



STANDARD CONSULTANT AGREEMENT

(For Capital Consultant Contracts)
Terms and Conditions Template
Rev. B [7/1/2018-06/30/2019]

This agreement (Agreement) is effective once fully executed (Effective Date), by and between SANTA CLARA VALLEY WATER DISTRICT (District), and MOTT MACDONALD GROUP, INC. a California corporation (Consultant), individually the Party or collectively the Parties.

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

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

SECTION ONE

SCOPE OF SERVICES

The Scope of Services (Services) to be performed pursuant to this Agreement is described in the Schedule(s), Scope of Services, 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, to meet the purposes specified in this Agreement. References to "Consultant" herein include those performing any portion of the Services at its direction such as Subconsultants, vendors, suppliers, subcontractors, and other business entities and individuals. Consultant will collaborate with District staff in engineering, asset management, operations, and maintenance units to be made aware of District operational constraints, procedures, or preferences relevant to Consultant's performance of the Services described in the attached Schedule(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 the Scope of Services.

3. Licensing

Services performed by Consultant will be undertaken only by persons appropriately licensed, certified, or registered in California, as applicable to the Services described herein, when required by statutes or regulations, as well as pursuant to the relevant standard of care as described in subsection 11. Standard of Care. 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 to 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 at no additional cost to the District. 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's Key Staff and Subconsultants

- A. Consultant's Key Staff and firms subcontracted by the Consultant (Subconsultants) assigned to perform the Services are identified in Attachment Three to the Scope of Services, Consultant's Key Staff and Subconsultants.
- B. The Project team organization chart and delegated responsibilities of each team member will be submitted to the District for concurrence.
- C. Consultant may utilize Subconsultants, subcontractors, suppliers, or vendors it deems appropriate to the complexity and nature of the required Services.
 - 1) Consultant must obtain the District's approval of all Subconsultants. Upon the District's request, Consultant must provide copies of all Subconsultant agreements.
 - 2) Consultant must require its delegates or Subconsultants to agree, in writing, to adhere to Terms and Conditions of this Agreement.
- D. Any delegation or use of Subconsultants by Consultant will not operate to relieve Consultant of its responsibilities as described in this Agreement.
- E. If any of Consultant's designated key staff persons or Subconsultants fail to perform to the satisfaction of the District, on written notice from the District, Consultant will have 15 calendar days to remove that person from the Project and provide a replacement acceptable to the District.
- F. Consultant will not charge the District for the time it takes Consultant's replacement personnel to obtain the District-specific Project knowledge in the possession of the person(s) being replaced.
- G. Consultant's Key Staff: The District Project Manager may approve any revisions to Consultant's list of key staff assigned to the Project as an administrative modification to this Agreement, and such approval will be confirmed in writing.
- H. Consultant's Subconsultants
 - 1) The District Project Manager may approve any revisions to Consultant's list of authorized Subconsultants when the Subconsultant is deleted from the list and the Scope of Services is deleted from the Agreement or such services are assumed by the Consultant; such approval will be confirmed in writing.
 - 2) The District's authorized representative may approve any revisions to Consultant's list of authorized Subconsultants when a listed Subconsultant is replaced (to perform the same Scope) or a new Subconsultant is added (to perform new Scope), provided the firm complies with all insurance requirements established by the District for such work; such approval will be confirmed in writing.

8. Compliance with All Laws

- A. Consultant's performance must be in compliance with the most current versions of any and all laws relevant to the Services it performs pursuant to this Agreement, including, but not limited to adherence to: all applicable governmental laws, statutes, ordinances, rules, codes, regulations, orders, and other requirements; 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.
- B. Consultant shall provide, at District's request, documentation demonstrating Consultant's compliance with all laws as described herein. After reasonable notice and according to reasonable conditions, the District has the right to inspect and copy any records of Consultant regarding such compliance.
- C. Consultant represents and warrants that neither Consultant nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal government department or agency.

9. Occupational Safety and Health

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

10. Consultant as Independent Contractor

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

11. Standard of Care

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

SECTION THREE

DUTIES OF DISTRICT

1. Available Data

The District will make available to Consultant all data and information in its possession and control and which it deems necessary to the preparation of the deliverables specified in the Schedule(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 for providing data and information that it does not possess.

2. Review of Deliverables

- A. The District will designate a Project Manager (District Project Manager) for purposes of administering and managing this Agreement.
- B. Consultant's progress in completing the Services will be reviewed by the District Project Manager at each milestone identified in 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 said deliverable. Deliverables deemed satisfactory and in compliance with this Agreement are subject to approval by District. Within 30 calendar days of receipt of each deliverable, the District will either (1) notify Consultant that the District accepts the deliverable, or (2) notify the Consultant that the deliverable is not acceptable and must be revised.
- D. If the District advises Consultant that a deliverable must be revised due to errors or omissions by the Consultant, Consultant must correct, at no cost to the District, those

deficiencies as soon as possible and shall notify the District upon completion of the revised deliverable and submit to the District.

- E. The District will then review the revised deliverable and within 30 calendar days of receipt, advise the Consultant if the revised deliverable is acceptable. All deficient deliverables will be revised at no cost to the District and this process will continue until Consultant has corrected all deficiencies identified by the District.
- F. None of the proposed changes or revisions or anything else in this Agreement will be construed to relieve the Consultant of professional or legal responsibility for the performance of the Services as otherwise required by the Terms and Conditions of this Agreement. Corrections to any deliverable as a result of Consultant's errors or omissions, as determined by the District, will not result in additional costs or expenses to the District.

3. Access to District Facilities

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

SECTION FOUR

FEES AND PAYMENTS

1. Total Fixed Not-to-Exceed Fees

- A. Payment for all Services performed by Consultant to the satisfaction of the District, as described in the Schedule(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), equipment, reimbursable travel and per diem expenses incurred by the Consultant to perform the Services.
- B. Upon the written approval of the District 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.
- C. Upon the written approval of the District 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.
- D. 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.

- E. 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.
- F. Automobile travel mileage expenses will be paid at the current IRS rate. District will not reimburse Consultant nor its Subconsultants for mileage nor travel time to and from District Headquarters and surrounding campus located at 5700 Almaden Expressway, San Jose, California. However, District will reimburse Consultant and its Subconsultants for mileage incurred from District Headquarters or Consultant's and Subconsultants' firm address, whichever is closer to the destination, to Project site(s) and, if directed or authorized by the District, to meeting locations with regulatory agencies, for community outreach activities and meetings, for partnering meetings, and Dispute Review Board meetings.

2. Consultant 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. Invoices must be consistent with Scope of Services described in the Schedule(s) attached hereto; and include the following:
 - 1) Employee classification and name itemized with all labor charges by Service task;
 - 2) Summary of the amount Consultant has been billed by their Subconsultants and further detailed by Service task;
 - 3) Other direct charges and expenses by Service task;
 - 4) 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; and
 - 5) 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, and within the Agreement NTE Fees in accordance with Attachment One to the Schedule(s), Fees and Payments. The progress report shall document Services completed, 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.

1) 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 two 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. Invoices, 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:
- 1) Agreement Number;
 - 2) Full Legal Name of Consultant/Firm;
 - 3) Payment Remit-to Address;
 - 4) Invoice Number;
 - 5) Invoice Date (the date invoice is mailed); and
 - 6) 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 Project Manager will review Consultant's written invoice within five District business days of receipt, address any questions with Consultant's Contact/Principal Officer and approve the undisputed amount of the invoice within ten working days of receipt of the invoice. District will pay undisputed invoice amounts within 30 calendar days from date invoice is received by District Project Manager.
- 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 §1771, et. seq. and the applicable implementing regulations.
- B. Labor Code §1720 includes "Inspection and Land Surveying" in its definition of "Public Works." If Consultant's Services includes such work, Consultant and its Subconsultants must comply with all Labor Codes applicable to prevailing wages.
- C. The Consultant and its Subconsultants shall not engage in the performance of public work, as defined in California Labor Code §1771.1, unless currently registered and qualified to perform public work pursuant to California Labor Code §1725.5.
- D. The General Prevailing Wage Rates issued by the California Department of Industrial Relations may be adjusted by the State throughout the term of this Agreement. Notwithstanding any other provision of this Agreement, Consultant will not be entitled to

any adjustment in compensation rates in the event there are adjustments to the General Prevailing Wage Rates.

