor

Valley Water 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 Valley Water 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 Valley Water's name, Consultant shall promptly so inform Valley Water and assist Valley Water 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. No Third-Party Beneficiaries

Nothing in this Agreement, whether express or implied, shall be construed to give any person or entity, other than the Parties hereto, any legal or equitable right, remedy, or claim under or in respect of this Agreement or any covenants, conditions, or provisions contained herein.

19. Severability

If a court of competent jurisdiction holds any provision of this Agreement to be illegal, unenforceable, or invalid in whole or in part for any reason, the validity and enforceability of the remaining provisions, or portions of them, will not be affected, unless an essential purpose of this Agreement would be defeated by the loss of the illegal, unenforceable, or invalid provision.

20. Debt Limitation

This Agreement is contingent on the appropriation of sufficient funding by Valley Water for the services described in this Agreement. Valley Water is subject to laws or policies which limit its ability to incur debt in future years. Nothing in this Agreement shall constitute an obligation of future legislative bodies of Valley Water to appropriate funds for purposes of this Agreement.

21. 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 Valley Water and Consultant at their respective addresses as follows:

VALLEY WATER:

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

CONSULTANT:

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

22. Appendices

The following list of Standard On-Call Consultant Agreement Appendices are 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

23. 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

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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
Valley Water

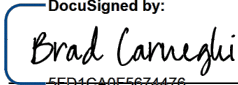
By: _____
Nai Hsueh
Chair, Board of Directors

Date: _____

ATTEST:

Michele L. King, CMC
Clerk, Board of Directors

CARNEGHI-NAKASAKO & ASSOCIATES
Consultant

By:  _____
Brad Carneghi
Principal

Date: ^{4/11/2024} _____

Consultant's Address:
1550 The Alameda, Suite 210
San Jose, California 95126

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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, [or any of its Subconsultants], shall not submit a proposal:

- A. For any agreement to be awarded of any project that is related to the Services provided pursuant to this Agreement; - NOT USED
- B. In response to any request for proposal or Valley Water 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) Outreach Program Participation - NOT USED

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 Valley Water.
- B. Task Orders are subject to approval by Valley Water's Deputy Operating Officer unless delegated to an Assistant Operating Officer and/or Unit Manager.
- C. Valley Water Assistant Operating Officer is authorized to approve individual Task Orders in an amount not-to-exceed \$[authorization amount]. [NOT USED]
- D. Valley Water Unit Manager(s) is authorized to approve individual Task Orders in an amount not-to-exceed \$ [Authorization Amount]. [NOT USED]
- E. The total not-to-exceed amount for any one Task Order shall not exceed \$ [NOT-TO-EXCEED AMOUNT]. [NOT USED]
- F. Consultant must acknowledge receipt and respond to Valley Water's request to submit a Cost Proposal within five (5) business days or within the time specified in Valley Water's request. [NOT USED]

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

G. Upon Valley Water and Consultant's successful negotiation of the Consultant's Cost Proposal, Consultant must submit a Task Order within five (5) business days or within the time specified in Valley Water's request, for Valley Water's approval of the Task Order, and issuance of a Notice-to proceed. [NOT USED]

5. Engineering Support Services During Construction - NOT USED

6. Task Order Assignments for Multi-Awards Agreement

Valley Water has retained eight (8) separate consultants to perform on-call real estate services during the same timeframe. Task orders will be assigned on a competitive basis when conflicts of interest do not exist. There is no guarantee of any amount of work that will be given to each of the consultants. Valley Water's Project Manager is responsible for administering the task orders for assigned work among the firms for the term of the Agreements.

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**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 Valley Water 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

Valley Water 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 shared equally by Valley Water and Consultant.

3. Negotiations Before and During Mediation

Negotiations to resolve disputes before and during mediation are initiated for settlement purposes only, are confidential, and are not binding unless otherwise agreed by Valley Water 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 require each Party to supplement such information.

