



STANDARD CONSULTANT AGREEMENT

(For Capital Consultant Contracts)
Terms and Conditions Template
Rev. B [7/1/2016-06/30/2017]

This agreement (Agreement) is effective once fully executed (Effective Date), by and between SANTA CLARA VALLEY WATER DISTRICT (District), and **ENVIRONMENTAL SCIENCE ASSOCIATES (ESA)** (Consultant), individually the Party or collectively the Parties.

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

NOW, THEREFORE, the District and Consultant, for the consideration and upon the terms and conditions specified, agree as follows:

SECTION ONE

SCOPE OF SERVICES

The scope of services (Services) to be performed pursuant to this Agreement is described in the schedule(s), attached hereto and incorporated herein by this reference (Schedule(s)). Services described in each Schedule are considered a scope of Services that is separate and apart from the scope of Services described in another Schedule.

SECTION TWO

DUTIES OF CONSULTANT

1. Performance.

- A. Each scope of Services described in an attached Schedule(s) must be performed by Consultant, or at its direction, in a manner sufficient to meet the purposes specified in this Agreement. References to "Consultant" herein include those performing any portion of the Services at its direction such as Subconsultants, vendors, suppliers, subcontractors, and other business entities and individuals. Consultant will collaborate with District staff in engineering, operations, and maintenance units to be made aware of District operational constraints, procedures, or preferences relevant to Consultant's performance of the Services described in the attached Schedule(s).
- B. Unless the requirements for the Services described in the attached Schedule(s) 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(s) unless authorized in writing by the District prior to the performance of such Services by

issuance of a Task Order or pursuant to an amendment to this Agreement signed by both Parties.

2. **Consultant Controlled Areas.** Consultant is responsible for the security and safety of the area(s) it controls wherein it is required to perform field operations pursuant to a scope of Services.
3. **Licensing.** Services performed by Consultant will be undertaken only by persons appropriately licensed, certified, or registered in California, as applicable to the Services described herein, when required by statutes or regulations, as well as pursuant to the relevant standard of care as described in subsection 11, Standard of Care. Examples of such Services include those performed by: California State Licensed Contractors, Professional Engineers and Architects, Inspectors, and Surveyors. Consultant shall make available upon District'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 section 1720(a)(1).
4. **District's Approval of Deliverables.** Deliverables prepared by Consultant, notwithstanding acceptance and approval by District, which District determines must subsequently be modified due to errors or omissions, will be corrected at no additional cost to District.
5. **Errors and Omissions.** The Services may include preparation of deliverables by Consultant which will be implemented in a public works construction project. Consultant is responsible for any direct or actual damages incurred by District which District determines result from Consultant's errors or omissions in Consultant's deliverables, including, but not limited to, any increase in the District'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. **District Standardization Requirements.**
 - A. Consultant shall perform the Services utilizing District nomenclature, standardized forms, software requirements, documented procedures, and best management practices. Consultant shall use Microsoft Office software and AutoCAD software that is compatible with the District Microsoft Office software and AutoCAD software used at the time(s) the District issues a notice-to-proceed pursuant to this Agreement.
 - B. Engineering drawings prepared by Consultant must be in compliance with the District's CADD and drafting standards including line types, line weights, text sizes, text orientation, dimensioning, labeling/numbering system for detailed plan views and detailed section views. Drawings prepared using different CADD software and versions must be converted to be compatible with the District's CADD software. Prior to acceptance, the District reserves the right to test the submitted CADD files to verify that the files are not corrupted or missing linkages (for blocks, etc., used in the drawing) and that the standards are retained during the conversion process used by the Consultant.

7. Consultant Key Staff and Subconsultants.

- A. Consultant's key staff and Subconsultants assigned to perform the Services are identified in Attachment Three to the Scope of Services, Consultant's Key Staff and Subconsultants.
- B. The Project team organization chart and delegated responsibilities of each team member will be submitted to the District for concurrence.
- C. Consultant may utilize Subconsultants, subcontractors, suppliers, or vendors it deems appropriate to the complexity and nature of the required Services.
 - I. Consultant must obtain the District's approval of all Subconsultants. Upon the District's request, Consultant must provide copies of all Subconsultant agreements.
 - II. Consultant must require its delegates or Subconsultants to agree, in writing, to adhere to terms and conditions of this Agreement.
- D. Any delegation or use of Subconsultants by Consultant will not operate to relieve Consultant of its responsibilities as described in this Agreement.
- E. If any of Consultant's designated key staff persons or Subconsultants fail to perform to the satisfaction of the District, on written notice from the District, Consultant will have fifteen (15) calendar days to remove that person from the Project and provide a replacement acceptable to the District.
- F. Consultant will not charge the District for the time it takes Consultant's replacement personnel to obtain the District-specific Project knowledge in the possession of the person(s) being replaced.
- G. Consultant's Key Staff

The District Project Manager may approve any revisions to Consultant's list of key staff assigned to the Project as an administrative modification to this Agreement, and such approval will be confirmed in writing.

- H. Consultants Subconsultants.
 - I. The District Project Manager may approve any revisions to Consultant's list of authorized Subconsultants when the Subconsultant is deleted from the list and the scope of services is deleted from the Agreement or such services are assumed by the Consultant; such approval will be confirmed in writing.
 - II. The District Project Manager may not approve any revisions to Consultant's list of authorized Subconsultants when the Subconsultant is deleted from the list; the services are not deleted from the Agreement; and the scope of services is not assumed by the Consultant. Such revisions to the list of authorized Subconsultants are subject to approval by the District and documented in an executed amendment to this Agreement.

8. Compliance With All Laws. 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 the District's assistance is necessary to achieve such compliance, Consultant shall promptly notify the District.

- A. Consultant shall provide, at District's request, documentation demonstrating Consultant's compliance with all laws as described herein. After reasonable notice and according to reasonable conditions, the District has the right to inspect and copy any records of Consultant regarding such compliance.
- B. Consultant represents and warrants that neither Consultant nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal government department or agency.

9. Occupational Safety and Health.

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

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

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11. Standard of Care.

- A. Consultant must possess and maintain during the term of this Agreement, all certifications, licenses, permits, and qualifications to perform the Services and prepare all deliverables. Consultant must perform all services and prepare all deliverables in accordance with those standards and practices of care, skill, and diligence that are generally recognized and customarily observed by competent persons in Consultant's area of specialty in the State of California at the time such services are rendered.
- B. Consultant shall perform the Services and prepare all deliverables without any errors or omissions, and in accordance with Section Two, Duties of Consultant, subsection 8, Compliance With All Laws.
- C. Consultant and its Subconsultants must perform the Services in compliance with all applicable written federal, state and local codes, statutes, laws, regulations, and ordinances, including, but not limited to, environmental, energy conservation, and disabled access requirements as per the provisions of Section Two, Duties of Consultant, subsection 8, Compliance With All Laws.

SECTION THREE

DUTIES OF DISTRICT

- 1. **Available Data.** The District will make available to Consultant all data and information in its possession and control and which it deems necessary to the preparation of the deliverables specified in the Schedule(s). The District will actively aid and assist Consultant in obtaining such information from other agencies and individuals as it deems necessary. The District is not responsible to provide the data and information that it does not possess.
- 2. **Review of Deliverables.**
 - A. The District will designate a Project Manager (District Project Manager) for purposes of administering and managing this Agreement.
 - B. The Consultant's progress in completing the Services will be reviewed by the District's Project Manager at each milestone identified in the Schedule(s) and at such other time(s) at the discretion of the District.
 - C. Consultant must notify the District in writing when it completes each deliverable described in the Schedule(s) and provide the District with such deliverable. Deliverables deemed satisfactory and in compliance with this Agreement are subject to approval by District. Within thirty (30) calendar days of receipt of each deliverable, the District will either (i) notify Consultant that the District accepts the deliverable, or (ii) notify the Consultant that the deliverable is not acceptable and must be revised.

- D. If the District advises Consultant that a deliverable must be revised due to errors or omissions by the Consultant, Consultant must correct, at no cost to the District, those deficiencies as soon as possible and shall notify the District upon completion of the revised deliverable and submit to the District.

The District will then review the revised deliverable and within thirty (30) calendar days of receipt, advise the Consultant if the revised deliverable is acceptable. All deficient deliverables will be revised at no cost to the District and this process will continue until Consultant has corrected all deficiencies identified by District.

- E. None of the proposed changes or revisions or anything else in this Agreement will be construed to relieve the Consultant of professional or legal responsibility for the performance of the services as otherwise required by the terms and conditions of this Agreement. Corrections to any deliverable as a result of Consultant's errors or omissions will not result in additional costs or expenses to the District.

- 3. **Access to District Facilities.** The District will facilitate access to District facilities as required for the Consultant to perform the Services.

SECTION FOUR

FEES AND PAYMENTS

- 1. **Total Fixed Not-to-Exceed Fees.** Payment for all services performed by Consultant to the satisfaction of the District, as described in the Schedule(s) will be based on the Total Fixed Not-to-Exceed (NTE) Fees stated in Attachment One to the Schedule(s), Fees and Payments, for completion of the associated tasks. The District will make payments to the Consultant according to the terms provided for herein and in Attachment One to the Schedule(s), Fees and Payments. Payments made by the District to the Consultant for services rendered will be considered full compensation for all personnel, materials, supplies, Subconsultant(s) if any, equipment, reimbursable travel and per diem expenses incurred by the Consultant to perform the services.
 - A. Upon the written approval of the District's Deputy Operating Officer referenced herein, unused fees from a completed or cancelled task may be re-allocated to a task that has not yet been completed, provided the Agreement Total Not-to-Exceed Fees is not exceeded. Transferring fees from a task not yet completed to a different task is not permitted.
 - B. Upon the written approval of the District's Deputy Operating Officer referenced herein, the scope of services described in a task may be reduced or eliminated. If the scope of services of a task is reduced or eliminated, the portion of the fees attributable to that reduced or eliminated task may be allocated to revised existing tasks, or transferred to a Supplemental Services task, if provided for herein.