- E. This Agreement is subject to compliance monitoring and enforcement by the State of California Department of Industrial Relations. Upon request, the Consultant and Subconsultants must furnish the records specified in Labor Code §1776 directly to the Labor Commissioner, in a format prescribed by the Labor Commissioner.
- F. All records or documents required to be kept to verify statutory compliance with the prevailing wage requirement, such as certified payroll records, must be made available for audit at no cost to the District, at any time during regular business hours, upon written request by the District.
- G. **California State Department of Industrial Relations Contractor and Sub-Contractor Registration Requirements**

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

4. Retention

Unless otherwise specified in Attachment One to the Schedule(s), Fees and Payments, when the total compensation payable pursuant to this Agreement exceeds \$20,000, ten percent of each invoice will be withheld by the District and not paid to Consultant until 30 calendar days after the assigned District representative signs the final approval for all Services/deliverables as stated in the applicable Schedule, Attachment Two, Schedule of Completion, and Section Three, Duties of District, subsection 2. Review of Deliverables. Provided that at any time after 50% of the work has been completed, the District may, at its sole discretion, determine that satisfactory progress is being made in the completion of the Agreement, and prospectively make the remaining progress payments in full. The retention previously withheld on the first 50% of the work will continue to be withheld until final contract close out.

SECTION FIVE

SCHEDULE OF COMPLETION

1. Performance of Tasks

Consultant will commence performing the tasks described in the Scope of Services of the attached Schedule(s) to this Agreement upon receipt of the Notice to Proceed issued by the District.

2. Project Schedule Table

Consultant will perform and complete the services described in the Scope of Services 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 subtasks, 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, at its discretion, grant a reasonable adjustment in the Project Schedule.

5. Changes to the Project Schedule

District 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 90 days from the date of the notice of suspension, any decision to proceed must be conditioned upon execution of a new Notice to Proceed or Task Order.

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

3. Consultant's Compensation upon Termination or Suspension

In the event of termination of this Agreement or any Task Order, or suspension of Services by District, Consultant shall receive compensation based on satisfactory performance, accepted by the District, as follows:

- A. Direct Labor: Consultant shall be entitled to receive compensation for all authorized direct labor performed prior to termination pursuant to the provisions of this Agreement or Task Order and all authorized labor expenses incurred to demobilize from the Project after the date of termination;
- B. Other Direct Costs and Expenses: Consultant shall be entitled to receive compensation for all authorized other direct costs and expenses incurred prior to termination and all authorized expenses incurred to demobilize from the Project after the date of termination; and
- C. In no event shall the total compensation paid for any item of Service exceed the payment specified in the Agreement or applicable Task Order for that item of Service.

4. Survival

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

SECTION EIGHT

INDEMNIFICATION

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

SECTION NINE

INSURANCE REQUIREMENTS

Insurance requirements applicable to this Agreement are set forth in the Standard Consultant Agreement, Appendix Four Insurance Requirements. Consultant must provide and maintain at its own expense, during the term of this Agreement, or as may be further required herein, all insurance coverages as detailed in Appendix Four, Insurance Requirements to the Standard Consultant Agreement, and comply with all provisions stated therein.

SECTION TEN

OWNERSHIP AND REUSE OF DELIVERABLES

1. District Ownership

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

intellectual property rights it has so as to limit its ability or right to develop, design, or provide services on other projects of or for its other clients.

2. Reuse of Instruments of Service

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

3. Copies of Data

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

4. Computer-Generated Material

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

5. Work for Hire

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

6. Copyright Claims

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

SECTION ELEVEN

EQUAL OPPORTUNITY

1. Equal Opportunity Employer

The Santa Clara Valley Water District is an equal opportunity employer and requires its consultants to have and adhere to a policy of equal opportunity and non-discrimination. In the performance of the Agreement, the Consultant will comply with all applicable federal, state, local laws and regulations, and will not discriminate against any subcontractor, employee, or applicant for employment in the recruitment, hiring, employment, utilization,

promotion, classification or reclassification, transfer, recruitment advertising, evaluation, treatment, demotion, layoff, termination, rates of pay or other forms of compensation, and selection for professional development training (including apprenticeship), or against any other person, on the basis of sex (which includes pregnancy, childbirth, breastfeeding and medical conditions related to pregnancy, childbirth or breastfeeding), race, religion, color, national origin (including language use restrictions), ancestry, religious creed (including religious dress and grooming practices), political affiliation, disability (mental and physical, including HIV or AIDS), medical condition (cancer and genetic characteristics), genetic information, marital status, parental status, gender, age (40 and over), pregnancy, military and veteran status, sexual orientation, gender identity and gender expression, the exercise of family and medical care leave, the exercise of pregnancy disability leave, or the request, exercise, or need for reasonable accommodation.

2. Compliance with Applicable Equal Opportunity Laws

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

3. Investigation of Claims

Consultant must designate a specific position within its organization to be responsible for assuring nondiscrimination and non-harassment as provided in this Agreement. Consultant must investigate all complaints directed to it by District. District will refer complaints in writing and Consultant will advise District in writing when such investigations are concluded. The scope of such investigations must include all appropriate officers, employees, and agents of the Consultant, as well as all subcontractors, Subconsultants, and material suppliers of the Consultant. In cases where such investigation results in a finding of discrimination, harassment, or hostile work environment, Consultant must take prompt, effective disciplinary action against the offender.

SECTION TWELVE

MISCELLANEOUS PROVISIONS

1. Entire Agreement

This Agreement, which includes the Terms and Conditions, Appendices, the Schedule(s), Attachments to the Schedule(s), and all executed Task Orders, 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

Upper Llagas Creek Flood Protection Project
Phase 2 – Construction Management
Standard Consultant Agreement for Construction Management Services
Version 4/15/20

CAS File No. 4902

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

3. No Assignment

- A. The expertise and experience of Consultant are material considerations for District's award and execution of this Agreement. Consultant will not assign or transfer any interest in this Agreement nor the performance of any of Consultant obligations hereunder, without prior written consent of District in the form of an amendment executed by the Parties, and any attempt to so assign this Agreement, or any rights, duties or obligations arising hereunder, will be void and of no effect. Any assignment of monies due or to become due in accordance with this Agreement, will be to the extent permitted by law, and will be subject to all proper set-offs, deductions, and withholdings in favor of the District.
- B. In no event shall an assignment of any interest in this Agreement release the Consultant from its duties and responsibilities as described in this Agreement nor shall the Consultant be released from liability created by the provision of Services as described in this Agreement until such assignment takes effect. Any attempted or purported assignment without the District's written consent in the form of an amendment executed by the Parties is null and void.

4. Reasonableness

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

5. Gifts

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

6. Audits

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

7. Force Majeure

Neither Party will be held responsible for delays caused by acts beyond its control, such as acts of God or public enemies, utility or communication delays, or failures not caused by such Party's negligence or fault, accidents not caused by such Party's negligence or fault, labor disputes, war, or failure of the other Party to provide data as required pursuant to this Agreement.