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

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;
 - b. Statements made by the other Party in the course of the mediation proceedings;

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

- 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

The mediation shall be terminated:

- 1) By the execution of a Settlement Agreement by the Parties;
- 2) By a written declaration of the mediator to the effect that further efforts at mediation are no longer worthwhile; or
- 3) By a written declaration of a Party or Parties to the effect that the mediation proceedings are terminated.

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.

5. Compensation for Participation in Mediation

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

**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 (Valley Water) and _____ (Consultant), dated _____.

Valley Water: _____

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 Valley Water Project Manager, Consultant is hereby authorized to perform the Services described in Attachment A to this Task Order. Any costs incurred, Services performed or expenditures by 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. Consultant personnel to be assigned to perform the Services, including resumes if not previously provided to Valley Water;
 - B. The total not-to-exceed fees amount for Consultant to complete the Services, including estimated number of hours required to perform the Services assigned to each Consultant classification;
 - C. Estimated cost of each other direct cost and reimbursable expense, including any applicable fees;
 - D. The distribution detail for each service, direct cost, and reimbursable expense. This information must be included in the invoice for the services authorized pursuant to this Task Order; and
 - E. Project schedule for completing the Scope of Services.
3. Consultant shall be compensated at fixed fees or at the hourly rates established in Schedule OC, Attachment One, Fees and Payments. 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 becomes effective on the date of full execution by authorized representatives of the Parties and remains 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 Consultant previously provided the appropriate permits to Valley Water.
- 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 Valley Water to be "Public Works" requiring the payment of prevailing wages. See the Standard On-Call Consultant Agreement, Section Four, Fees and Payments, subsection 3. Prevailing Wages.
 - 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 Valley Water's Office of the Clerk of the Board of Directors and incorporated herein by reference the same as though set forth in full. The rates are also available on the State of California Department of Industrial Relations website at <http://www.dir.ca.gov>.

8. Signatures:

Signature:	_____	_____
	[NAME OF CONSULTANT FIRM]	DATE
	[PRINT NAME]	
	[PRINT TITLE]	
Signature:	_____	_____
	SANTA CLARA VALLEY WATER DISTRICT	DATE
	[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 Four Insurance Requirements.

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

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

In addition to certificates, Consultant must furnish District with copies of all original endorsements affecting coverage required by this Appendix Four Insurance Requirements. The certificates and endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. **All endorsements and certificates are to be received and approved by District before the Agreement is executed.** In the event of a claim or dispute, 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 Requirements document.

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

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 valleywater@ebix.com.

The certificates will:

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

**Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, CA 95118
Agreement A4976A / PB No. VW0218**

IMPORTANT: The agreement or PB number must be included.

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

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 Four Insurance Requirements 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 Four Insurance Requirements 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: valleywater@ebix.com
2. Provide the following information in the "Certificate Holder" box:

**Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, CA 95118
Agreement A4976A / PB No. VW0218**

IMPORTANT: The agreement or PB 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:

\$1,000,000 per occurrence / **\$1,000,000** 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:

\$1,000,000 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:

\$1,000,000 per claim/ **\$1,000,000** 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.

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

4. Workers' Compensation and Employer's Liability Insurance

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

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.

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

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 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

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

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SCHEDULE OC SCOPE OF SERVICES

1. Representatives

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

Carlos Herrera (Valley Water Project Manager)
Senior Real Estate Agent
Real Estate Services Unit
Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, CA 95118-3638

Phone: (408) 630-3035
Email: cherrera@valleywater.org

Carlo Achdjian
Real Estate Services Manager
Real Estate Services Unit
Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, CA 95118-3638

Phone: (408) 630-4352
Email: cachdjain@valleywater.org

Lisa Bankosh
Assistant Officer
Watershed Stewardship and Planning Division
Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, CA 95118-3638

Phone: (831) 345-2936
Email: lbankosh@valleywater.org

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

Brad Carneghi
Principal
Carneghi-Nakasako & Associates
1550 The Alameda, Suite 210
San Jose, California 95126

Phone: (408) 535-0900

SCHEDULE OC SCOPE OF SERVICES

Email: brad@cnaappraisal.com

- C. The Consultant's Principal Officer for this Agreement is as listed below. As per the Agreement, Section Twelve, Miscellaneous Provisions, subsection 21. Notices, all notices pertaining to this Agreement must be submitted to the Consultant's Principal Officer.