- C. Any reduction or elimination of tasks and any inter-task transfers will be clearly noted and described in the subsequent monthly progress report to the District.
- D. Services to be performed pursuant to the Supplemental Services task, if provided for herein, will commence only after issuance of a fully executed Task Order.
- E. Automobile travel mileage expenses will be paid at the current IRS rate. District will not reimburse Consultant and its Subconsultants for mileage and travel time to and from District Headquarters and surrounding campus located at 5700 Almaden Expressway, San Jose, California. District will reimburse Consultant and its Subconsultants for mileage incurred from District Headquarters or Consultant's and Subconsultants' firm address, whichever is closer to the destination, to Project site(s) and, if directed or authorized by the District, to meeting locations such as with regulatory agencies, for community outreach activities and meetings, for partnering meetings, and Dispute Review Board meetings.
- F. Travel and overnight accommodations, including per diem, required for performance of this Agreement will be paid at reasonable cost not to exceed the U.S. General Services Agency Per Diem Rates for Sunnyvale/Palo Alto/San Jose, California area, provided prior District approval has been obtained from the District's Project Manager. For air travel, District will pay the cost of a coach class or equivalent ticket. Where air travel is required, district will pay the total cost of the rental car, which may include insurance, gas, car fee, and taxes and will be paid at the actual costs incurred. Vehicle rental is limited to a compact or economy model.

2. Consultant Monthly Invoices.

- A. Consultant's monthly 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; will be consistent with scope of Services described in the Schedule(s) attached hereto; and include the following:
 - I. Personnel Category and employee name itemized with all labor charges by Service task.
 - II. Consultant's summary of the amount Consultant has been billed by their Subconsultants and further detailed by Service task.
 - III. Other direct charges and expenses by Service task.
 - IV. Other Direct charges and expenses must reflect actual fees versus the Agreement not-to-exceed fees as stated in Attachment One to Schedule(s), Fees and Payments.

- V. To the extent that the Consultant is adding an administrative, processing, overhead or mark-up fee, the District will not pay for such duplication of costs for both the Consultant and its Subconsultants.
- B. Before submitting monthly invoices, a progress report and draft invoice (in Adobe PDF format) will be provided by the Consultant for preliminary review by the District Project Manager. Upon preliminary approval by the District, the Consultant will mail the complete signed and dated hardcopy invoice, including all supporting documentation. District's preliminary review of the draft invoice does not represent final approval of the hardcopy invoice, but is intended to reduce potential for re-submittals of hardcopy invoice by Consultant.
- C. Each monthly invoice must include a monthly progress report that documents whether or not the Services are on schedule to be completed in accordance with the Project schedule in Attachment Two to the Schedule(s), Schedule of Completion, which applies to the specific scope of Services (Schedule of Completion), and within the Agreement NTE Fees in accordance with Attachment One to the Schedule(s), Fees and Payments. The progress report shall document the Services completed; document the execution of the tasks described in this Services; and enable the District to evaluate the Consultant's progress and performance towards completion of the Services.
 - I. The monthly progress report shall include:
 - a. An assessment of actual versus planned progress in completing the Services, including a description of the tasks and deliverables completed to date;
 - b. A look ahead schedule listing deliverables and activities planned for the next 2 months;
 - c. A statement that progress towards completion of the Services is on schedule and will be completed within the timeline set forth in the Schedule of Completion; or, if completion of the Services is not on schedule, then a statement of the anticipated length of the delay, the cause of the delay, measures proposed or taken to prevent or minimize the delay, and the schedule for implementation of such measures;
 - d. A summary of performed tasks to date, an updated Project work plan including estimate of work required to complete this Agreement, explanation of any major variances in percentage of services to be completed compared to percentage of this Agreement NTE fees remaining, and any anticipated changes to this Agreement that may be necessary to complete the Services;
 - e. For any proposed change to the scope of Services, provide a summary of the proposed changes, including supporting rationale for such change;

- f. For each task, the percentage of the fees incurred for the task compared to dollar amount allocated to the task, the percentage of services performed versus the percentage of Agreement NTE fees incurred for such task, and explanation of any significant variances in percentage of services performed compared to percentage of fees incurred;
 - g. A statement that all tasks, as specified in this Agreement, shall be completed within the NTE amount of the Agreement;
 - h. Level of Small Business Enterprise (SBE) participation, if applicable, documenting the level of SBE participation throughout the Project; and
 - i. Any changes in Consultant's key staff or Subconsultants.
- D. Invoices will include a summary of labor expenditures, direct costs, and billed Subconsultant charges. Billing statements, transmitted separately from the monthly progress reports, will be organized such that the billing categories correspond with the Services tasks.
- E. Consultant shall send all invoices to:

Santa Clara Valley Water District
 Attention: Accounts Payable
 P.O. Box 20670
 San Jose, CA 95160-0670
- F. In addition to ensuring that each invoice is accompanied with a monthly progress report, Consultant must also ensure that each invoice contains the following information:
 - I. Agreement Number
 - II. Full Legal Name of Consultant/Firm
 - III. Payment Remit-to Address
 - IV. Invoice Number
 - V. Invoice Date (the date invoice is mailed)
 - VI. Beginning and end date for billing period that services were provided
- G. Consultant shall invoice for its performance of the Services on a monthly basis consistent with the task fee breakdown stated in Attachment One to the Schedule(s), Fees and Payments, to the Schedule(s), which applies to the specific scope of Services.
- H. District's Project Manager will review Consultant's written invoice within five (5) District business days of receipt, address any questions with Consultant's Contact/Project Officer and approve the undisputed amount of the invoice within ten (10) working days of receipt of the invoice. District will pay undisputed invoice amounts within thirty (30) calendar days from date invoice is received by District's Project Manager.

- I. Consultant's services will be performed by its staff members and Subconsultants' staff members at the lowest hourly and unit rates commensurate with the complexity of the required Services.

3. Prevailing Wages.

- A. A portion of the Services to be performed pursuant to this Agreement may be considered "Public Works" subject to California Labor Code Section §1771, et. seq. and the applicable implementing regulations.
 - B. Labor Code Section §1720 includes "Inspection and Land Surveying" in its definition of "Public Works." If Consultant's Services includes such work, Consultant and its Subconsultants must comply with all Labor Codes applicable to prevailing wages.
 - C. The Consultant and its Subconsultants shall not engage in the performance of public work, as defined in California Labor Code Section 1771.1, unless currently registered and qualified to perform public work pursuant to California Labor Code Section 1725.5.
 - D. The General Prevailing Wage Rates issued by the California Department of Industrial Relations may be adjusted by the State throughout the term of this Agreement. Notwithstanding any other provision of this Agreement, Consultant will not be entitled to any adjustment in compensation rates in the event there are adjustments to the General Prevailing Wage Rates.
 - E. This Agreement is subject to compliance monitoring and enforcement by the State of California Department of Industrial Relations. Upon request, the Consultant and Subconsultants must furnish the records specified in Labor Code §1776 directly to the Labor Commissioner, in a format prescribed by the Labor Commissioner.
 - F. All records or documents required to be kept to verify statutory compliance with the prevailing wage requirement such as certified payroll records must be made available for audit at no cost to the District, at any time during regular business hours, upon written request by the District.
- 4. Retention.** Unless otherwise specified in Attachment One to the Schedule(s), Fees and Payments, when the total compensation payable pursuant to this Agreement exceeds twenty thousand dollars (\$20,000), five (5) percent of each statement will be withheld by the District and not paid to Consultant until thirty (30) calendar days after the assigned District representative signs off the final approval for all services/deliverables as stated in the applicable Schedule, Attachment Two to the Schedule(s), Schedule of Completion, and Section Three, subsection 2 of this Agreement.

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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 the attached Schedule(s) to this Agreement upon receipt of the Notice-to-Proceed (NTP) issued by the District.
2. **Project Schedule Table.** Consultant will perform and complete the services described in the scope of Service in accordance with the Project Schedule table (Project Schedule) as stated in Attachment Two to the Schedule(s), Schedule of Completion. Consultant will coordinate services with the District to provide the timeline of all tasks and sub-tasks including the site visits, document review, meetings, and deliverables.
3. **Monitoring of Project Schedule.** The approved Project Schedule will be monitored monthly. Changes to the schedule for performance of tasks and deliverables are subject to advance written approval by the District.
4. **Project Delays.** The Consultant will make all reasonable efforts to comply with the Project Schedule as stated in the Attachment Two to the Schedule(s), Schedule of Completion. In the event the Project Schedule will be delayed, Consultant will notify the District Project Manager as soon as possible, providing the reason why, the length of the delay, and a description of the actions being taken to address the delay. In the event Consultant is delayed in performance of its services by circumstances beyond its control, District may in its discretion grant a reasonable adjustment in the Project Schedule.
5. **Changes to the Project Schedule.** District's Project Manager and Consultant may agree to modify the Project Schedule specified for Consultant's performance as an administrative modification to the Agreement 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.** This Agreement encompasses all Services that Consultant is responsible to perform within the time limits and Not-to-Exceed Fees set forth herein. Consultant will not undertake to provide Services where it reasonably appears that

the Services cannot be provided and expenses cannot be incurred within said total compensation limit and the applicable Not-to-Exceed Fees of any Task Order.

2. District Rights.

- A. **Suspension:** District may, by written notice to Consultant, suspend any or all Services pursuant to this Agreement or to any individual Task Order. District may subsequently terminate this Agreement or any Task Order for convenience, or determine to proceed. If a decision to proceed is not made within ninety (90) days from the date of the notice of suspension, any decision to proceed must be conditioned upon execution of a new Notice-To-Proceed or Task Order.
- B. **Termination for Convenience:** District may, by written notice to Consultant, terminate all or part of this Agreement or any Task Order at any time for District's convenience. Upon receipt of such notice, Consultant will immediately cease all work as specified in the notice. If this Agreement or any Task Order is so terminated, Consultant will be compensated as set forth in subsection 3, Consultant's Compensation Upon Termination or Suspension.
- C. **Termination for Breach:** If Consultant violates any of the covenants, agreements or stipulations of this Agreement or a Task Order, or if Consultant fails to fulfill in a timely and proper manner its obligations pursuant to this Agreement or any Task Order, and does not cure such failure or violation within thirty (30) days (or a reasonable extension thereof, if requested, which extension will not be unreasonably withheld) after receipt of written notice from District specifying such failure or violation, District will thereupon have the right to terminate this Agreement and any or all uncompleted Task Orders by giving written notice to Consultant of such termination. Such notice will specify the effective date thereof, and Consultant will not be entitled to compensation for services or expenses beyond the specified termination date.
- D. If, after notice of termination for breach of this Agreement or any Task Order, it is determined that Consultant did not breach the Agreement or Task Order, the termination will be deemed to have been effected for District's convenience, and Consultant will receive payment that is allowed by this Agreement for a termination for convenience.
- E. The rights and remedies provided herein to District are in addition to any other rights and remedies provided by law, this Agreement, or a Task Order.