8. Binding Effect

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

9. Choice of Law and Venue

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

10. Confidentiality

- A. Due to the nature of the services 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:

- 1) Consultant employees, officers, agents, Subconsultants, and subcontractors assigned to perform services pursuant to this Agreement, shall file, in a manner prescribed by the District, an Assuming Office Statement. The Assuming Office Statement shall be filed:
 - a. Within 30 calendar days of the effective date of this Agreement; or
 - b. Within 30 calendar days of Consultant hiring, adding, or promoting to a designated filer position, employees, officers, agents, Subconsultants, and subcontractors to perform services pursuant to this Agreement.
- 2) Consultant employees, officers, agents, Subconsultants, and subcontractors assigned to perform services pursuant to this Agreement, that filed an Assuming Office Statement, shall file in a manner prescribed by the District, an amendment to their Form 700 any time there is a change to their disclosure information.
- 3) Consultant employees, officers, agents, Subconsultants, and subcontractors assigned to perform services pursuant to this Agreement, that filed an Assuming Office Statement, shall file an Annual Statement in a manner prescribed by the District, during the District's annual filing season, as determined by the District;
- 4) Consultant employees, officers, agents, Subconsultants, and subcontractors assigned to perform services pursuant to this Agreement, that filed an Assuming Office Statement, shall file, in a manner prescribed by the District, a Leaving Office Statement with the District when one of the following occurs:
 - a. Upon termination of this Agreement; or
 - b. Within 30 calendar days of Consultant employees, officers, agents, Subconsultants, and subcontractors vacating a designated filing position (i.e., removed from the Project, promotion, demotion, transfer to non-designated position, end of employment, or as a result of changes in designated filer positions in the District's Conflict of Interest Code).
- 5) Consultant understands and agrees that its employees, officers, agents, Subconsultants, and subcontractors may be disqualified from providing services to the District pursuant to the California Political Reform Act, Gov. Code §81000 et. seq. and Government Code §1090. If any of Consultant's employees, officers, agents, Subconsultants, and subcontractors are disqualified from providing services, on written notice from District Project Manager, Consultant will have 15 calendar days to remove said employee(s), officer(s), agent(s), Subconsultant(s) and subcontractor(s) employee(s) from the Project and provide a replacement acceptable to the District.
- 6) The failure of Consultant's employees, officers, agents, Subconsultants, and subcontractors to file an Assuming Office, Annual, Amended, or Leaving Office Statement within the time prescribed by the District is deemed a material breach and may result in termination of the Agreement for cause.

13. Task Orders

- A. Some tasks and Services will be assigned to the Consultant through issuance of Task Orders. After the tasks and Services are identified and communicated to the Consultant by the District Project Manager, the Consultant will prepare a proposed Task Order (see Standard Consultant Agreement, Appendix Three Task Order Template). The proposed Task must identify the following:
- 1) Description of the services, including deliverables;
 - 2) The total Not-to-Exceed Fees for Consultant to complete the services, including estimated number of hours per assigned staff to complete the services;
 - 3) Proposed staff that will be assigned to complete the services, including resumes if not previously provided to the District's Project Manager;
 - 4) Estimated cost of each other direct cost and reimbursable expense, including any applicable fees;
 - 5) Schedule for completing the services; and
 - 6) Copies of applicable state and federal permits required to complete the services, unless previously provided to the District.
- B. 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 the Standard Consultant Agreement, Appendix One Additional Legal Terms (Appendix One), and the Consultant's authorized representative.
- C. 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 Project Manager. No payment will be made for any services performed prior to approval or after the period of performance of the Task Order. The period of performance for Task Orders will be in accordance with dates specified in the Task Order. No Task Order will be written which extends beyond the expiration date of this Agreement. The total amount payable by the District for an individual Task Order will not exceed the amount agreed to in the Task Order.
- D. Prevailing Wage Requirements: The Scope of Services may be considered by the District to be "Public Works" requiring the payment of prevailing wages. See the Standard Consultant Agreement, Section Four, Fees and Payments, subsection 3. Prevailing Wages, and Appendix Three, Task Order Template.

14. Good Neighbor

The District always strives to be a good neighbor to the community adjacent to its facilities. 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. Governmental Permits and Notifications

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

16. Taxes and Benefits

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

17. Nonwaiver of Rights

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

18. Notices

Unless otherwise specified in this Agreement, all requests for written approval or legal notices must be sent to the representatives below. All notices are deemed to have been given when made in writing and when delivered or mailed to the representatives of the District and the Consultant at their respective addresses as follows:

DISTRICT:

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

CONSULTANT:

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

19. No Third Party Beneficiaries

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

20. Severability

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

21. Debt Limitation

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

22. 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

23. Schedule(s) and Attachments

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

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

(SIGNATURES FOLLOW ON NEXT PAGE)

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

SANTA CLARA VALLEY WATER DISTRICT
District

MOTT MACDONALD GROUP, INC.
Consultant

By: _____
Nai Hsueh
Chair, Board of Directors

By: _____
Chris Metzger
Senior Vice President and Northern
California Division Manager

Date: _____

Date: _____

Consultant's Address:

ATTEST:

2077 Gateway Place, Suite 550
San Jose, CA 95110

Michele L. King, CMC
Clerk, Board of Directors

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

1. Conflict of Interest for Future Services

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

- A. For any agreement to be awarded for planning, design, or the construction of any project that is related to the Services provided pursuant to this Agreement;
- B. In response to any request for proposal or District solicitation developed or prepared by or with the assistance of Consultant, Consultant's parent company, Consultant's subsidiaries, or any affiliated entity sharing substantially similar ownership of or control with Consultant; or
- C. For any single or sole source products/services related to the Services pursuant to this Agreement or have a financial stake in any single or sole source products/services resulting from this Agreement.

2. Dispute Resolution

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

3. Small Business Enterprise 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 **30%** or more of the Total Not-to-Exceed Fees stated in the Standard Consultant Agreement, Attachment One, Fees and Payments, to the Schedule(s), and Consultant agrees to use its best efforts to meet this goal.

District intends to construct the Upper Llagas Creek Flood Protection Project (Project) in multiple phases, including Phase 1 (Consultant is not providing services for Phase 1), Phase 2A, and Phase 2B. Consultant estimates they will achieve **30%** SBE participation for Phase 2A and Phase 2B combined.

4. Task Order Approvals

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

**STANDARD CONSULTANT AGREEMENT
APPENDIX TWO
DISPUTE RESOLUTION**

1. Consultant's Questions and Concerns

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

2. Dispute Resolution

A. Alternate Dispute Resolution

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

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

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

3. Negotiations Before and During Mediation

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

4. Voluntary Mediation

A. Initiation of Mediation

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

B. Request for Mediation

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

C. Selection of Mediator

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

D. Qualifications of a Mediator

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

**STANDARD CONSULTANT AGREEMENT
APPENDIX TWO
DISPUTE RESOLUTION**

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

E. Vacancies

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

F. Representation

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

G. Time and Place of Mediation

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

H. Identification of Matters in Dispute

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

I. Authority of Mediator

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

**STANDARD CONSULTANT AGREEMENT
APPENDIX TWO
DISPUTE RESOLUTION**

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

J. Privacy

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

K. Confidentiality

Except as provided by California or federal law or regulation:

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

**STANDARD CONSULTANT AGREEMENT
APPENDIX TWO
DISPUTE RESOLUTION**

L. No Stenographic Record

There shall be no stenographic record of the mediation.

M. Termination of Mediation

The mediation shall be terminated:

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

N. Exclusion of Liability

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

O. Interpretation and Application of These Mediation Provisions

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

P. Expenses

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

5. Compensation for Participation in Mediation

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

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

Task Order No. _____

Title: _____

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

District: _____

Consultant: _____

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

1. Upon full execution of this Task Order No. _____, as set forth in the Standard Consultant Agreement, Section Twelve, Miscellaneous Provisions, subsection 13. Task Orders, and the issuance of a Notice to Proceed by the District Project Manager, the Consultant is hereby authorized to perform the Services described in Attachment A to this Task Order. Any costs incurred, Services performed or expenditures by the Consultant before this Task Order is executed or before the issuance of the Notice to Proceed will be considered outside the contracted Scope of Services and will not be eligible for payment.
2. Both the Scope of Services to be performed and the deliverables to be provided in accordance with this Task Order are described in Attachment A which is attached hereto and incorporated by this reference. Attachment A shall include at a minimum the following:
 - A. The Consultant personnel to be assigned to perform the Services, including resumes if not previously provided to the District.
 - B. The total not-to-exceed fees amount for Consultant to complete the Services, including estimated number of hours required to perform the Services assigned to each Consultant classification.
 - C. Estimated cost of each other direct cost and reimbursable expense, including any applicable fees; and
 - D. Project schedule for completing the Scope of Services.
3. 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.
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].