Brad Carneghi
Principal
Carneghi-Nakasako & Associates
1550 The Alameda, Suite 210
San Jose, California 95126

Phone: (408) 535-0900

Email: brad@cnaappraisal.com

2. Scope of Services

- A. Consultant has the resources and expertise to perform all services for on-call real estate support services described in this Agreement. Consultant's services will be requested on an "as-requested" or "as-needed basis" to assist Valley Water in accomplishing its capital improvement and operational projects in a timely manner. Valley Water may request services to be performed by the Consultant at any time during the term of this Agreement and by staff at different levels of experience and expertise. The tasks to be performed by Consultant during the term of this Agreement, pursuant to Task Orders issued by Valley Water, are as follows:

Task 1 – Task Order and Project Management/Coordination

Task 2 – Category 1: Real Estate Appraisal Services

Task 3 – Category 2: Real Estate Review Appraisal Services

Task 7 – Additional Services

- B. The scope of On-Call services may include tasks and subtasks as described below, only as appropriate and necessary to accomplish Valley Water's objective for the particular Task Order.

- 1) Project management services including development of overall real estate acquisition and relocation schedules, contract management, reporting and tracking, and coordinating services and meeting with Valley Water staff.
- 2) Real property right of way (RP/ROW) clearance issues including identifying encroachments within the proposed Valley Water right of way, coordinating acquisition with property owners, and clearing right of way to allow construction of a project.

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SCHEDULE OC SCOPE OF SERVICES

- 3) Obtain title and escrow services including escrow closings, real property interest appraisals, negotiating with property owners to obtain real property rights, relocate displaced persons and businesses, prepare loss of goodwill appraisals and settlements, prepare fixture and equipment appraisals and provide eminent domain support as necessary for Valley Water's Capital Improvement and Operational Projects.
- 4) Review and analyze existing leases, easements, permits, preliminary title reports and underlying documents.
- 5) Communicate and coordinate with Valley Water real estate agents, and when directed, with engineers, planners, legal counsel, and other Valley Water staff, consultants, subconsultants contractors, outside legal counsel, and the public.
- 6) Representing Valley Water at public meetings including Valley Water Board of Directors (Board) public and closed sessions pertaining to a project.
- 7) Representing Valley Water at community meetings pertaining to a project and making public presentations.
- 8) Appraise land rights and review of appraisal reports.
- 9) Negotiation and acquisition services including all interests to be acquired or cleared such as fee simple, easements, lease hold interests, permits to enter, rights of entry for early possession, and coordinating clearing all matters of record through escrow not compatible to Valley Water usage of properties.
- 10) Providing Valley Water's counsel with condemnation process support including expert witness testimony.
- 11) Providing relocation assistance services including preparing Relocation Assistance Plans, arranging for public review and comment on Plans, responding to comments and presenting them to Valley Water's Board of Directors for approval, preparing, presenting and explaining informational materials to displaced persons and businesses, determining individual relocation needs, assisting displaced persons in filling out forms and appeals, and providing relocation services to potentially impacted individuals and/or businesses according to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, and other applicable laws.
- 12) Request for services of qualified staff persons from the Consultant's team may come at any time and may include a need for more than one specific task described in the Scope of Services.

- C. Consultants to perform on-call real estate support services during the agreement term. Task orders will be issued on a competitive basis when conflicts of interest do not exist. There is no guarantee of any amount of work that will be given to the selected firms.