3. Consultant's Compensation Upon Termination or Suspension. In the event of termination of this Agreement or any Task Order, or suspension of Services by District, Consultant shall receive compensation based on satisfactory performance, accepted by the District, as follows:

- A. **For Direct Labor—**Consultant shall be entitled to receive compensation for all authorized direct labor performed prior to termination pursuant to the provisions of this Agreement

or Task Order and all authorized labor expenses incurred to demobilize from the Project after the date of termination.

B. For Other Direct Costs and Expenses—Consultant shall be entitled to receive compensation for all authorized other direct costs and expenses incurred prior to termination and all authorized expenses incurred to demobilize from the Project after the date of termination.

C. In no event shall the total compensation paid for any item of Service exceed the payment specified in the Agreement or applicable Task Order for that item of Service.

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

SECTION EIGHT

INDEMNIFICATION

Notwithstanding any other provision of this Agreement, Consultant agrees to indemnify, defend and hold harmless the District, its agents, officers, directors, and employees from and against any and all demands, claims, damages, losses and reasonable expenses, including but not limited to liabilities, obligations, claims, costs, reasonable expenses (including without limitation interest, penalties and reasonable attorney's fees), fines, taxes, levies, imposts, assessment, demands, damages or judgments of any kind or nature, whether in law or equity (including without limitation, death or injury to any person, property damage, administrative and judicial orders and consents, or any other loss) to the extent they arise out of, pertain to, or relate to the Consultant's negligence, recklessness, or willful misconduct. The foregoing does not limit any strict liability imposed onto the Consultant by law. The rights, duties, and obligations of the Parties as set forth above in this Section Eight, Indemnification, survive termination, expiration, completion, and suspension of this Agreement.

SECTION NINE

INSURANCE REQUIREMENTS

Insurance requirements applicable to this Agreement are set forth in Appendix Four to the Standard Consultant Agreement, 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 Appendix Four to the Standard Consultant Agreement, and comply with all provisions stated therein.

SECTION TEN

OWNERSHIP & REUSE OF DELIVERABLES

1. **District Ownership.** All deliverables and other materials prepared by Consultant, including computer programs and media developed by the Consultant, to perform the Services, during the term of this Agreement, will be and remain the property of the District following payment in full to Consultant for each task or portion of a completed task, or in accordance with Section Seven, Term and Termination. In the event the work is not completed, the completed portions thereof will become the property of the District. Consultant will provide the District with such deliverables and material at appropriate times during this Agreement. Consultant may retain a copy for its records. Consultant does not convey, assign, or transfer the intellectual property rights it has so as to limit its ability or right to develop, design, or provide services on other projects of or for its other clients.
2. **Re-Use of Instruments of Service.** If the District desires to re-use the completed plans, specifications, or other deliverables, in total or in part, on project sites associated with this Agreement, or any other site, or to complete any incomplete portion of construction documentation which the District has already paid Consultant, the District will release the Consultant from any liability incurred by the District from re-using said deliverables.
3. **Copies of Data.** Copies of data exchanged by, through, and between the District and Consultant that may be relied upon are limited to the 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 the computer-generated material will be at the user's sole risk, and no representations are made, either express or implied, as to the long-term performance of data thus transferred.
5. **Work for Hire.** Any and all original correspondence, memoranda, reports, designs, plans, specifications, data compilations, computer programs, or drawings delivered to the District by Consultant according to the terms of this Agreement, in or by any medium is deemed to be "work for hire" according to the copyright laws of the United States and the copyright will belong to the District.

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

SECTION ELEVEN

EQUAL OPPORTUNITY

1. **Equal Opportunity Employer.** The Santa Clara Valley Water District is an equal opportunity employer and requires its consultants to have and adhere to a policy of equal opportunity and non-discrimination. In the performance of the Agreement, the Consultant will comply with all applicable federal, state, local laws and regulations, and will not discriminate against any subcontractor, employee, or applicant for employment, in the recruitment, hiring, employment, utilization, promotion, classification or reclassification, transfer, recruitment advertising, evaluation, treatment, demotion, layoff, termination, rates of pay or other forms of compensation, and selection for professional development training (including apprenticeship), or against any other person, on the basis of sex (which includes pregnancy, childbirth, breastfeeding and medical conditions related to pregnancy, childbirth or breastfeeding), race, religion, color, national origin (including language use restrictions), ancestry, religious creed (including religious dress and grooming practices), political affiliation, disability (mental and physical, including HIV or AIDS), medical condition (cancer and genetic characteristics), genetic information, marital status, parental status, gender, age (40 and over), pregnancy, military and veteran status, sexual orientation, gender identity and gender expression, the exercise of family and medical care leave, the exercise of pregnancy disability leave, or the request, exercise, or need for reasonable accommodation.
2. **Compliance With Applicable Equal Opportunity Laws.** The Consultant's policy must conform with applicable state and federal guidelines including the Federal Equal Opportunity Clause, "Section 60-1.4 of Title 41, Part 60 of the Code of Federal Regulations," Title VII of the Civil Rights Act of 1964 as amended; the American's with Disabilities Act of 1990; the Rehabilitation Act of 1973 (Sections 503 and 504); the Age Discrimination Act of 1975 (42 U.S.C. sec. 6101 et seq.); the California Fair Employment and Housing Act (Government Code Section 12900 et. seq.); California Labor Code Sections 1101 and 1102.
3. **Investigation of Claims.** Consultant must designate a specific position within its organization to be responsible for assuring nondiscrimination and non-harassment as provided in this Agreement. Consultant must investigate all complaints directed to it by District. District will refer complaints in writing and Consultant will advise District in writing when such investigations are concluded. The scope of such investigations must include all appropriate officers, employees, and agents of the Consultant, as well as all subcontractors, Subconsultants, and material suppliers of the Consultant. In cases where such investigation results in a finding of discrimination, harassment, or hostile work environment, Consultant must take prompt, effective disciplinary action against the offender.

SECTION TWELVE

MISCELLANEOUS PROVISIONS

- 1. Entire Agreement.** This Agreement, which includes the terms and conditions, the Schedule(s), the Attachments to the Schedules, and the attached Appendices, represents the entire understanding between the Parties hereto relating to the Services described in this Agreement 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.** Formation of an Agreement between the Parties requires accomplishment of the following: (1) execution of the Agreement by Consultant; (2) submission by the Consultant, and acceptance by the District, of evidence of all required insurance coverages and documents; (3) submission by the Consultant, and acceptance by the District, of evidence of all required Form 700 documents, if applicable; (4) submission by the Consultant of the QEMS Awareness certification ; (5) submission by the Consultant, and acceptance by the District, of all required Non-Disclosure Agreements (NDA) documents as provided in Attachment Four to the Schedule(s), Reference Materials, if applicable; (6) submission by the Consultant, and acceptance by the District, of a Health and Safety Plan, if applicable; (7) any other requirements that are deemed necessary by the District, and (8) execution of the Agreement by the District. No contract between the Parties is formed until all eight actions items have been accomplished to the satisfaction of the District. The District Project Manager will not issue a Notice-to-Proceed until all required documents have been submitted and accepted by the District, if applicable.
- 3. No Assignment.**
 - A. The expertise and experience of Consultant are material considerations for District's award and execution of this Agreement. Consultant will not assign or transfer any interest in this Agreement nor the performance of any of Consultant obligations hereunder, without prior written consent of District in the form of an amendment executed by the Parties, and any attempt to so assign this Agreement, or any rights, duties or obligations arising hereunder, will be void and of no effect. Any assignment of monies due or to become due in accordance with this Agreement, will be to the extent permitted by law, and will be subject to all proper set-offs, deductions, and withholdings in favor of the District.
 - B. In no event, shall an assignment of any interest in this Agreement release the Consultant from its duties and responsibilities as described in this Agreement nor shall the Consultant be released from liability created by the provision of Services as described in this Agreement until such assignment takes effect. Any attempted or purported assignment without the District's written consent in the form of an amendment executed by the Parties is null and void.

4. **Reasonableness.** Discretionary actions or approvals to be performed by the Parties will be exercised in a reasonable manner.
5. **Gifts.** Consultant hereby acknowledges that District policy prohibits the acceptance by District personnel of gifts of any kind from its contractors, consultants, suppliers or vendors. Consultant shall honor this policy by not sending or bringing gifts to the District.
6. **Audits.** Consultant agrees that the District and its agent(s), have the right to review, obtain, and copy all records pertaining to performance of this Agreement. Consultant agrees to provide the District and its agent(s) with any relevant information requested and will permit the District and its agent(s), access to its premises, upon reasonable notice, during normal business hours for the purpose of interviewing employees and inspecting or copying books, records, accounts, computerized records, and other materials that may be relevant to the matter under investigation or subject to audit such as by a government agency providing the District with grant funds to pay for Consultant's services, for the purpose of determining compliance with this Agreement. Consultant further agrees to maintain such records for a period of three (3) years after final payment as provide for in this Agreement.
7. **Force Majeure.** Neither Party will be held responsible for delays caused by acts beyond its control, such as acts of God or public enemies, utility or communication delays, or failures not caused by such Party's negligence or fault, accidents not caused by such Party's negligence or fault, labor disputes, war, or failure of the other Party to provide data that it is required to provide pursuant to this Agreement.
8. **Binding Effect.** This Agreement is binding on the heirs, executors, administrators, successors and assigns of the Parties.
9. **Choice of Law and Venue.** The Parties agree that this Agreement is to be governed, construed and enforced in accordance with the laws of the State of California. The Parties also agree that the venue of any litigation arising out of or connected with this Agreement will lie exclusively in the state trial court or Federal District Court located in Santa Clara County in the State of California, and the Parties consent to jurisdiction over their persons and over the subject matter of any such litigation in such courts, and consent to service of process issued by such courts.
10. **Confidentiality.**
 - A. Due to the nature of the services the Consultant will provide pursuant to this Agreement, there may be disclosures made to the Consultant of detailed information about the District's operations, including on a need-to-know basis information which may be protected from public disclosure by confidentiality laws, the attorney-client privilege, and/or other provisions of law which govern the nature and timing of disclosure of public information.