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

5. Copies of applicable local, state and federal permits required to perform the Services described in Attachment A are attached to this Task Order, unless the Consultant previously provided the appropriate permits to the District.
6. The Consultant shall perform all Services described in Attachment A to this Task Order in accordance with the Terms and Conditions of the Agreement.
7. Prevailing Wage Requirements [NOT USED]
 - A. The Scope of Services described in this Task Order is considered by the District to be "Public Works" requiring the payment of prevailing wages. See the Standard Consultant Agreement, Section Four, Fees and Payments, subsection 3. Prevailing Wages.
 - B. In accordance with prevailing wage laws, the Director of the California Department of Industrial Relations (Director) has ascertained the general prevailing rate of wages and employer payments for health and welfare, pension, vacation, and similar purposes available to the particular craft, classification, or type of workers employed on the Project. These rates are set forth in the latest determination obtained from the Director, which is on file in the District's Office of the Clerk of the Board of Directors and incorporated herein by reference the same as though set forth in full. The rates are also available on the State of California Department of Industrial Relations website at <http://www.dir.ca.gov>.

8. Signatures:

Signature:

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

DATE

Signature:

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

DATE

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**STANDARD CONSULTANT AGREEMENT
APPENDIX FOUR
INSURANCE REQUIREMENTS**

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

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

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

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

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

Certificates of Insurance

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

Consultant shall instruct their insurance broker/agent to submit all insurance certificates and required notices electronically in PDF format to the designated District Contract Administrator and email a copy to **Insurance.Certificates@valleywater.org**.

The certificates will:

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

**Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, CA 95118
Agreement/CAS No. 4902**

**STANDARD CONSULTANT AGREEMENT
APPENDIX FOUR
INSURANCE REQUIREMENTS**

IMPORTANT: The agreement or CAS number must be included.

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

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

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

Maintenance of Insurance

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

Renewal of Insurance

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

Consultant shall instruct its insurance broker/agent to:

1. Submit all renewals of insurance certificates and required notices electronically in PDF format to:

Insurance.Certificates@valleywater.org

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

**Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, CA 95118
Agreement/CAS No. 4902**

IMPORTANT: The agreement or CAS number must be included.

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

**STANDARD CONSULTANT AGREEMENT
APPENDIX FOUR
INSURANCE REQUIREMENTS**

Required Coverages

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

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

General Liability insurance must include:

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

2. **Business Auto Liability Insurance** with coverage as indicated:

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

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

\$10,000,000 per claim/ **\$10,000,000** 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:
 - 1) Certificate of Insurance shall clearly state that the coverage is claims-made.
 - 2) Policy retroactive date must coincide with or precede the Consultant's start of work (including subsequent policies purchased as renewals or replacements).
 - 3) Policy must allow for reporting of circumstances or incidents that might give rise to future claims.
 - 4) Insurance must be maintained and evidence of insurance must be provided for at least three (3) years after completion of the contract of work.

**STANDARD CONSULTANT AGREEMENT
APPENDIX FOUR
INSURANCE REQUIREMENTS**

4. Workers' Compensation and Employer's Liability Insurance

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

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

General Requirements

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

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

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

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

**STANDARD CONSULTANT AGREEMENT
APPENDIX FOUR
INSURANCE REQUIREMENTS**

provide a financial guarantee satisfactory to the Entity guaranteeing payment of losses and related investigations, claim administration, and defense expenses. Consultant agrees that in the event of a claim they will pay down any agreed upon SIR in a prompt manner as soon as bills are incurred in order to trigger the insurance related to the SIR.

6. **Subconsultants:** The Consultant shall secure and maintain or shall be responsible for ensuring that all subconsultants performing the Contract Services secure and maintain all insurance coverages appropriate to their tier and scope of work in a form and from insurance companies reasonably acceptable to the District.
7. **Amount of Liability not Limited to Amount of Insurance:** The insurance procured by Consultant for the benefit of the District must not be deemed to release or limit any liability of Consultant. Damages recoverable by the District for any liability of Consultant must, in any event, not be limited by the amount of the required insurance coverage.
8. **Coverage to be Occurrence Based:** Except for Professional Liability, all coverage must be occurrence-based coverage. Claims-made coverage is not allowed.
9. **Waiver of Subrogation:** Consultant agrees to waive subrogation against the District to the extent any loss suffered by Consultant is covered by any Commercial General Liability policy, Automobile policy, Workers' Compensation policy described in **Required Coverages** above. Consultant agrees to advise its broker/agent/insurer and agrees to provide evidence (either through the Certificate of Insurance, endorsement or language in the insurance contract) that subrogation has been waived by its insurer.
10. **Non-compliance:** The District reserves the right to withhold payments to the Consultant in the event of material noncompliance with the insurance requirements outlined above.

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**STANDARD CONSULTANT AGREEMENT
APPENDIX FOUR
INSURANCE REQUIREMENTS**

CHECK LIST OF DOCUMENTS NEEDED

General Liability:	A.	Limits (\$2,000,000)	
	B.	Additional Insured (Endorsement)	
	C.	Waiver of Subrogation (COI, Endorsement or policy language)	
	D.	Primacy (COI, Endorsement or policy language)	
	E.	Cancellation Endorsement	
Auto Liability:	A.	Limits (\$2,000,000)	
	B.	Additional Insured (Endorsement)	
	C.	Waiver of Subrogation (COI, Endorsement or policy language)	
	D.	Primacy (COI, Endorsement or policy language)	
	E.	Cancellation Endorsement	
Umbrella:	A.	Limits (\$)	
	B.	Primacy (Endorsement or policy language)	
Workers Comp:	A.	Limits (\$1,000,000)	
	B.	Waiver of Subrogation (Endorsement or policy language)	
	C.	Cancellation Endorsement	
Professional Liability:	A.	Limits (\$10,000,000)	
	B.	Cancellation Endorsement	

Appendix IV ConsultantGL2AL2PL10_rev. 10.23.18

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**SCHEDULE CM (CONSTRUCTION MANAGEMENT)
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's Project Manager.

Collette Frawley, P.E. (District Project Manager)
Associate Engineer - Civil
Water Utility Capital Division
Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, CA 95118-3638

Phone: 408-630-2281

Email: cfrawley@valleywater.org

Stephen M. Ferranti, P.E. (District Unit Manager)
Capital Engineering Manager
Dam Safety and Capital Delivery Division
Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, CA 95118-3638

Phone: 408-630-2677

Email: sferranti@valleywater.org

Heath McMahon, P.E. (District Deputy Operating Officer)
Water Utility Capital Division
Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, CA 95118-3638

Phone: 408-630-3126

Email: hcmcmahon@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.

Martin Nnam P.E. (Consultant Project Manager)
Principal Project Manager
Mott MacDonald Group, Inc.
2077 Gateway Place, Suite 550
San Jose, CA 95110

Phone: 408-592-1123

Email: martin.nnam@mottmac.com

SCHEDULE CM (CONSTRUCTION MANAGEMENT) SCOPE OF SERVICES

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

Chris Metzger, P.E., LEED AP (Consultant Principal Officer)
Senior Vice President and Northern California Division Manager
Mott MacDonald Group, Inc.
2077 Gateway Place, Suite 550
San Jose, CA 95110

Phone: 408-876-6039

Email: chris.metzger@mottmac.com

2. Scope of Services

This Schedule CM, Scope of Services describes the professional construction management (CM) services to be performed by Consultant for the **Upper Llagas Creek Flood Protection Project, Phase 2** (Project). The District reserves the right to initiate a new consultant agreement selection process for services for any phase and/or utilize District staff to perform such services.

Phase 2 consists of both Phase 2A and Phase 2B. Phase 2A consists of construction of an underground bypass tunnel, bypass concrete culverts, road work, utility relocation, traffic controls/detours, fencing, soil testing as required for off-site disposal, miscellaneous concrete work, other miscellaneous work, and community outreach coordination.