SCHEDULE OC SCOPE OF SERVICES

3. Project Objectives

- A. The Santa Clara Valley Water District (Valley Water) implements a number of capital and operational projects and programs to meet its mission and goals in water supply, flood protection and watershed stewardship. The on-call services provided pursuant to this Agreement will augment the services of Valley Water staff and provide additional on-call real estate support services as needed.
- B. The objective of Consultant's services is to supplement the Real Estate Services Unit's (RESU) efforts by performing real estate services work in accordance with the standard of care exercised by professionals in the real estate industry. Consultant shall implement best management practices and perform their assigned tasks in accordance with Valley Water's Quality and Environmental Management System (QEMS) Procedures and Work Instructions documents. This includes providing services summarized in accordance with all pertinent local, state and federal laws.
- C. All Services required pursuant to this Agreement will be provided only on an as-needed/as-requested basis by the issuance of an authorized Task Order by the Valley Water to the Consultant. A project scope will be developed for each task order, including deliverables for a total not-to-exceed amount. No work will be performed without a task order. The Consultant will perform services on a Task Order Basis as authorized by Valley Water's Deputy Operating Officer unless delegated to an Assistant Operating Office and/or Unit Manager, as set forth in the Standard On-Call Consultant Agreement, Section Twelve, Miscellaneous Provisions, subsection 13. Task Orders.

4. Background

- A. The mission of the Santa Clara Valley Water District, now known as Valley Water, is to provide Silicon Valley safe, clean water for a healthy life, environment, and economy.

Valley Water is a public agency providing water supply, flood protection, and stream stewardship for Santa Clara County. Valley Water manages an integrated water resources system that includes the supply of clean safe water, flood protection and stewardship of streams on behalf of Santa Clara County's 2 million residents. Valley Water effectively manages ten dams and surface water reservoirs, three water treatment plants, a state-of-the-art water quality laboratory, and more than 275 miles of streams. For information about Valley Water, visit www.valleywater.org.

5. Intent

- A. Valley Water has retained eight (8) separate consultants to perform on-call real estate support services for a five-year term. Task orders will be issued on a competitive basis when conflicts of interest do not exist. There is no guarantee of any amount of work that will be given to the selected firms.

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SCHEDULE OC SCOPE OF SERVICES

- B. This Schedule OC, Scope of Services describes the on-call real estate support professional services to be performed by Consultant for Valley Water's (Project). The deliverables, number of staff hours, and proposed staff for each Task Order will depend on the nature and scope of services requested by Valley Water, as well as the not-to-exceed fees of the Agreement, and will be negotiated along with the Services, payment terms, and not-to-exceed fees for each Task Order. There is no guarantee of any amount of work that will be given to the selected firm.
- C. Task Orders will not be issued to Consultant when Consultant cannot perform the Services due a conflict of interest or if all funds in this Agreement have been expended.
- D. Conflict of Interest. In addition to Valley Water's General Terms and Conditions, the following will apply with regard to conflict of interest:
 - 1) Consultant may be awarded multiple Task Orders pursuant to this agreement, for the same Valley Water Project.
 - 2) Consultant is precluded from performing services for any other entity, or in any other capacity for Valley Water, on the same Valley Water project for which a Task Order has been issued.
 - 3) Task Orders will be voided when the Consultant cannot perform the Services due to a conflict of interest.
 - 4) Consultant must bring the conflict of interest to Valley Water's attention as soon as the Consultant is aware of the potential conflict.
 - 5) If Consultant is already performing services on a Valley Water project, unrelated to this Agreement, in any capacity, a Task Order related to that project will not be issued pursuant to this Agreement.