- B. The Consultant understands and acknowledges that District staff members providing information to the Consultant do so with the understanding that such information will be handled appropriately.
- C. In the event the Consultant receives such restricted or confidential information, the Consultant will limit access to the information to only those of the Consultant's employees, its subcontractors and its Subconsultants authorized by the District to have the information.
- D. Consultant will notify the District immediately of any request by any third party to have access to confidential information, and will not disclose the requested information without first receiving express written authorization from the District.
- E. The requirements stated herein will survive completion, expiration, suspension, and termination of this Agreement.

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

12. Conflict of Interest.

- A. Consultant represents that there exists no actual or potential conflict of interest concerning the services to be performed pursuant to this Agreement.
- B. Consultant represents that Consultant's performance required as stated in this Agreement does not require the breach of any agreement or obligation to keep in confidence the proprietary information of another party. Consultant will not bring to the District, or use in the performance of Consultant's duties as described in this Agreement, any materials or documents of another party considered confidential or proprietary unless Consultant has obtained written authorization from such party, and the informed consent of the District, for the possession and use of such materials.
- C. Consultant represents and warrants that during the term of the Agreement, Consultant, Consultant's parent company, Consultant's subsidiaries, or any affiliated entity sharing substantially similar ownership of or control with Consultant shall not act as a Consultant or expert for any party in support of any potential or active claim or legal action against the District by such party.
- D. CALIFORNIA FAIR POLITICAL PRACTICES COMMISSION STATEMENT OF ECONOMIC INTEREST FORM 700 ("FORM 700"): Upon District's request, Consultant

employees, officers, agents, Subconsultants, and subcontractors shall complete, execute, and submit a Form 700 as follows:

- I. Consultant employees, officers, agents, subconsultants, and subcontractors assigned to perform services pursuant to this Agreement shall file with the District in a manner prescribed by the District Assuming Office Statement. The Assuming Office Statement shall be filed:
 - a. Within thirty (30) calendar days of the effective date of this Agreement; and
 - b. Within thirty (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.
- II. Consultant employees, officers, agents, subconsultants, and subcontractors assigned to perform services pursuant to this Agreement that filed an Assuming Office Statement shall file in a manner prescribed by the District an amendment to their Form 700 any time there is a change to their disclosure information.
- III. Consultant employees, officers, agents, subconsultants, and subcontractors assigned to perform services pursuant to this Agreement that filed an Assuming Office Statement shall file with the District an Annual Statement in a manner prescribed by the District during the District's annual filing season as determined by the District;
- IV. Consultant employees, officers, agents, subconsultants, and subcontractors assigned to perform services pursuant to this Agreement that filed an Assuming Office Statement shall file in a manner prescribed by the District a Leaving Office Statement with the District when one of the following occurs:
 - a. Upon termination of this Agreement; and
 - b. Within thirty (30) calendar days of Consultant employees, officers, agents, subconsultants, and subcontractors vacating a designated filing position (i.e., removed from the Project, promotion, demotion, transfer to non-designated position, end of employment, or as a result of changes in designated filer positions in the District's Conflict of Interest Code).
- V. Consultant understands and agrees that its employees, officers, agents, subconsultants, and subcontractors may be disqualified from providing services to the District pursuant to the California Political Reform Act, Gov. Code Sections 81000 et. seq. and Government Code Section 1090. If any of Consultant's employees, officers, agents, Subconsultants, and subcontractors are disqualified from providing services, on written notice from District's Project Manager, Consultant will have fifteen (15) calendar days to remove that employee(s), officer(s), agent(s),

subconsultant's, and subcontractor's person from the Project and provide a replacement acceptable to the District.

VI. Further, the failure of Consultant's employees, officers, agents, subconsultants, and subcontractors to file an Assuming Office, Annual, Amended, or Leaving Office Statement within the time prescribed by the District is deemed a material breach and may result in termination of the Agreement for cause.

13. Task Orders. As described herein some tasks and services will be assigned to the Consultant through issuance of Task Orders. After said tasks and services to be performed pursuant to this Agreement are identified and communicated to Consultant by the District Project Manager, the Consultant will prepare a proposed Task Order (See Appendix Three to the Standard Consultant Agreement—Task Order Template.) The proposed Task Order must identify the following:

- A. Description of the services, including deliverables;
 - B. The total Not-to-Exceed Fees for Consultant to complete the services, including estimated number of hours per assigned staff to complete the services;
 - C. Proposed staff that will be assigned to complete the services, including resumes if not previously provided to the District's Project Manager;
 - D. Estimated cost of each other direct cost and reimbursable expense, including any applicable fees;
 - E. Time schedule for completing the services; and
 - F. Copies of applicable state and federal permits required to complete the services, unless previously provided to the District.
- I. The Consultant agrees that the Not-to-Exceed Fees specified in a proposed Task Order will be the product of a good faith effort in exercising its professional judgment. After an agreement has been reached on the negotiable items, the finalized Task Order will be signed by both the District's authorized representative referenced in Appendix One to the Standard Consultant Agreement, Additional Legal Terms (Appendix One) and the Consultant's authorized representative.
 - II. The Consultant must not commence performance of work or services on a Task Order until it has been approved by the District's authorized representative and notice to proceed has been issued by the District's Project Manager. No payment will be made for any services performed prior to approval or after the period of performance of the Task Order. The period of performance for Task Orders will be in accordance with dates specified in the Task Order. No Task Order will be written which extends beyond the expiration date of this Agreement. The total amount

payable by the District for an individual Task Order will not exceed the amount agreed to in the Task Order.

- 14. Good Neighbor.** The District always strives to be a good neighbor to the community adjacent to its facilities. The Consultant will ensure that disturbance to neighbors is minimized. The Consultant, its staff, and Subconsultants will always interact with the members of the public in a polite and professional manner.
- 15. District Quality Environmental Management System (QEMS) Awareness.** As an on-site provider of services that has the potential to result in significant environmental impacts, Consultant is required to review the QEMS Fact Sheet, which is incorporated herein by this reference hereto (Attachment Four to the Schedule(s), Reference Materials), with any of the employee(s), subcontractor(s), and/or Subconsultant(s) (Staff) performing Services on behalf of the District, and make Staff aware of the District's Quality and Environmental Policy and their role and responsibility in achieving conformity with the expectations.
- 16. Governmental Permits and Notifications.** Unless otherwise expressly stated herein or in an executed Task Order, Consultant represents and warrants that it has investigated the need for, and has or will procure, at its cost, and in its own name to the extent allowed by law, all governmental permits, notifications, approvals and inspections required for the performance of the Services. Consultant shall promptly notify the District if any such permit or approval lapses, or is modified or revoked. If, pursuant to applicable law, any such permits or approvals must be procured in the District's name, Consultant shall promptly so inform the District and shall assist the District in obtaining such permits or approvals.
- 17. 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.
- 18. 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.
- 19. Notices.** Unless otherwise specified in this Agreement, all requests for written approval or legal notices must be sent to the representatives below. All notices will be deemed to have been given when made in writing and when delivered or mailed to the representatives of the District and the Consultant at their respective addresses as follows:

DISTRICT:

Deputy Officer (as listed in Section 1, of the attached Schedule(s), Scope of Services).

CONSULTANT:

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

20. Appendices. The following listed 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

21. Schedule(s) and Attachments. Schedule P, Scope of Services, and the following listed Attachments are incorporated herein by this reference as though set forth in full:

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

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(SIGNATURES FOLLOW ON NEXT PAGE)

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date it is fully executed by the Parties.

SANTA CLARA VALLEY WATER DISTRICT
"District"

**ENVIRONMENTAL SCIENCE
ASSOCIATES (ESA)**
"Consultant"

By: _____
John L. Varela
Chair/Board of Directors

By: _____
Robert Battalio
Vice President

Date: _____

Date: _____

Firm Address:

**550 Kearney Street, Suite 800
San Francisco, CA 94108**

Michele King, CMC
Clerk/Board of Directors

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**APPENDIX ONE TO THE
STANDARD CONSULTANT AGREEMENT
ADDITIONAL LEGAL TERMS**

- 1. Conflict of Interest—Future Services.** N/A.
- 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 Appendix Two of the Standard Consultant Agreement, Dispute Resolution.
- 3. Small Business Enterprise (SBE) Participation.** This Agreement provides for the Consultant to include California Department of General Services certified Small/Micro Businesses in the performance of the Services, estimated to be 32% percent or more of the Total Not-to-Exceed Fees stated in Attachment One, Fees and Payments, to the Schedule(s), and Consultant agrees to use its best efforts to meet this goal.
- 4. Task Order Approvals.**
 - A. Task Orders are subject to approval by the District's Watersheds Deputy Operating Officer unless delegated to the Unit Manager.
 - B. District Unit Manager(s) is authorized to approve individual Task Orders in an amount not-to-exceed \$25,000.
 - C. Services to be performed pursuant to a Task Order may only commence once a specific Notice to Proceed for that Task Order has been issued by the District.
- 5. Additional Fees and Payments Language**
 - A. Expenses incurred by the Consultant for subconsultants providing professional services and for subcontractor, will be reimbursed at actual cost plus 10%.

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**APPENDIX TWO TO THE
STANDARD CONSULTANT AGREEMENT
DISPUTE RESOLUTION**

1. Consultant's Questions and Concerns.

Questions regarding the terms, conditions, and services relating to this Agreement will be decided by the District who will furnish the decisions to Consultant in writing within thirty (30) Days after receiving a written request from Consultant.

2. Dispute Resolution.

A. Alternate Dispute Resolution (ADR)

- I. District intends to use ADR techniques including partnering and mediation to resolve disputes relating to the Project.

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

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

3. Negotiations Before and During Mediation.

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

4. Voluntary Mediation.

A. Initiation of Mediation

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

B. Request for Mediation

- I. 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

- I. Upon receipt of a written request for mediation, unless otherwise agreed by the Parties, within fourteen (14) Days, the Parties will confer to select an appropriate mediator agreeable to all Parties.
- II. 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.