Phase 2B consists of construction of concrete bypass culverts, creek modifications/excavation by widening and deepening, installation of drainage outfalls, construction of an inlet basin split flow weir structure, bridge underpinning work, installation of instream complexities, removal of plantings and non-native plantings, revegetation, utility relocations, outfall modifications, aggregate base maintenance roads, access ramps, traffic controls/detours, fencing, soil testing as required for off-site disposal, miscellaneous concrete work, other miscellaneous work, and community outreach coordination.

3. Project Objectives

- A. The objectives of the Project include:

- 1) Providing 100-year flood protection to urban areas of Morgan Hill within Reach 7 and Reach 8 of the Project;
- 2) Providing 10-year flood protection within Reach 14 of the Project;
- 3) Providing no induced flooding due to creek modifications within Reaches 4, 5, and 6 of the Project; and
- 4) Preserving and enhancing creek habitat for fish and wildlife.

SCHEDULE CM (CONSTRUCTION MANAGEMENT) SCOPE OF SERVICES

- B. The District's intent is to successfully complete the Project while effectively managing and limiting the Project risks, including but not limited to, the cost, schedule, quality, and safety. The Consultant is responsible for providing professional construction management services to achieve unified oversight and management of the Project that meets the District's intent.

4. Project Background

- A. 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 dams and surface water reservoirs, three water treatments plants, nearly 400 acres of groundwater recharge ponds and more than 275 miles of streams.
- B. The Project is located in southern Santa Clara County, encompassing portions of the communities of Morgan Hill, Gilroy, and unincorporated areas of Santa Clara County, including San Martin. Llagas Creek is one of the tributaries of the Pajaro River and drains a 104-square-mile watershed within Santa Clara County. The Upper Llagas Creek Flood Protection Project, Phases 1 and 2, has been divided into various reaches (Reaches 4, 5, 6, 7A, 7B, 8 and 14). The completed work will provide 100-year flood protection to urban areas of Morgan Hill, as well as an approximate ten-year level of flood protection and no induced flooding to the agricultural areas of Gilroy and Morgan Hill. The goal is to provide flood protection for 1,100 homes, 500 businesses, and over 1,300 acres of agricultural land in southern Santa Clara County.
- C. Construction of the Project will be done in multiple phases.
- 1) Phase 1 consists of Reach 4 (Buena Vista Avenue to confluence with Reach 14), a portion of Reach 5 (from Reach 4/Reach 14 confluence to east of Highway 101), Reach 7A (Monterey Road to Watsonville Road), and Lake Silveira (on-site mitigation element of the Project). Construction management of Phase 1 **is not** part of this Agreement.
 - 2) Phase 2 consists of two phases:
 - a. Phase 2A (from Ciolino Avenue to Hale Avenue approximately 300 feet north of West Main Avenue).

Phase 2A (portion of Reach 8) consists of construction of approximately 2,300 linear feet of a horseshoe-shaped underground bypass tunnel, approximately 1,600 linear feet of twin bypass concrete culverts, road work, utility relocation, traffic controls/detours, fencing, soil testing as required for off-site disposal, miscellaneous concrete work, other miscellaneous work, and community outreach coordination.
 - b. Phase 2B consists of the remaining portion of Reach 5; Reach 6 (east side of Highway 101 to Monterey Road; Reach 7B (Watsonville Road to Ciolino Avenue; Reach 8 (Hale Avenue, approximately 300 feet north of West Main

SCHEDULE CM (CONSTRUCTION MANAGEMENT) SCOPE OF SERVICES

Avenue to Llagas Road); and Reach 14 (confluence with Reach 4 to approximately Sycamore Avenue).

Phase 2B (portion of Reach 5, Reach 6, Reach 7B, portion of Reach 8, Reach 14) consists of construction of bypass concrete culverts, creek modifications/excavation by widening and deepening, installation of culverts, construction of an inlet basin weir split flow structure, bridge underpinning work, installation of instream complexities, removal of plantings and non-native plantings, habitat enhancements, revegetation, utility relocations, outfall modifications, aggregate base maintenance roads, access ramps, traffic controls/detours, fencing, soil testing as required for off-site disposal, miscellaneous concrete work, other miscellaneous work, and community outreach coordination.

D. Project Construction for Phase 2 is comprised of the following milestones:

1) Phase 2A Milestones:

- a. Milestone One (Tunnel Completion): Completion of the tunnel construction work within 20 months of the First Charged Day as stated in the Notice to Proceed.
- b. Milestone Two (Project Completion): Completion of all the civil work, including underground box culvert structures, utility relocations, traffic detours/controls, street restoration, placement of AC pavement, soil testing as required for off-site disposal, and miscellaneous concrete work within 30 months as stated in the Notice to Proceed.

2) Phase 2B Milestones:

- a. Milestone One (Flood Protection Completion): Completion of all work, including soil testing as required for off-site disposal, miscellaneous concrete work, and other miscellaneous work within Llagas Creek and its tributaries (within "waters of the U.S.") within 30 months of the First Charged Day as stated in the Notice to Proceed.
- b. Milestone Two (Completion of Civil Work): Completion of all civil work, including aggregate maintenance roads, permanent fencing, mitigation and landscape plant installation with operational irrigation systems within 36 months of the First Charged Day as stated in the Notice to Proceed.
- c. Milestone Three (Project Completion): installation of all plantings and completion of the three-year revegetation and maintenance establishment period within 72 months of the First Charged Day as stated in the Notice to Proceed (Consultant will not perform CM services for the construction scope performed during Milestone Three).

SCHEDULE CM (CONSTRUCTION MANAGEMENT) SCOPE OF SERVICES

- E. At District's discretion, Consultant shall review Phase 2A and Phase 2B construction documents prior to advertisement and provide written comments to the District identifying any constructability concerns for the District's consideration. Consultant will perform CM Services to administer the contract between the District and the firm employed by the District to construct the Project (Contractor), and to manage and control the Project risks during construction including, but not limited to, the cost, schedule, quality, and safety.
- F. Project construction duration, not including the plant establishment component, is currently estimated to take approximately four years to complete and is anticipated to commence in November 2020.
- G. The District intends to issue two separate Notices to Proceed (NTP) to Consultant; the first NTP for Phase 2A with an initial term of approximately 36 months, including approximately 6 months for preconstruction services.
- H. A second NTP for Phase 2B will only be issued after the District's Board of Directors approves of Consultant performing services pursuant to this Agreement for Phase 2B.

5. Assumptions and Requirements

A. General Assumptions and Requirements

- 1) **Manage Scope of Services.** Consultant shall manage the Scope of Services such that the work is completed within the Not-to-Exceed Fees limit and in accordance with the Project schedule and ensure that all services and deliverables meet the District and Project objectives and requirements.
- 2) **Deliverable Format.** Consultant shall submit deliverables in both electronic and hardcopy format, if requested. Deliverables shall be submitted in PDF and native (editable) format, including Word documents, Excel spreadsheets, PowerPoint files, AutoCAD files, GIS files. The hard copy deliverables shall be printed in professional quality presentation and submitted in 5 (five) copies, if requested. District may require original copies of signed documents and/or scanned (Adobe PDF) versions.
- 3) **Review of Deliverables.** The District will review and comment on all Project deliverables and forward to Consultant for revision and preparation of final versions. As determined by the District, some of the deliverables may also be subject to review and comment from regulatory agencies and stakeholders following the District review process.
- 4) **District Quality Environmental Management System.** District maintains a Quality Environmental Management System (QEMS), including a construction manual, which has procedures, guidelines, and work instructions for the performance of various District work. Consultant will perform the Agreement tasks and/or sub tasks in accordance with the QEMS framework. In such situations, the DPM will provide the Consultant with the specific QEMS procedure, guideline, and/or work instruction prior to the preparation of deliverables.

SCHEDULE CM (CONSTRUCTION MANAGEMENT) SCOPE OF SERVICES

- 5) Consultant Responsibility.** Consultant, with its expertise in performing the Services described herein, is responsible for making the appropriate assumptions in each task to complete each task's deliverables and to achieve the Project objectives of this Agreement as described in Section 3. Project Objectives.
- 6) Document Control.** The Consultant is responsible for establishing and maintaining its own document control system to execute this Scope of Services. An internal document control system for this Project is maintained by the District.
- 7) File Exchange Service.** Consultant will provide a file exchange service, accessible to all parties as designated by the District, to facilitate the transfer of Project documents; particularly of large files over three megabytes. Difficulties in using and transmitting information with this exchange service shall be resolved by the Consultant. In the event that transmitting or receiving information does not occur in a timely manner, the District will not be responsible for delays in completing Project work. Consultant may need to coordinate with District's Information Technology Division to address any firewall issues and/or permissions required to allow for these communications.