6. Assumptions and Requirements

A. General Assumptions and Requirements

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

SCHEDULE OC SCOPE OF SERVICES

- (1) Consultant shall perform the Services utilizing Valley Water nomenclature, standardized forms, software requirements, documented procedures, and best management practices. Consultant shall use Microsoft Office software and Autodesk Civil 3D software that is compatible with Valley Water's current Microsoft Office software and Autodesk software used at the time(s) Valley Water issues a Notice to Proceed pursuant to this Agreement.
- (2) Engineering drawings prepared by Consultant must be in compliance with Valley Water's Computer-Aided Design and Drafting (CADD) standards including line types, line weights, text sizes, text orientation, dimensioning, labeling/numbering system for detailed plan views and detailed section views. Drawings prepared using different CADD software and versions must be converted to be compatible with Valley Water's CADD software at no additional cost to Valley Water. Prior to acceptance, Valley Water reserves the right to test the submitted CADD files to verify that the files are not corrupted or missing linkages (for blocks, etc., used in the drawings) and that the standards are retained during the conversion process used by the Consultant.
- 3) **Review of Deliverables.** Valley Water will review and comment on all Project deliverables and forward to the Consultant for revision and preparation of final versions. As determined by Valley Water, some of the deliverables may also be subject to review and comment from regulatory agencies and stakeholders following Valley Water review process. For each deliverable, Valley Water will collect comments from all Valley Water stakeholders and provide a single set of consolidated comments to the Consultant. The comments provided by Valley Water staff during the workshops will be documented by the Consultant as meeting minutes and will be included in the next revision of the documents.
- 4) **Valley Water Quality Environmental Management System.** Valley Water maintains a Quality Environmental Management System (QEMS) which has procedures, guidelines, and work instructions for the performance of various Valley Water work. If requested, the Consultant will perform the applicable Agreement tasks and/or sub-tasks in accordance with the QEMS framework. In such situations, the VWPM will provide the Consultant with the specific QEMS procedure, guideline, and/or work instruction prior to the preparation of such deliverables.
- 5) **Consultant Responsibility.** Consultant, with its expertise in performing the Services described herein, is responsible for making the appropriate assumptions in each task to complete each task's deliverables and to achieve the Project objectives of this Agreement as described in section 3. Project Objectives.
- 6) **Document Control.** Consultant is responsible for establishing and maintaining its own document control system to execute this Scope of Services. An internal document control system for this Project is maintained by Valley Water.

SCHEDULE OC SCOPE OF SERVICES

- 7) **File Exchange Service.** Consultant will provide a file exchange service, accessible to all parties as designated by Valley Water, to facilitate communications; particularly of large files over three megabytes. Difficulties in using and transmitting information with this exchange service shall be resolved by the Consultant. In the event that transmitting or receiving information does not occur in a timely manner, Valley Water will not be responsible for delays in completing Project work. Consultant may need to coordinate with Valley Water's Information Technology Division to address any firewall issues and/or permissions required to allow for these communications.

7. Scope of Services Task Orders

The scope of On-Call services may include tasks and subtasks as described below, only as appropriate and necessary to accomplish Valley Water's objective for the particular Task Order. Tasks and deliverables will be determined on a task order basis.

Task 1 - Task Order and Project Management/Coordination

The purpose of this task is for Consultant to manage this Scope of Services such that the work is completed within the not-to-exceed fees limit stated in Schedule OC, Attachment One, Fees and Payments, and in accordance with the Project Schedule stated in Schedule OC, Attachment Two, Schedule of Completion, while ensuring that all services and deliverables by the Consultant meet Valley Water and Project requirements.

- 1.1 Project controls activities such as development and tracking of schedule and budget.
- 1.2 Provide project management and coordination of assigned task orders.
- 1.3 Conduct project meetings with Valley Water Project Manager (VWPM) and Valley Water staff to review progress of assigned Task Orders.
- 1.4 Prepare monthly status reports detailing progress of assigned Task Orders.
- 1.5 Manage staff and associated tasks and oversee subcontracting for, and managing of, any necessary disciplines needed for the Task.
- 1.6 Manage ongoing general consultation and project coordination with Valley Water and other stakeholder parties.
- 1.7 Assist with analyzing various courses of action and work with Valley Water to resolve problems and provide recommended solutions.