**APPENDIX TWO TO THE
STANDARD CONSULTANT AGREEMENT
DISPUTE RESOLUTION**

D. Qualifications of a Mediator

- I. Any mediator selected must have expertise in the area of the dispute and be knowledgeable in the mediation process.
- II. 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.
- III. 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

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

F. Representation

- I. Any Party may be represented by person(s) of their choice who must have full authority to negotiate.
- II. 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

- I. The mediator will set the time of each mediation session.
- II. The mediation will be held at a convenient location agreeable to the mediator and the Parties, as determined by the mediator.
- III. All reasonable efforts will be made by the Parties and the mediator to schedule the first session within sixty (60) Days after selection of the mediator.

H. Identification of Matters in Dispute

- I. The 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.

**APPENDIX TWO TO THE
STANDARD CONSULTANT AGREEMENT
DISPUTE RESOLUTION**

- II. At the first session, the Parties will be expected to produce all information reasonably required for the Mediator to understand the issue(s) presented. The mediator may require each Party to supplement such information.

I. Authority of Mediator

- I. 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.
- II. The mediator is authorized to conduct joint and separate meetings with the Parties and to make oral and written recommendations for settlement.
- III. 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.
- IV. 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

- I. Mediation sessions are private.
- II. The Parties and their representatives may attend mediation sessions.
- III. 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:

- I. The mediator will not divulge confidential information disclosed to a mediator by the Parties or by witnesses in the course of the mediation.
- II. All records, reports, or other documents received by a mediator while serving as mediator, are confidential.
- III. 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.

**APPENDIX TWO TO THE
STANDARD CONSULTANT AGREEMENT
DISPUTE RESOLUTION**

- IV. The Parties must maintain the confidentiality of the mediation and must not rely on, or introduce as evidence in any arbitration, judicial or other proceedings:
- a. Views expressed or suggestions made by the other Party with respect to a possible settlement of the dispute;
 - b. Statements made by the other Party in the course of the mediation proceedings;
 - c. Proposals made or views expressed by the mediator;
 - 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

- I. There shall be no stenographic record of the mediation.

M. Termination of Mediation

- I. The mediation shall be terminated:
- a. By the execution of a Settlement Agreement by the Parties;
 - b. By a written declaration of the mediator to the effect that further efforts at mediation are no longer worthwhile; or
 - c. By a written declaration of a Party or Parties to the effect that the mediation proceedings are terminated.
- II. No mediator shall be a necessary Party in judicial proceedings related to the mediation.

N. Exclusion of Liability

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

O. Interpretation and Application of These Mediation Provisions

- I. The mediator will interpret and apply these mediation provisions insofar as they relate to the mediator's duties and responsibility.

**APPENDIX TWO TO THE
STANDARD CONSULTANT AGREEMENT
DISPUTE RESOLUTION**

P. Expenses

- I. The expenses of witnesses for each Party must be paid by the Party producing the witnesses.
- II. All other expenses of the mediation, including required travel and other expenses of the mediator, and the expenses of any witness called by the mediator, or the cost of any proofs or expert advice produced at the direct request of the mediator, will be apportioned as the mediator finds appropriate or as otherwise agreed to by the Parties.

5. Compensation for Participation in Mediation.

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

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**APPENDIX THREE TO THE
STANDARD CONSULTANT AGREEMENT
TASK ORDER TEMPLATE**

Task Order No. _____

Title: _____

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

District Project Manager: _____

Consultant Project Manager: _____

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

1. Upon full execution of this Task Order No. _____, as set forth in the Standard Consultant Agreement, Section Twelve, subsection 13, Task Orders, and the issuance of a notice to proceed by the District Project Manager, the Consultant is hereby authorized to perform the Services described in Attachment A to this Task Order. Any costs incurred, Services performed or expenditures by the Consultant before this Task Order is executed or before the issuance of the notice to proceed will be considered outside the contracted scope of Services and will not be eligible for payment.
2. Both the scope of Services to be performed and the deliverables to be provided in accordance with this Task Order are described in Attachment A which is attached hereto and incorporated by this reference. Attachment A shall include at a minimum the following:
 - a. The Consultant personnel to be assigned to perform the Services, including resumes if not previously provided to the District Project Manager.
 - b. The total not-to-exceed fees amount for Consultant to complete the Services, including estimated number of hours required to perform the Services assigned to each Consultant classification.
 - c. Estimated cost of each other direct cost and reimbursable expense, including any applicable fees.
 - d. Project schedule for completing the scope of Services.
3. The Consultant shall be compensated at fixed fees or at the hourly rates established in Attachment One to the Schedule(s), Fees and Payments, of the Agreement. The Consultant agrees that it will provide all equipment, furnish all materials, except as may be otherwise noted in the Attachment A.

**APPENDIX THREE TO THE
STANDARD CONSULTANT AGREEMENT
TASK ORDER TEMPLATE**

4. This Task Order will become effective on the date of full execution by authorized representatives of the Parties and remain in effect until the earlier of: completion of the tasks set forth in Attachment A or [expected completion date].
5. Copies of applicable local, state and federal permits required to perform the Services described in Attachment A are attached to this Task Order, unless the Consultant previously provided the appropriate permits to the District.
6. The Consultant shall perform all Services described in Attachment A to this Task Order in accordance with the terms and conditions of the Agreement.
7. Signatures:

Signature: _____ DATE _____

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

Signature: _____ DATE _____

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

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**APPENDIX FOUR TO THE
STANDARD CONSULTANT AGREEMENT
INSURANCE REQUIREMENTS**

Please refer to the insurance requirements listed below.

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

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. All Certificates of Insurance complete with copies of all required endorsements must be sent to: **Contract Administrator, Santa Clara Valley Water District, 5750 Almaden Expressway, San Jose, CA 95118.**

In addition to certificates, Consultant must furnish District with copies of original endorsements affecting coverage required by this Appendix. The certificates and endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. **All endorsements and certificates are to be received and approved by District before work commences.** 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.

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

Required Coverages

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

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

General Liability insurance must include:

- a. Coverage at least as broad as found in standard ISO form CG 00 01.
- b. Contractual Liability expressly including liability assumed under this contract.
- c. If Consultant must be working within fifty (50) feet of a railroad or light rail operation, any exclusion as to performance of operations within the vicinity of any railroad bridge, trestle, track, roadbed, tunnel, overpass, underpass, or crossway must be deleted, or a railroad protective policy in the above amounts provided.
- d. Severability of Interest
- e. Broad Form Property Damage liability
- f. If the standard ISO Form wording for "OTHER INSURANCE," or other comparable wording, is not contained in Consultant's liability insurance policy, an endorsement

**APPENDIX FOUR TO THE
STANDARD CONSULTANT AGREEMENT
INSURANCE REQUIREMENTS**

must be provided that said insurance will be primary insurance and any insurance or self-insurance maintained by District, its Directors, officers, employees, agents or volunteers must be in excess of Consultant's insurance and must not contribute to it.

2. Business Auto Liability Insurance with coverage as indicated:

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

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

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

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

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

4. Workers' Compensation and Employer's Liability Insurance

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

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 and Business Automobile

**APPENDIX FOUR TO THE
STANDARD CONSULTANT AGREEMENT
INSURANCE REQUIREMENTS**

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:** 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. Note: Editions dated 07/04 are not acceptable)

2. **Primacy Clause:** Consultant's insurance must be primary with respect to any other insurance which may be carried by the District, its officer, agents and employees, and the District's coverage must not be called upon to contribute or share in the loss.
3. **Cancellation Clause Revision:** The Certificate of Insurance **MUST** provide **30 days notice of cancellation, (10 days notice for non-payment of premium)**. **NOTE: The standard wording in the ISO Certificate of Insurance is not acceptable.** The following words must be crossed out or deleted from the standard cancellation clause: "...endeavor to..." AND "...but failure to mail such notice must impose no obligation or liability of any kind upon the company, its agents or representatives."
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 Management Administrator.
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.
6. **Subconsultants:** Should any of the work under this Agreement be sublet, the Consultant must require each of its subconsultants of any tier to carry the aforementioned coverages, or Consultants may insure subconsultants under its own policies.
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.

**APPENDIX FOUR TO THE
STANDARD CONSULTANT AGREEMENT
INSURANCE REQUIREMENTS**

8. **Coverage to be Occurrence Based:** With the exception of the Professional Liability/Errors and Omissions coverage mentioned above, all coverage must be occurrence-based coverage. Claims-made coverage is not allowed.
9. **Waiver of Subrogation:** Consultant agrees on 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, or Professional policy described in **Required Coverages** above. Consultant agrees to advise its broker/agent/insurer about this provision and obtain any endorsements, if needed, necessary to ensure the insurer agrees.
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.
11. **Renewal certificates and endorsements must be submitted to:**

certificates-santaclara@riskworks.com

Please also note that the Certificate Holder on the certificates of insurance should read:

**Santa Clara Valley Water District
c/o EXIGIS Risk Management Services
P.O. Box 4668 - ECM #35050
New York, NY 10163-4668
Greg Meamber, Senior Engineer
Stream Maintenance Guidelines Project, CAS No. 4774**

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

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**SCHEDULE P
SCOPE OF SERVICES**

1. Representatives.

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

Greg Meamber (District Project Manager)
Senior Engineer
Operations & Maintenance Engineering Support Unit
Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, CA 95118-3686

Phone: 408-630-3016
E-mail: gmeamber@valleywater.org

Devin Mody (District Unit Manager)
Operations & Maintenance Engineering Support Manager
Watersheds O&M Engineering Support Unit
Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, CA 95118-3686

Phone: 408-630-2024
E-mail: dmody@valleywater.org

Sue Tippetts (Division Deputy Operating Officer)
Watersheds Operations and Maintenance Division
Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, CA 95118-3686

Phone: 408-630-2253
E-mail: stippetts@valleywater.org

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

Christie Beeman, P.E. (Consultant Project Manager)
Project Manager
ESA
550 Kearny Street, Suite 800
San Francisco, CA 94108

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Phone: (415) 262-2321
E-mail: cbeeman@esassoc.com

Robert Battalio, P.E. (Consultant Principal Officer)
Vice President
ESA
550 Kearny Street, Suite 800
San Francisco, CA 94108

Phone: (415) 896-5900
E-mail: bbattalio@esassoc.com

2. Scope of Services.

This Schedule P, Scope of Services, describes the professional planning or pre-design services to be performed by Consultant to develop stream maintenance guidelines for the District's Stream Maintenance Program (Project). The District may, at its discretion, choose to negotiate an amendment to this Agreement with Consultant for environmental permitting support, design and/or construction phase engineering support services. The District reserves the right to initiate a new consultant agreement selection process for services for any subsequent phase(s) and/or utilize District staff to perform such services.