B. Project-Specific Assumptions and Requirements

- 1) The Consultant will provide CM services for Phase 2A and Phase 2B as follows:

Phase 2A - Milestone One and Milestone Two in accordance with Article 4. Project Background D. from the First Charged Day as stated in the Notice to Proceed through the District's issuance of Milestone One and Two completion letters in accordance with the Project Specifications.

Phase 2B - Milestone One and Milestone Two in accordance with Article 4. Project Background D. from the First Charged Day as stated in the Notice to Proceed through the District's issuance of Milestone One and Two completion letters in accordance with the Project Specifications.
- 2) Project construction schedule is expected to be determined and provided to the Consultant prior to the execution of this Agreement.
- 3) Consultant will not provide the construction management services for the Milestone Three construction scope, as described in Article 4. Project Background, D.
- 4) Consultant must coordinate with and support the District's Office of Communications lead role regarding community outreach.

6. Construction Management Phase Tasks

Task 1 – Construction Administration

1.1 – Project Construction Management

Consultant will prepare a Construction Management Work Plan, conduct construction

SCHEDULE CM (CONSTRUCTION MANAGEMENT) SCOPE OF SERVICES

management general meetings, establish a construction management action item and decision log, and the following tasks as described below.

- 1.1.1 Manage Scope of Services.** The Consultant shall manage the Scope of Services such that the work is completed within the Not-to-Exceed Fees limit and in accordance with each Project schedule and ensure that all services and deliverables meet the District's and each of the Project's requirements. These will include, but not be limited to coordination, monitoring tasks and schedules, status report preparation, and Consultant's monthly progress report preparation. The Monthly progress report requirements are described in Section Four, Fees and Payments of the Standard Consultant Agreement.
- The Consultant's monthly progress report will include all tasks identified in Section Four, Fees and Payments of the Standard Consultant Agreement and include a Project description, Project status, schedule status, milestones, cost and budget, key areas of effort, contract status, safety, project management, quality assurance, technical issues resolved, Contractor and District personnel, neighborhood issues, Project specific items of interest, work completed during the month, anticipated work, major planned road closures, and photographs.
- 1.1.2 Project Construction Management Work Plan (CMWP).** If requested, Consultant will prepare a Project CMWP in accordance with this Scope of Services.
- 1.1.2.1** The Project Construction Management Work Plan shall include a list of the CM team organization chart, roles and responsibilities of each team member as well as sub-consultants and their staff, the approach to effectively manage and administer the construction contract including techniques and methods to keep the construction on schedule and within the CM fees and the Contractor's cost, a detailed Project construction schedule, communication protocols, document control and other administrative procedures.
- 1.1.2.2** The District reserves the right to request and review the Consultant's Project documentation demonstrating its adherence to its own quality assurance procedures.
- 1.1.3 Construction Management Meetings.** The construction management meetings will be organized, facilitated, and documented by the Consultant and will provide a forum for review of construction progress with the District. The meetings will primarily focus on decision-making and management of the construction. The meetings will track and review the Consultant's progress in completing the CM services and the progress of construction including discussion and resolution of key construction issues. These meetings will facilitate the District making key decisions with information, support and recommendations from the Consultant and other Project participants. Consultant will conduct construction management meetings every month with the District and other team members. The intent of the meetings is to track construction management services, construction contract development, budget review, Construction Management Consultant (CMC) budget, risk management issues, and coordinate with the District.

SCHEDULE CM (CONSTRUCTION MANAGEMENT) SCOPE OF SERVICES

1.1.4 Construction Management Action Item and Decision Log. Consultant will establish and maintain a log of construction management action items and decisions. This log will document action items and concerns and issues throughout the term of the Agreement which require resolution by District and/or Consultant. The log shall contain significant construction management issues requiring a decision or action by the District and/or Consultant. The log will also contain the submittal log, potential contract change order log, contract change order log, and non-conformance report log which will be updated weekly by the Consultant. Review of the issue/action-tracking log shall be an agenda item at all meetings chaired by the Consultant. At a minimum, the log shall indicate:

- a. When the issue/action was first identified;
- b. A brief description of the issue/action;
- c. The party responsible for resolving the issue/action;
- d. The due date for resolution of the issue/action;
- e. The current status of resolution of the issue/action; and
- f. The date when the issue/action was resolved.

1.1.5 Construction Contract Monthly Progress Report. The Monthly Progress Report shall provide an overview of the construction activities and progress toward completion of the construction of the Project. The report will be submitted at the same time that the Consultant's monthly invoice for services is submitted.

1.1.5.1 The report will summarize the status of the construction of the Project into a record of the construction progress, adjustments in contract cost and schedule, quality assurance (QA) of Contractor's quality control (QC), and will provide the District with justification for monthly construction contract payment.

1.1.5.2 The report will provide a detailed breakdown for Contractor payment and status of requests for information (RFIs) and submittals, will inform the District of the construction progress and will summarize and consist of:

- a. Contract administration and QA activities of Contractor's schedule progress;
- b. Document processing;
- c. Quality control;
- d. Budget and changes;
- e. Disputes;
- f. Public outreach activities;
- g. Construction Schedule Report;
- h. Potential risk management issues and required actions;
- i. Photographs of ongoing work, including time lapse videos when appropriate;
- j. Payment to date for each bid item, and monthly updated cost-loaded schedule (S-Curve);
- k. Status and logs of RFIs and submittals, including District's Design Consultant's response times;
- l. Summary of major equipment procurement;
- m. Summary of Contractor's quality control activities;
- n. Status of Contract Document clarification (CDC);

SCHEDULE CM (CONSTRUCTION MANAGEMENT) SCOPE OF SERVICES

- o. Status and logs of Potential Change Order (PCO), Directed Change Order (DCO), Change Order (CO), and budget;
- p. Summary of trends and/or potential risk costs;
- q. Potential disputes or claims; and
- r. Public outreach issues.

1.1.6 One-on-One Meetings with District. Consultant Project Manager must provide a brief update of the team's work activities completed within the week, the look-ahead activities, and the issues and actions that require the District's attention. The meeting schedule will be established by the District, weekly/biweekly either in person, or by phone, at the District's discretion.

1.1.7 Coordination and Communication with External Agencies. Consultant will assist the District Project Manager with coordination and communication with regulatory or other agencies, elected officials, City of Morgan Hill and County of Santa Clara staff, as necessary, to execute this Scope of Services. Consultant shall coordinate all external communications through the District Project Manager. This task includes support in drafting correspondence related to the Consultant's Construction Management activities as requested by the District. Consultant will report on these activities in the monthly progress report.

1.1.8 Public Outreach. Consultant will provide support and assistance to the District's public outreach activities related to coordination, preparation, and participation including, preparing presentation materials, attendance at meetings, Project site tours, preparation of newsletters, graphics, updates to the Project website, developing responses to questions, and other tasks as directed by the District Project Manager. Consultant will report on these activities in the monthly progress report. Consultant will provide public outreach content for periodic newsletters and public meetings, apprising the public of progress made, problems solved and safety records achieved as well as other information related to the Project; attend public outreach meetings and arrange and attend press conferences; provide materials for public outreach such as Project renderings, graphic images, flyers, door hangers, bill-stuffers, and other information as required by the District's neighborhood liaison.