Task 1 - Deliverables

- 1. Schedule and budget.
- 2. Project meetings
- 3. Monthly status reports
- 4. Recommend solutions to project manager questions.

SCHEDULE OC SCOPE OF SERVICES

Task 2 - Category 1: Real Estate Appraisal Services

1. Prepare Notice of Decision to Appraise and Parcel Diary
2. Prepare Appraisal Report Including:
 - a. Title page identifying the Project, Valley Water file number, and parcel number;
 - b. Letter of transmittal addressed to Valley Water with a brief summary of the real property rights appraised, date of inspection and valuation, valuation conclusions, appraiser certification, and other relevant information;
 - c. Table of Contents (Number all pages, including exhibits);
 - d. Summary of salient facts and conclusions;
 - e. Analysis of area surrounding subject property;
 - f. Description of the property and analysis of the site including all standard items such as zoning, taxes utilities, topographic features, environmental factors, etc.;
 - g. Highest and best use (if controversial, discuss fully);
 - h. Description of improvements – in detail if they're to be acquired. Measurements are to be shown in English standard unit dimensions;
 - i. Photographs of subject property – identify portion shown;
 - j. Discussion of sales, comparing them directly to subject;
 - k. Valuation methodology, including a discussion of the three approaches to market value (if any approaches are not applicable, explain why);
 - l. Identify each acquisition area by Valley Water file number and parcel number on the Summary page and on the individual appraisal page;
 - m. Itemize valuation of each acquisition such as permanent or temporary rights and improvements taken;
 - n. Discussion and calculation of severance damage (of lack of it) where a partial take is involved;
 - o. Effect of existing easements and title encumbrances on market value of property being appraised (title report to be furnished by Valley Water);
 - p. Correlate and explain the final estimate of market value (summarize the reasons supporting conclusions);
 - q. Right of way drawing delineating take areas (to be furnished by Valley Water);
 - r. Comparable sales data with photos (limit to 10 most applicable sales for each type/category); and
 - s. Map showing location of all sales in relation to subject property.

Task 2 - Deliverables

1. Notice of Decision to Appraise
2. Parcel Diary
3. Appraisal Report which includes the information described in Task 2.
4. Other information pertinent to the specific property or appraisal, as set forth in Valley Water's Task Order

SCHEDULE OC SCOPE OF SERVICES

Task 2 - Assumptions

1. Task Order may necessitate the services of a Goodwill appraiser or Furniture, Fixtures, and Equipment appraiser.

Task 3 - Category 2: Real Estate Review Appraisal Services

- 3.1** Provide review services which in most cases, will be utilized to provide Valley Water with a reasoned recommendation as to approval of the appraised fair market value. A recommended value is to serve as the basis to establish the offer of just compensation required by Valley Water or by statute for eminent domain.
- 3.2** Prepare a written technical review report, referred to here as the Review Appraiser's Report (RAR), complying with the Uniform Standards of Professional Appraisal Practice (USPAP).
 - 3.2.1** The RAR must identify: the relevant project, party and property data, the Review Appraiser, the Appraiser, dates of appraisal and review reports and effective dates; all scope of work elements; all factual data needed to follow the data and reasoning supporting the conclusions. For partial acquisitions, include sufficient detail as to the rights acquired and their timing and the elements of project construction and use proposed, on and off the subject, to support the assessment of severance damages, benefits or none.
 - 3.2.2** The RAR is to include the opinions required by USPAP standards. These refer to the completeness of the material under review; the apparent adequacy and relevance of the data and the propriety of any adjustments to the data; the appropriateness of the appraisal methods and techniques used; whether the analyses, opinions and conclusions are appropriate and reasonable.
- 3.3** Where applicable, follow and assess compliance of the appraisal with the requirements of applicable federal and state law, including the California Codes: Eminent Domain Law (C.C.P.); Government Code (Uniform Act); the Evidence Code (§822) and known case law. If state and/or federal monies fund part/all of the project, other requirements may apply.
- 3.4** Conduct a personal field review of each subject property and all comparable data relied upon in the appraisal.
- 3.5** Analyze and support any departure from established high standard of professional appraisal theory, method practice and reporting in the review and appraisal.
- 3.6** Seek clarifications where the Review Appraiser has differences for cause with the Appraiser. If they cannot be resolved, the Review Appraiser may prepare an opinion thereon that adheres to USPAP. If not feasible, the Review Appraiser in the RAR will recommend disapproval of the appraisal to Valley Water and the reasoning that supports that finding.