3. Project Objectives.

- A. The purpose of the Project is for the Consultant to develop Stream Maintenance Guidelines for ten District creek facilities.
- B. The Stream Maintenance Guidelines will provide a quantitative approach to identifying conditions under which maintenance actions on District creek facilities would be required to maintain adequate flow capacity in those facilities.
- C. Stream Maintenance Guidelines will be developed for channels designated as Unmodified, Modified or Modified with Ecological Value. Stream Maintenance Guidelines will be prepared to present the following:
 - Criteria such as design flood return period, design flow, roughness coefficient, allowable sediment accumulation and vegetation growth, and other channel characterizations including channel geometry, maintenance access road locations, etc.

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- Conditions under which sediment removal and vegetation management activities are required to convey storm flows based on the quantifiable thresholds established by hydraulics analysis.

Stream Maintenance Guidelines will be completed during the term of the Agreement for the following creek facilities. As described in more details in the specific task discussions below and also specified in Attachment Two, Schedule of Completion, priority should be given to the Permanente Creek, Saratoga Creek, Randol Creek, Lower Silver Creek, and Jones Creek facilities.

Facility	Watershed	Station	
		From	To
Permanente Creek	Lower Peninsula Watershed	0+00	528+70
Saratoga Creek	West Valley Watershed	0+00 369+44	183+31 530+70
Randol Creek	Guadalupe Watershed	0+57	34+60
Lower Silver Creek	Coyote Watershed	0+00	320+00
Jones Creek	Pajaro Watershed	0+00	255+92
Coyote Creek	Coyote Watershed	0+00	732+20
Regnart Creek	West Valley Watershed	111+34	139+51
San Francisquito Creek	Lower Peninsula Watershed	0+00	492+31
Thompson Creek	Coyote Watershed	1+64	195+26
Madrone Channel	Pajaro Watershed	0+00	220+00

4. Project Background.

The District 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 1.8 million residents and businesses. The District effectively manages 10 (ten) dams and surface water reservoirs, 3 (three) water treatment plants, nearly 400 (four hundred) acres of groundwater recharge ponds and more than 275 (two hundred seventy-five) miles of streams.

The District maintains its creek facilities to convey storm flows draining from the upper watershed and from storm water outfalls. When properly maintained, these facilities convey flows at either the level they were designed for (reaches where flood control projects have been constructed) or at historic levels (non-engineered channels that have been modified historically or unmodified channels). Design flow conveyance is typically a basis for an

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expected Level of Service (LOS) for channels. Stream Maintenance Guidelines establish quantifiable objectives that define the corrective, routine maintenance necessary to provide the established LOS on District facilities while minimizing impacts to channels and natural resources. District creek facilities have been categorized in three distinct classifications: Modified with Ecological Value, Modified, or Unmodified.

5. General Assumptions and Requirements.

The following is a list of general assumptions:

- A. Manage Scope of services.** The Consultant shall manage the Scope of Services such that the work is completed within the Not-to-Exceed Fees limit and in accordance with the Project schedule and ensure that all services and deliverables meet the District and Project requirements.
- B. Deliverable Format.** Consultant shall submit deliverables in both electronic and hardcopy format. Deliverables shall be submitted in PDF and native (editable) format, including Word documents, Excel spreadsheets, PowerPoint files, AutoCAD files, etc. The hard copy deliverables shall be printed in professional quality presentation and submitted in 5 (five) copies. District may require original copies of signed documents and/or scanned (Adobe PDF) versions.
- C. Review of Deliverables.** The District will review and comment on all Project deliverables and forward to the Consultant for revision and preparation of final versions. As determined by the District, some of the deliverables may also be subject to review and comment from regulatory agencies and stakeholders following the District review process.
- D. District Quality Environmental Management System.** The District maintains a Quality Environmental Management System (QEMS) which has procedures, guidelines and work instructions for the performance of various District work. If requested, the Consultant will perform some of the contract tasks and/or sub-tasks in accordance with the QEMS framework. In such situations, the DPM will provide the Consultant with the specific QEMS procedure, guideline, and/or work instruction prior to the production of deliverables.
- E. Consultant Responsibility.** Consultant, with its expertise in the provision of the listed services, 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 Article 2, Scope of Services.
- F. Document Control.** The Consultant is responsible for establishing and maintaining its own document control system to execute this Scope of Services. An internal document control system for this project is maintained by the District.

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- G. File Exchange Service.** Consultant will provide a file exchange service to facilitate communications; particularly of large files over three (3) megabytes. Difficulties in using and transmitting information with this exchange service shall be resolved by the Consultant. In the event that transmitting or receiving information does not occur in a timely manner, the District will not be responsible for delays in completing Project work. Consultant may need to work with District's Information Technology Unit to address any firewall issues and/or permissions required to allow for these communications.

6. Scope of Services Tasks.

The Consultant will perform the following tasks to develop the Stream Maintenance Guidelines.

Task 1—Project Management and Coordination.

- A. 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 fee limit stated in Appendix Two, Fees and Payments, and in accordance with the Project schedule stated in Appendix Three, Schedule of Completion, while ensuring that all services and deliverables by the Consultant meet these Scope of Services requirements.
- B. This task includes all Project management efforts required to organize Consultant's team, assign and control work, and report progress to the District in the form of monthly progress reports.
- C. Consultant will attend one Project kickoff meeting to introduce key District and Consultant team members to one another, acquaint all participants with the purpose of and expectations for the Project, describe team member roles and responsibilities, describe Project procedures and summarize scope and schedule. The District's Project Manager will organize and lead the kickoff meeting. The kickoff meeting will be attended by related key Project members of the District's and Consultant's team. Items to be discussed at the meeting will also include: review of Project Objectives and recommended improvements, critical success factors, District management expectations, key decision points, outside agency involvement, and the Project work plan. Consultant will identify and invite appropriate Consultant team members. Consultant team members are expected to include the Consultant's Project Manager and Subconsultants, as appropriate. The District will identify and invite District team members and others, as appropriate.
- D. Consultant will conduct regular progress meetings with District's Project Manager; solicit administrative and technical requirements from District staff; and ensure that the requirements have been managed.

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- E. Consultant will develop and maintain a current Project schedule indicating all major tasks, milestones and deliverables. The Project schedule will include sufficient details to track Project progress and completion of tasks, subtasks and major deliverables and milestones described in this Scope of Services.
- F. The Consultant is responsible for overseeing all activities among assigned Consultant's staff, managing and approving all work of sub-consultants, and maintaining appropriate coordination and communication with the District.
- G. The Consultant will communicate weekly with the District's Project Manager to plan and review work progress.
- H. The Consultant shall develop the Consultant Project Work Plan in accordance with District's Quality Environmental Management System (QEMS) Work Instruction W75102 Create Work Plan. The Consultant Work Plan will detail the Consultant's approach to undertaking each of the tasks; while integrating tasks for efficiency where feasible. At a minimum, the Consultant Work Plan will include:
 - 1. the team organization;
 - 2. team member roles and responsibilities;
 - 3. stakeholder, management, document control, and team communication, coordination and protocols;
 - 4. technical and managerial work activities, deliverables;
 - 5. task level resource and cost-loaded schedule; and
 - 6. Project controls and reporting.
 - 7. The Consultant will work diligently to maintain Project schedule and budget.
 - 8. The Consultant shall provide a monthly Project Progress Report to the District. The requirements for the progress reports are described in Section Four, Fees and Payment, of this Agreement.

Task 1—Deliverables

- 1. Kick-off meeting;
- 2. Draft and Final Project Work Plan;

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3. Monthly Progress Reports;
4. Monthly progress meetings; and
5. Monthly draft and final agenda for progress meetings and meeting notes.

Task 1—Assumptions Include:

1. Progress meetings will occur monthly either in person or by teleconference, at District's discretion.
2. It is assumed that up to two Consultant team members will attend the progress meetings/teleconference.

Task 2—Data Collection, Review and Preliminary Investigation

- A. The purpose of this task is for Consultant to collect, organize and evaluate previously developed and readily available information to prepare maintenance guidelines. Existing information may include: hydrology and hydraulic information, Hydrologic Engineering Centers- River Analysis System (HEC-RAS) models, stream channel topography and as-built surveys, natural resource information including habitat and sensitive species data, maintenance history, and land ownership and easement conditions.
- B. The Consultant will coordinate with the District to identify data sources and secure existing information about each creek facility. After review of the information collected, the Consultant will identify any additional modeling and survey activities necessary to update the existing surveying and hydraulic analysis (Task 3 and Task 4).
- C. The Consultant will:
 1. Obtain and review background information.
 2. Obtain and review documentation of existing hydrology and hydraulic models and documents for each of the 10 creek facilities.
 3. Obtain and review as-built drawings and maintenance history for each of the 10 creek facilities, as available.
 4. Review tidal conditions and potential influence on creek hydraulics for those creek facilities under tidal influence.

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SCOPE OF SERVICES**

5. Obtain and review biological data for each of the 10 creek facilities.
6. Review District's inspection rating system.
7. Review area maps for property ownership and easements to identify extent of maintenance area to be included in Stream Maintenance Guidelines.
8. Review District's recent Inspection reports for evaluating problem/sensitive areas in the channel.
9. Identify any additional survey or modeling efforts necessary to complete the Stream Maintenance Guidelines.
10. Refine hydraulic modeling scope of work based on review of available information.

D. The District will provide the following information:

- a. Available reports and plans;
- b. Current hydrology and hydraulic model(s) for channels, if available;
- c. Maintenance history for the channels, if requested;
- d. Inspection reports, if requested;
- e. Area Maps for property ownership and easements; and
- f. GIS Data in usable digital format, if requested.

Task 2—Deliverables

1. Data summary for each constructed facility, including information regarding: maintenance history, as-built records, agreements, planning studies, original engineering basis of channel design, channel geometries and channel types.
2. Summary of the available hydrology and hydraulic models.
3. Recommendation for additional survey and hydraulic modeling services.
4. Scope of work for additional field data collection and hydraulic modeling needs to address data gaps, if any.

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Task 3—Topographic Survey.