1.1.9 Neighborhood Communications. Consultant will assist the District's neighborhood liaison with communication strategies that may include message planning, proactive positive communication, building strong relationships within the community, monitoring Contractor activities, and assisting with responses to inquiries from neighbors. Consultant will report on these activities in the monthly progress report. Consultant will:

1.1.9.1 Assist the District's neighborhood liaison with maintaining positive relationships with the neighborhoods surrounding the jobsite and effectively communicating the neighborhoods' issues related to the impacts of construction; track, manage, and respond to public inquiries and complaints using a public web-based software program acceptable to the District;

SCHEDULE CM (CONSTRUCTION MANAGEMENT) SCOPE OF SERVICES

- 1.1.9.2 Assign a contact person to assist the District's neighborhood liaison in providing information to the public to quickly address any complaints and answer any questions that may arise;
- 1.1.9.3 Immediately direct any public and media inquiries to the District's neighborhood liaison or the District's Public Information Representative;
- 1.1.9.4 Immediately inform the District's Public Information Representative of any and all interactions with the public and media (e.g. if approached at the construction site, if received a phone call, etc.);
- 1.1.9.5 Provide construction status, schedule updates and relevant technical information as required by the District's neighborhood liaison; provide updates on status of outreach inquiries at weekly progress meetings and summarize outreach issues and decisions in Construction Contract Monthly Progress Report. Provide monthly photos and videos of the construction site to the District's Public Information Representative for use on the Project website, social media accounts and other outreach materials; and
- 1.1.9.6 Monitor sensitive neighborhood issues, including but not limited to, noise, dust, vibration, Contractor's working hours, truck traffic, Contractor deliveries, and off-haul of debris.

Subtask 1.1 – Deliverables

- 1. Construction management Work Plan (Draft, Draft Final, and Final)
- 2. Monthly Progress Report to be provided with monthly invoice
- 3. Monthly billing statement
- 4. Construction contract Monthly Progress Reports
- 5. Construction management action item and decision log
- 6. Construction status, schedule updates, and relevant technical information
- 7. Attendance at Progress Meetings, construction management meetings and workshops
- 8. Weekly or bi-weekly meetings/conference calls attendance and notes. Frequency of meetings and calls will be at District's discretion.
- 9. Meeting agendas, minutes and action items list
- 10. Outreach materials such as graphic images, flyers, door hangers, or bill-stuffers
- 11. Provide web-based program to track, monitor, and respond to neighborhood communications.
- 12. Report containing information regarding neighborhood issues, such as noise, dust, vibration, Contractor working hours, truck traffic, deliveries, and off-haul of debris.

Subtask 1.1 – Assumptions

- 1. Monthly progress report is described in Section 4 Fees and Payments of the Standard Consultant Agreement and Task 1 – Construction Administration. Monthly Progress Report (up to 20 pages) to be provided by Consultant with monthly invoice.
- 2. Weekly or bi-weekly meetings/conference calls attendance and notes. Frequency and type of meetings and calls (in person or by phone) will be at District's discretion.
- 3. The District will lead outreach activities with support from Consultant.

SCHEDULE CM (CONSTRUCTION MANAGEMENT) SCOPE OF SERVICES

1.2 – Preconstruction Services

The Consultant shall review the Phase 2 construction documents prior to advertisement and provide written comments to the District identifying any constructability concerns for the District's consideration. Consultant will organize and conduct pre-construction conferences, coordinate with the District on community outreach, including public meetings, and the following tasks as described below.

1.2.1 Construction Contract Documents Review. Consultant will conduct constructability reviews of the construction contract documents (Contract Documents) prior to construction contract bidding and provide written comments to the District identifying any constructability concerns for the District's consideration. The review will identify key issues and challenges that can be eliminated with adjustments to the design and identify challenging areas of the Project. Based on this review, Consultant shall:

- 1.2.1.1 Familiarize itself with the site and the Contract Documents, including the draft Construction Risk Management Plan, if available, and perform an independent constructability review and evaluate potential claim risks;
- 1.2.1.2 Facilitate the constructability reviews with Consultant-provided experts, the District, District's design consultant, and other participants as directed by the District;
- 1.2.1.3 Review and provide written comments on the Construction Risk Management Plan Updates, if available, prepared by District's design consultant; and
- 1.2.1.4 Prepare a constructability review written report, which may include but not be limited to:
 - a. Construction sequencing, transitions and milestones, risk allocation and bid items completeness;
 - b. Bid analysis and recommendations;
 - c. Evaluate potential claim risk;
 - d. Construction Risk Management Plan updates;
 - e. Conflicts between drawings and specifications;
 - f. Errors, omissions, or inconsistencies in the requirements of various paragraphs of the Contract Documents;
 - g. Contractor pre-qualification recommendations;
 - h. Construction schedule requirements, including construction sequencing, phase transitions, and milestones;
 - i. Contractor staging and work areas;
 - j. Long lead time equipment;
 - k. Utility interferences and coordination;
 - l. Contractor skills and labor force requirements;
 - m. Transportation and traffic;
 - n. Labor availability, strike issues, construction labor agreements, and other labor issues;
 - o. Coordination requirements and compatibility with equipment pre-purchase documents;

SCHEDULE CM (CONSTRUCTION MANAGEMENT) SCOPE OF SERVICES

- p. All required provisions in Project environmental permits;
- q. Channel water control and winter shutdown requirements;
- r. Potential for endangered species and migratory bird-caused delays; and
- s. Other potential risk exposure provisions.

1.2.2 Preconstruction Conferences

Consultant will coordinate and conduct preconstruction conferences.

- 1.2.2.1 Organize and conduct preconstruction conferences with the District, District's design consultant, Contractor, and applicable federal, state, local, and other regulatory agency representatives, in accordance with the District's Construction Manual and Consultant's CM best practices as applicable and appropriate. The first conference will serve as a kick-off meeting for construction of the Project.
- 1.2.2.2 Review and become familiar with the Contract Documents, including but not limited to, performing field site visits, conferring with District staff on the intent of and details for the Project, and developing a list of anticipated Contractor submittals.
- 1.2.2.3 Participate in the preconstruction conference with the District and the District's design consultant, and prepare an agenda and meeting minutes for distribution.
- 1.2.2.4 Develop an agenda to discuss Project requirements, constraints, and construction procedures that consist of:
 - a. Reiteration of the goals of the Project;
 - b. A review of the rules for working within District's right of way, including within temporary rights of way secured by the District;
 - c. Permit requirements, quality control, site safety, site security and maintaining District's good-neighbor policy; and
 - d. Review the checklist of activities that must be confirmed before Contractor starts construction activities, such as: layout of Contractor's offices, construction staging, sequencing of the work, and cooperation of Contractor with District staff.
- 1.2.2.5 Record draft and final meeting minutes and distribute minutes to attendees.

1.2.3 Review Reports and Infrastructure

- 1.2.3.1 Consultant will review the geotechnical baseline report and geotechnical data report to adhere to subtask 1.2.1 Construction Contract Documents Review and provide written comments.
- 1.2.3.2 Consultant will prepare the pre-bid site summary report to include photographs.
- 1.2.3.3 Consultant will identify existing infrastructure within or adjacent to the Project limits and recommend what infrastructure to be included in the Project specifications for the Contractor's required preconstruction surveys.

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Subtask 1.2 – Deliverables

1. Constructability review written report
2. Notes regarding Construction Risk Management Plan updates
3. Notes regarding Consultant's bid analysis and recommendations
4. Notes regarding Contractor pre-qualification recommendations
5. Pre-bid and site visit(s) written meeting minutes and notes
6. Pre-bid site summary report
7. Draft Notice to Begin Work
8. Preconstruction survey summary written report
9. Preconstruction photos, videos, notes
10. Preconstruction meeting agenda
11. Preconstruction meeting minutes

Subtask 1.2 – Assumptions

1. Preconstruction surveys, which include the documentation of all areas of potential impacts from Project construction activities, including, but not limited to, existing infrastructure, buildings, landscape plantings, architectural finishes, sidewalks, driveways are part of the Contractor's scope of work and will not be included in the Consultant's preconstruction survey summary written report.
2. The pre-bid site summary report will be a maximum of 30 pages.
3. District will provide latest approved Construction Contract Documents to Consultant immediately after this Agreement has been executed by both Parties.