SCHEDULE OC SCOPE OF SERVICES

Task 3 - Deliverables

1. The RAR which includes the information described in Task 3.2.
2. Other information pertinent to the specific property or appraisal, as set forth in the Valley Water Task Order

Task 3 - Assumptions

1. In order to eliminate engineering and legal questions that might affect the appraised value of the subject property, the Review Appraiser and Appraiser will consult with each other and Valley Water during the initial phases of the review process.
2. It is assumed the Consultant will be requested to perform all tasks.

Task 7 - Additional Services

7.1 Additional Services. Consultant will provide additional quantities of previously identified services as requested by Valley Water. Consultant will provide additional services, including quantity of tasks and deliverables, beyond those stated in Task 1 through 3 as Task 7 Additional Services, to include but not be limited to:

- 7.1.1 Additional meetings;
- 7.1.2 Additional time allotted for meetings;
- 7.1.3 Additional status/progress reports;
- 7.1.4 Additional phone conference calls, site visits;

Task 7 - Deliverables

1. To be determined on a Task Order basis.

Task 7 - Assumptions

1. To be determined on a Task Order basis.

8. Attachments

The following Standard On-Call Consultant 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

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SCHEDULE OC ATTACHMENT ONE FEES AND PAYMENTS

1. Total Authorized Funding

Total payment for Services performed, to the satisfaction of Valley Water, as described in the Schedule and in all approved Task Orders will not exceed a total amount of \$5,000,000 (Not-to-Exceed Fees or NTE). There is no guarantee of any particular amount of compensation to Consultant under this Agreement. The \$5,000,000 also represents a Not-To-Exceed Aggregate Fee amount that shall apply to each On-Call Agreement awarded for on-call real estate support services. The NTE Aggregate Fee shall also be a total NTE amount to be shared, distributed to, and drawn from, by all On-Call Agreements for on-call real estate support services. The maximum aggregate compensation that Valley Water has authorized to be expended will not exceed the amount as indicated above. Under no conditions will the total compensation to the Consultant exceed this NTE payment amount without prior written approval in the form of an amendment to this Agreement executed by Valley Water's Board of Directors (Board), or Chief Executive Officer, or designee, as authorized by the Board. It is understood and agreed that this total is an estimate, and the total amount of Services to be requested by Valley Water may be less. **There is no guarantee, either expressed or implied, as to the actual dollar amount that will be authorized pursuant to this Agreement.** However, in valuable consideration for Consultant's agreement to be on-call to perform services for Valley Water upon request with no minimum guaranteed amount of work, Valley Water will pay Consultant Five Hundred Dollars (\$500) on or before the expiration of this Agreement if Valley Water has not requested to utilize Consultant's services during the agreement term.

2. Terms and Conditions

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

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

**SCHEDULE OC
ATTACHMENT ONE
FEES AND PAYMENTS**

- 3) Appraisal and appraisal review services are billed on a parcel specific basis and will be negotiated for deliverables, staff, scope of work, and a not-to-exceed amount for each task order.