- A. The purpose of this task is to conduct topographic field reconnaissance, surveying, and data analysis needed to support hydraulic modeling and capacity analysis. Consultant will coordinate with District to finalize a survey work plan describing the scope of any additional field data collection tasks that may be needed to support the Project. A field data collection plan will be developed for each creek based on the results of Task 2 and input from District staff.
- B. The Consultant will:
1. Based on recommendations for additional field data collection (Task 2), work with District staff to finalize field data collection scope of work for each creek facility.
 2. Initiate field reconnaissance (5 creek facilities per year) to verify study reaches by river station, identify areas that require additional survey detail and/or warrant special attention in the Maintenance Guidelines, note locations for repeat survey (monumented cross-section), photo-documentation monitoring and stream gaging, and provide observational data to inform hydraulic modeling.
 3. Initiate collection of survey data if authorized by District.
 4. Establish horizontal and vertical control (to NAD83 and NAVD88, respectively) points for each facility based on the District's (or similar) control network. For the conventional survey locations (i.e., total stations), Consultant will use the nearest control point through the survey reach(es) (as needed).
 5. Collect survey data at selected cross-sections (5 creek facilities per year).
 6. Conduct field data post-processing.
 7. Convert existing model(s) to the datum specified above.
 8. Identify representative locations for comparison between as-built and current cross-section.
 9. Compare current cross-sections (either collected in the field or from existing hydraulic models where new survey not conducted) with design

**SCHEDULE P
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cross-sections and prepare graphic and numerical comparison of design cross-sections to current cross-section at the selected locations.

10. Establish permanent monuments to facilitate re-surveying of selected cross sections for maintenance monitoring purposes. Selection of the monumented cross-section locations will be based upon the results of Tasks 3 and 4, as well as consultation with District staff. Rebar stakes will be placed to mark the left and right bank locations of the section; rebar may be further stabilized with a collar of fast-setting concrete if needed. The location of the installed monuments will be recorded with a hand-held GPS unit.

Task 3—Assumptions Include:

1. The budget for Task 3 was estimated based on available information regarding existing HEC-RAS models for the study reaches, and current understanding of additional survey needs. To the extent actual survey needs are different from the assumptions described herein, the required level of effort may be higher or lower than the estimated task budget.
2. For reaches with existing models the following assumptions apply to the level of effort for field surveying:
 - a. Channel cross section geometry data for pre-2000 HEC-2 and HEC-RAS models is not representative of existing conditions and will be resurveyed;
 - b. Bridge/structure geometry for models from 1998-2008 will not need to be resurveyed;
 - c. Channel cross section geometry data for models from 2000-2008 will need to be resurveyed;
 - d. Channel and bridge/structure geometry data for hydraulic models from 2008-2014 will not need to be resurveyed;
 - e. Limited spot-check surveying will be carried out where full resurveying is not needed.
3. For areas with moderate-to-dense riparian vegetation, surveying will be conducted using a total station with an average cross-section spacing of approximately 750 feet.

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SCOPE OF SERVICES**

4. For areas of open channel with no-too-sparse riparian vegetation, the surveying will be conducted using an RTK-GPS unit with an average cross-section spacing of approximately 750 feet.
5. The District will provide the location and requisite information (e.g., coordinates, elevation) for all relevant vertical and horizontal control points within their network.
6. When additional control is necessary for a conventional survey (total station), Consultant will utilize RTK-GPS methods to set up/carry control for each set of cross-sections. Consultant will not run differential levels through the existing control point(s).
7. Survey crew will have access to District facilities to be surveyed.
8. Survey data will be collected for use in updating hydraulic models and monitoring for stream maintenance purposes, consistent with Geologic and Landscape Surveys as defined in the Professional Land Surveyors' Act (California Business and Professions Code).
9. Approximately one cross-section monument will be installed per three miles of Project creeks.

Task 3—Deliverables

1. Work plan for field data collection of raw and processed field data collected for Task 3.
2. Draft and Final Technical memorandum presenting comparison of as-built and/or model cross sections to surveyed sections at selected locations including electronic source files.
3. Draft and Final Technical memorandum describing monument locations, including map(s) and photos.

Task 4—Hydraulic Analysis.

A. The purpose of this task is for Consultant to conduct hydraulic analysis needed to evaluate channel capacity under existing conditions and a range of maintenance scenarios, relative to LOS and freeboard requirements. The results of these analyses will form the basis for defining maintenance thresholds within the Stream Maintenance Guidelines.

B. The Consultant will perform the following:

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1. Convert existing model(s) to the NAVD88 vertical datum as needed.
2. Create new one-dimensional steady state flow geo-referenced HEC-RAS models if reliable recent models are unavailable, or update or supplement available models using new cross sections to achieve reasonable confidence level for maintenance purposes.
3. Update existing HEC-RAS models with recently surveyed cross-sections and other data as required. Existing model geometry will be replaced with new cross-sections only when cross section-comparison task (Task 3.7) indicates updating is warranted.
4. Identify channel reaches (by station) based on LOS flow, geomorphic conditions or other field conditions noted under Task 2.
5. Identify a “typical” cross-section for each channel reach that represents the general geometry of the channel throughout the reach.
6. Identify Manning’s n values to be applied to each model reach for baseline, existing and maintenance scenario conditions.
7. Develop an “atlas” of Manning’s n values by compiling channel photographs and associated roughness values for each “typical” cross-section.
8. Identify sediment accumulation scenarios to be used for maintenance conditions.
9. If stream gauge data is available for the channel reach, calibrate HEC-RAS model against available known water surface elevations and/or surveyed high water marks, and test sensitivity of computed water surface elevations to Manning’s roughness coefficient.
10. Run HEC-RAS models for LOS flows under baseline, existing and maintenance scenario conditions.
11. Develop a nomograph for each creek facility relating water surface, roughness and sediment accumulation for each reach of each channel facility, based on model results for the “typical” cross-section.

Task 4—Deliverables.

1. A draft and final hydraulic analysis report that includes:
 - a. A description of modeling methods assumptions and data sources
 - b. Modeling files (electronic)
 - c. A summary of hydraulic analysis results
 - d. Documentation of method for Manning’s n selection

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2. Nomographs relating water surface, roughness and sediment accumulation for each reach of each channel facility, based on model results.
3. An “atlas” with description of vegetation type and composition for Manning’s n values found in Santa Clara County with sample photographs.

Task 4—Assumptions Include:

1. Available hydraulic models, survey data, and design and as-built structure drawings will be provided by the District.
2. Calibration data including gauge records, high water marks, flood photos, and observations will be provided by the District for each facility as available.
3. LOS flow rate and design freeboard will be provided by the District for each facility.
4. For channel reaches with existing models, the following assumptions were made in estimating the level of effort for hydraulic analysis:
 - a. Channel and bridge/structure geometry data for project reaches with recent hydraulic models (i.e., 2008-2016) are representative of existing conditions will not be replaced in the models; however, limited spot-checking will be conducted.
 - b. Channel geometry data for models from 2000-2008 will be compared to survey data under Task 2. For purposes of Task 3, it is assumed that the channel geometry for these models will be replaced with new survey data.
 - c. Bridge/structure geometry for models from 1998-2008 will not need be updated;
 - d. Pre-2000 HEC-2 and HEC-RAS models will be updated with new survey data.
5. For models that would likely not need updating (e.g., Regnart Creek), Model calibration will be conducted only for channel reaches with available data (provided by the District).

Task 5—Stream Maintenance Guidelines

- A. The purpose of this task is for Consultant to integrate the hydrologic, hydraulic, survey, geomorphic, and biologic data collected, analyzed, or developed in the previous tasks and synthesize this information into Stream Maintenance Guidelines.

**SCHEDULE P
SCOPE OF SERVICES**

- B. The Stream Maintenance Guidelines will be organized according to individual stream creeks (facilities) and further specified according to reach-specific conditions. The Guidelines will include quantitative guidelines to evaluate the need to conduct sediment removal or vegetation management activities. The Consultant will develop a consistent methodology for developing the Guidelines, which will be based on numeric criteria and defined performance standards.
- C. The Consultant will develop an easy-to-reference template for the Maintenance Guidelines. The template contains sample summary information in table or chart format, with the “back up” information referenced in clear, well-organized appendices.
- D. The Consultant will develop separate and unique Stream Maintenance Guidelines for each reach of the listed facilities below.

Facility	Watershed	Station	
		From	To
Permanente Creek	Lower Peninsula Watershed	0+00	528+70
Saratoga Creek	West Valley Watershed	0+00 369+44	183+31 530+70
Randol Creek	Guadalupe Watershed	0+57	34+60
Lower Silver Creek	Coyote Watershed	0+00	320+00
Jones Creek	Pajaro Watershed	0+00	255+92
Coyote Creek	Coyote Watershed	0+00	732+20
Regnart Creek	West Valley Watershed	111+34	139+51
San Francisquito Creek	Lower Peninsula Watershed	0+00	492+31
Thompson Creek	Coyote Watershed	1+64	195+26
Madrone Channel	Pajaro Watershed	0+00	220+00

- E. Based on District's priority, the Consultant will complete the Stream Maintenance Guidelines for the Permanente Creek, Saratoga Creek, Randol Creek, Lower Silver Creek, and Jones Creek facilities before completing the Stream Maintenance Guidelines for the Coyote Creek, Regnart Creek, San Francisquito Creek, Thompson Creek, and Madrone Channel facilities (See also Attachment Two, Schedule of Completion).

**SCHEDULE P
SCOPE OF SERVICES**

- F. Each Stream Maintenance Guideline will:
- a. Summarize reach location, ownership, maintenance responsibilities, easements, locations of maintenance roads, and access.
 - b. Summarize known information for each reach, such as channel type, floodwalls, levees, channel geometry, instream features, bed slope, agreements, maintenance history, et al., and include aerial photos/maps.
 - c. Summarize the maintenance history of the reach (based on information provided by the District and collected in Task 2).
 - d. Describe vegetation type, percent coverage, and composition, including existing vegetation roughness conditions throughout the reach and at representative cross-section. Include diagrams of design and existing vegetation roughness conditions.
 - e. Document the results of the hydraulic analysis in terms of channel capacity relative to LOS flows and required freeboard, based on the nomographs developed in Task 4.
 - f. Identify the potential need for maintenance under each of modeled maintenance scenarios using the nomographs and other figures and text. Clearly identify the combination of roughness and sediment accumulation that results in a modeled water surface elevation that is higher than the target freeboard level, indicating the need for maintenance.
 - g. Provide photographs and figures to help identify roughness values and sediment accumulation corresponding to different maintenance conditions shown on the nomograph.