B. Reimbursable Expenses

- 1) All reimbursable expenses not already covered in overhead may include, but are not limited to, mapping, rendering, printouts, leased equipment, mailing and delivery services, printing services, film and processing, plotting, and supplies. These other direct expenses as approved by Valley Water Project Manager (VWPM) will be billed on a monthly basis at actual cost linked to each Agreement Task, provided that the Task total NTE amount is not exceeded. Consultant shall provide detailed receipts for each other direct expense item(s) with monthly invoices submitted.
- 2) Equipment purchased on behalf of Valley Water that costs \$50 or more must receive the prior written approval of Valley Water Project Manager (VWPM). All equipment purchased on behalf of Valley Water and paid for by Valley Water shall become the property of Valley Water and be delivered to Valley Water prior to expiration of this Agreement.
- 3) No markup will apply for Consultant to manage Subconsultants, subcontractors and vendors, including lab services.
- 4) For staff with rates exceeding the rate of \$[RATE LIMIT]/hr., the Consultant must obtain written approval from the Valley Water Project Manager (VWPM) as to the numbers of hours per task prior to that individual working on the Project. [NOT USED]

C. Prevailing Wage Requirements [NOT USED]

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**SCHEDULE OC
ATTACHMENT ONE
FEES AND PAYMENTS**

CATEGORY MATRIX: AREA OF EXPERTISE		
Task 1	Task Order and Project Management/ Coordination	Carneghi-Nakasako & Associates (<i>Prime</i>)
Task 2	Category 1: Real Estate Appraisal Services	Carneghi-Nakasako & Associates (<i>Prime</i>)
Task 3	Category 2: Real Estate Review Appraisal Services	Carneghi-Nakasako & Associates (<i>Prime</i>)
Task 7	Additional Services	Carneghi-Nakasako & Associates (<i>Prime</i>)

HOURLY/UNIT RATE SCHEDULE

CLASSIFICATION/STAFF	HOURLY/ UNIT RATE
Consultant: Carneghi-Nakasako & Associates	
Principal	\$415
Senior Appraiser	\$385
Research	\$250
Consultant II	\$144

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**SCHEDULE OC
ATTACHMENT TWO
SCHEDULE OF COMPLETION**

1. This Agreement commences on the Effective Date, subject to accomplishment of all conditions to formation of an agreement listed in the Standard On-Call Agreement, Section Twelve, Miscellaneous Provisions, subsection 2. Formation of Agreement.
2. This Agreement expires five years after the effective date, with an option solely exercisable by Valley Water, to extend it for up to two additional one-year terms, unless, prior to its expiration, its term is modified by a written amendment hereto, and signed by both Parties.
3. Each Task Order will state the schedule for Consultant's performance of that Task Order.
4. Valley Water and Consultant may agree to modify the schedule specified for Consultant's performance in an executed Task Order, as an administrative modification to the Task Order and will confirm such modification in writing.

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

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

Team Member	Classification	Project Role	Contact Information
Brad Carneghi, MAI	Contracting, Admin, Project Management	Principal	1550 The Alameda, Suite 210 San Jose, California 95126 (408) 535-0900 brad@cnaappraisal.com
Matt Watson, MAI	Project Management	Senior Appraiser	1550 The Alameda, Suite 210 San Jose, California 95126 matt@cnaappraisal.com
TBD	Research		1550 The Alameda, Suite 210 San Jose, California 95126

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**SCHEDULE OC
ATTACHMENT FOUR
REFERENCE MATERIALS**

Ref No.	Description
1	Santa Clara Valley Water District Non-Disclosure Agreement (NDA) (FC 1650)
2	W630D07 Acquisition of Property
3	W630D08 Relocation Assistance Program (RAP)
4	W-630-101 Appraisal Real Property Interests Program
5	Relocation Assistance Program Booklet
6	When Valley Water Buys Your Property Booklet

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