Task 5—Deliverables.

- 1. Draft Stream Maintenance Guidelines;
- 2. Final Stream Maintenance Guidelines; and
- 3. Copies of exhibits/figures/tables in the format in which they will be created in (such as AutoCAD, Excel, Arc Map, etc.).

Task 6—Supplemental Services.

A. The District may require, and the Consultant shall perform, Supplemental Services on an as-needed basis that are needed for, related to, or are the result of the creation of these maintenance guidelines. Prior to performing such Supplemental Services, the Consultant must obtain written authorization in the form of a Task Order approved by the District's authorized

**SCHEDULE P
SCOPE OF SERVICES**

representative. The form of this Task Order will be as per the Standard Consultant Agreement, Section Twelve, Miscellaneous Provisions, Subsection 13, Task Orders; and, Appendix Three of the Standard Consultant Agreement, Task Order Template.

Examples of possible Supplemental Services include:

- a. Additional meetings;
- b. Additional time allotted for meetings;
- c. Additional status/progress reports;
- d. Expanded level of effort for hydraulic modeling (beyond what is described in the assumptions for Task 3) and/or additional hydraulic modeling tasks.
- e. Expanded level of effort for field data collection (beyond what is described in the assumptions for Task 4) and/or additional field data collection tasks.
- f. Identification of trees that should be removed to maintain design capacity in a specific reach including preparation of associated report(s).

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

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

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

1. Total Authorized Funding.

Total payment for Services performed, as described in the Schedule(s) will not exceed a total amount of **\$1,450,000.00** (Not-to-Exceed Fees or NTE). Under no conditions will the total compensation to the Consultant exceed this fixed fee payment amount without prior written approval in the form of an amendment to this Agreement executed by the District's Board of Directors (Board), or Chief Executive Officer, or designee, as authorized by the Board.

2. Cost Breakdown.

The NTE total compensation of this Agreement consists of the following task fee breakdown. No services will be performed or fees paid by the District to the Consultant for Supplemental Services without prior written authorization by the District as stated in Schedule P, Scope of Services.

COST BREAKDOWN

Task	Description	Total Not-to-Exceed Fees
1	Project Management and Coordination	\$142,000
2	Data Review	\$176,000
3	Perform Surveying	\$347,000
4	Hydraulic Analysis	\$239,000
5	Stream Maintenance Guidelines	\$401,000
6	Supplemental Services	\$145,000
Total Not-to-Exceed Fees		\$1,450,000

3. Terms and Conditions.

Payments for services performed, as defined in this attached Schedule, which applies to the specific Services, will be based on the following terms:

- A.** The District will pay for Services provided by the Consultant according to the schedule of rates for professional, technical, and administrative personnel as well as materials and supplies as listed below in the Hourly/Unit Rate Schedule.
- B.** The stated hourly and unit rates are effective for the term of this Agreement unless otherwise revised as indicated. After twelve (12) months from the Effective Date of this Agreement, and each 12 months thereafter, these hourly and unit rates may be negotiated by the Consultant and the District, provided Consultant submits written notice

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

to District of Consultant's request to revise the hourly and unit rates ninety (90) calendar days prior to the Effective Date of this Agreement. Both Parties will use as a benchmark for negotiations the percent change for the previous twelve (12) months of the "Employment Cost Index (ECI), for total compensation for private industry workers, for the San Francisco-Oakland-San Jose, CA CSA Census region and metropolitan area (not seasonally adjusted)" as published by the U.S. Department of Labor, Bureau of Labor Statistics, or 2.5% whichever is less. A negative index will result in rates remaining the same. Such rate revisions are subject to written approval by the District's Water Supply Division Deputy Operating Officer.

- C. Reimbursable Expenses.** 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 will be billed on a monthly basis at actual cost plus 0% percent linked to each Agreement Task, as approved by the District's Project Manager, provided that the Agreement total NTE amount is not exceeded. Consultant shall provide receipts for each other direct expense item(s) with monthly invoices submitted. Any equipment purchased on behalf of the District that cost \$50 or more must receive the prior written approval of the District Project Manager. All equipment that the District is invoiced for becomes the property of the District when the Consultant is reimbursed for the amount it paid for that equipment.

4. Additional Fees and Payments Language.

- A. For staff with rates exceeding the rate of \$215 per hour the Consultant shall obtain written approval from the District Project Manager as to the numbers of hours per task prior to that individual working on the Project.

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

HOURLY/UNIT RATE TABLE

CLASSIFICATION/STAFF	HOURLY/UNIT RATE
Consultant: ESA	
Director II	\$215
Managing Associate II	\$180
Managing Associate I	\$165
Senior Associate I	\$140
Senior Associate II	\$150
Associate III	\$130
Associate II	\$120
Technician/Admin	\$95
Subconsultant(s): Horizon	
Principal	\$210
Director	\$185
Associate	\$150
Analyst	\$135
Analyst/Surveyor	\$125
Admin	\$75

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**ATTACHMENT TWO
TO SCHEDULE P
SCHEDULE OF COMPLETION**

1. This Agreement commences on the Effective Date, subject to accomplishment of all of the conditions to formation of an agreement listed in the Agreement at Section Twelve, Miscellaneous Provisions, subsection 2. Formation of Agreement.
2. This Agreement expires on December 31, 2019, unless, prior to its expiration, its term is modified by a written amendment hereto, signed by both Parties.
3. District's Project Manager and Consultant may agree to modify the schedule specified for Consultant's performance as an administrative modification to the Agreement and will confirm such modification in writing.

PROJECT SCHEDULE

Task	Description	Duration From Notice to Proceed (months)
1	Project Management and Coordination	Agreement Term
2	Data Collection, Review and Preliminary Investigation	
	<p>Permanente Creek, Saratoga Creek, Randol Creek, Lower Silver Creek, and Jones Creek facilities</p> <p>Coyote Creek, Regnart Creek, San Francisquito Creek, Thompson Creek, and Madrone Channel facilities</p>	<p>12</p> <p>24</p>
3	Topographic Survey	
	<p>Permanente Creek, Saratoga Creek, Randol Creek, Lower Silver Creek, and Jones Creek facilities</p> <p>Coyote Creek, Regnart Creek, San Francisquito Creek, Thompson Creek, and Madrone Channel facilities</p>	<p>12</p> <p>24</p>

**ATTACHMENT TWO
TO SCHEDULE P
SCHEDULE OF COMPLETION**

Task	Description	Duration From Notice to Proceed (months)
4	Hydraulic Analysis	
	Permanente Creek, Saratoga Creek, Randol Creek, Lower Silver Creek, and Jones Creek facilities	12
	Coyote Creek, Regnart Creek, San Francisquito Creek, Thompson Creek, and Madrone Channel facilities	24
5	Stream Maintenance Guidelines	
	Permanente Creek, Saratoga Creek, Randol Creek, Lower Silver Creek, and Jones Creek facilities	12
	Coyote Creek, Regnart Creek, San Francisquito Creek, Thompson Creek, and Madrone Channel facilities	24
6	Supplemental Services	Agreement Term

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

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

Team Member	Project Role	Contact Information
Christie Beeman	Project Manager	cbeeman@esassoc.com
		(415) 896-5900 (office); (415) 262-2321 (direct)
James Gregory	Deputy PM	jgregory@esassoc.com
		(415) 896-5900 (office); (415) 262-2338 (direct)
Justin Gragg	Managing Associate II	jgragg@esassoc.com
		(415) 896-5900 (office)
Damien Kunz	Senior Associate II	dkunz@esassoc.com
		(415) 896-5900 (office)
Tiffany Cheng	Senior Associate I	tcheng@esassoc.com
		(415) 896-5900 (office)
James Jackson	Senior Associate I	jjackson@esassoc.com
		(415) 896-5900 (office)
Hannah Snow	Associate III	hsnow@esassoc.com
		(415) 896-5900 (office)
Annika Sullivan	Associate III	asullivan@essassoc.com
		(415) 896-5900 (office)
Garrett Leidy	Associate II	gleidy@esassoc.com
		(415) 896-5900 (office)
Matt Norcott	Associate II	mnorcott@esassoc.com
		(415) 896-5900 (office)
Michael Strom	Associate III	mstrom@esassoc.com
		(415) 896-5900 (office)
Jill Sunahara	Senior Managing Assoc.	jsunahara@esassoc.com
		(415) 896-5900 (office)
Andy Collison	Director	acollison@esassoc.com
		(415) 896-5900 (office)

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

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

Firm	Contact Information
Horizon Water & Environment	Ken Schwarz, Principal
	180 Grand Ave #1405, Oakland, CA 94612
	ken@horizonh2o.com
	(510) 986-1850 (office)
Horizon Water & Environment	Johnnie Chamberlin
	266 Grand Ave, Suite 210, Oakland, CA 94610
	j.chamberlin@horizonh2o.com
	(510) 986-4733 (office)
Horizon Water & Environment	Kevin Fisher
	266 Grand Ave, Suite 210, Oakland, CA 94610
	kevin@horizonh2o.com
	(510) 986-5420 (office)
Horizon Water & Environment	Robin Hunter
	180 Grand Ave #1405, Oakland, CA 94612
	robin@horizonh2o.com
	(510) 986-1854 (office)
Horizon Water & Environment	Brian Piontek
	266 Grand Ave, Suite 210, Oakland, CA 94610
	brian@horizonh2o.com (510) 899-4808 (office)
Horizon Water & Environment	Scott Walls
	320 Alamo Ave Santa Cruz, CA 95060
	scott@wallslandwater.com (831) 246-1718 (cell)
Horizon Water & Environment	Scott Walls
	320 Alamo Ave Santa Cruz, CA 95060
	scott@wallslandwater.com (831) 246-1718 (cell)

**ATTACHMNT FOUR
TO SCHEDULE P
REFERENCE MATERIALS**

Ref No.	Description
1	Quality and Environmental Management System (QEMS) Fact-Sheet
2	Santa Clara Valley Water District Non-Disclosure Agreement (NDA)
3	Personal NDA (PNDA)
4	GIS Product Standards July 2015 version

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