1.3 – Construction Coordination, Documentation and Quality Control

Consultant will coordinate the activities of the Project and facilitate communications, organize progress and coordination meetings, provide a document control system and internet-based communication system, maintain the record documents, provide a quality assurance and quality control program, and the following tasks as described below.

1.3.1 Coordination and Communications. The Consultant will coordinate the activities of the Project participants, including District management, District's design consultant, and the construction Contractor. The Consultant will balance the objectives of each stakeholder in pursuit of successful completion of construction, startup and commissioning, while managing the construction risks, including cost, schedule, quality and safety. The Consultant will utilize all forms of available communication to facilitate teamwork and achieve common goals for construction. Consultant will also facilitate coordination of team members to efficiently complete tasks without significant disruption and will generate and maintain clear and concise records which consist of construction activities, communications, quality of performance, negotiations, and payments. Consultant will:

- 1.3.1.1 Provide effective, efficient, and coordinated communications among all the participants in the construction by directing all communications through the Consultant's representative(s) at the job site, in accordance with the District's Construction Manual and Consultant's CM best practices as applicable and

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appropriate. Participants include, but are not limited to, Contractor, District, and District's design consultant.

- 1.3.1.2 Serve as the primary point of communication for coordination between the Contractor, the District, District's design consultant, and other parties; receive Contractor correspondence, prepare draft responses, and transmit District-approved responses. Consultant will document all such coordination and communications in the coordination and communications report.
- 1.3.1.3 Establish and maintain a log of construction risk management issues, action items and decisions (Construction Risk Management Issues, Action Items and Decisions). The log shall contain risk management issues, consisting of safety, contract compliance, schedule, cost, coordination, and potential disputes requiring a decision or action by the District, District's design consultant, Contractor, and/or other entity or party. Review of the issue/action-tracking log shall be an agenda item on all regular weekly progress meetings. At a minimum, the written log shall indicate for each issue/action:
 - a. When the issue/action was first identified;
 - b. A brief description of the issue/action;
 - c. The party/parties responsible for resolving the issue/action;
 - d. The due date for resolution of the issue/action;
 - e. The current status of resolution of the issue/action; and
 - f. The date when the issue/action was resolved.
- 1.3.1.4 Establish and maintain written submittal logs, RFI logs, potential change order logs, non-conformance report logs, action items, and decision logs.
- 1.3.1.5 Establish, implement, and manage a master calendar of all significant events and meetings for the construction. The Master Calendar will show anticipated work schedules and must be maintained and continuously updated. The Master Calendar shall be accessible by all team members from their personal computer workstations.
- 1.3.1.6 Establish, implement, and maintain a master Project directory listing all Project participants, their role on the Project, address, phone number(s), email address, and other pertinent information. The master Project directory shall be accessible by all team members from their personal computer workstations.
- 1.3.1.7 Initiate correspondence with and respond to correspondence from Contractor, District's design consultant, the District, and other entities as may be required to administer the Project.
- 1.3.1.8 Provide drafts of all job-related correspondence to the District and District's design consultant, as required for approvals.

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- 1.3.1.9 Provide written correspondence and required responses to correspondence to the District's Project Manager within two business days after receipt of the copy of the Contractor's correspondence, or extended response time as per District's approval.
- 1.3.2 Progress and Coordination Meetings.** The Consultant will organize, coordinate, and lead progress and coordination meetings. The Consultant will provide Project team with agendas, meeting notes, action items, and identify follow-up activities. The weekly meetings will include review of recent activities and agenda items, exchange of new information, and planning and coordination of upcoming construction and related activities. Consultant will:
- 1.3.2.1 Organize and conduct regular weekly progress meetings with Contractor, District and other participants as necessary to discuss construction progress and planned work, submittals, RFIs, construction issues, potential change orders.
- 1.3.2.2 Organize and conduct all periodic and special meetings to resolve issues with Contractor, utilities (e.g., PG&E), regulators, and local agencies having jurisdiction (e.g. City of Morgan Hill, County of Santa Clara, Department of Health Services, Fire Department, Bay Area Air Quality Management, Caltrans), and any participants as necessary and appropriate.
- 1.3.2.3 Identify potential issues relating to construction, safety, compliance, schedule and/or cost, coordination and disputes and recommend an approach for resolving issues.
- 1.3.2.4 Prepare agendas, and produce meeting minutes with a summary of meeting discussion, action items and decision logs; and
- 1.3.2.5 If required, attend other periodic and/or special meetings organized by District.
- 1.3.3 Document Control and Internet-Based Communication System.** The Consultant will provide a web-based Document Control System (DCS) with internet connectivity to facilitate efficient communication and maintain Project data and records. The DCS will include features to log and track documents (submittals, RFIs, PCO) as well as store electronic copies. It will provide secure viewing levels which will be controlled by the District, and it will be configured and monitored by the Consultant who will train Project participants on its use. A primary objective of the DCS is to provide the Project team with a centralized document exchange portal to communicate technical and other Project-related information. The Consultant will post Project information, logs and reports, meeting agendas and notes, QA reports and other similar information. The DCS will provide a repository for Project data and records; its electronic data base will be archivable and will provide for a protected record of the Project history. Consultant will:
- 1.3.3.1 Maintain complete, current files utilizing District's Project directory on all construction-related records, including correspondence, construction and public outreach photographs, public outreach tracking inquiries, job files, submittals, shop drawings, requests for information, Contract Document clarification, and documentation of

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potential change orders, directed change orders, and change orders; issue/action tracking log; claims and nonconformance reports; stop-work notices; daily inspection diaries; weekly inspection summary report; field memos; claims management files; warranty/guarantee files; as-built drawings and specs; shop drawings; training plan; qualification records; material test reports; construction payment estimates and records; certified payrolls; manpower utilization reports; insurance and bonds; status reports and meeting minutes, all in accordance with the District's Construction Manual and Consultant's CM best practices as applicable and appropriate.

- 1.3.3.2 Establish a secure on-site document management system for the timely logging, filing, and tracking of construction-related correspondence to assure timely responses, and to enable efficient retrieval and establish the chronology of events.
- 1.3.3.3 Procure, develop, and maintain a secure, internet-based communication system which can be asked to share information among team members and track construction communication by date, subject, and status and contract specification number.
- 1.3.3.4 Allow the use of the internet-based communication system to connect the construction controls system to the jobsite, central construction personnel, and District managers.
- 1.3.3.5 Provide, as part of the secure internet-based communication system, three levels of access as follows:
 - a. Level 1 – accessible to Contractor, Consultant, District, and District's Design Consultant (read only and transmit): information such as issued change orders, requests for information which have been responded to, signed correspondence transmitted between Consultant and Contractor, returned submittals, and certain construction-related information as deemed appropriate by District and Consultant;
 - b. Level 2 – accessible only to District and Consultant: information accessible according to Level 1, plus all construction-related information as deemed appropriate by District and Consultant; and
 - c. Level 3 – as determined by District.
- 1.3.3.6 Provide training for District, District's design consultant, and Contractor as appropriate for proper use of internet-based communication system.
- 1.3.3.7 Provide copies of all job-related correspondence to District and District's Design Consultant, as required.
- 1.3.3.8 At completion of construction, provide the complete Project database of construction management documentation to District in a format that does not need the internet-based system to review.
- 1.3.4 Record Documents.** The Consultant will maintain an electronic set of Contract Documents recording all of the addenda, design clarifications and other modifications

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implemented during construction (Record Documents). At the conclusion of construction, the Consultant will combine this information with additional documentation from the Contractor's as-built drawings. These compiled specifications and drawings will provide a complete field record of the Contract Documents and their revisions.

- 1.3.4.1 The Consultant will provide its own record documents, which are the marked-up plans and specifications, to the District who will utilize them to update the District's Contract Documents and create Owner Record Drawings for the Project. The Consultant's documents will be accurate and complete as they are a critical Project record for the District's ongoing maintenance and operations activities.
- 1.3.4.2 Consultant will, throughout construction or otherwise as specified during individual phases of construction:
 - 1.4.6.1.1 Maintain a control and record set of plans and specifications with any changes as a result of RFIs, potential change orders, directed change orders, change orders or field memo;
 - 1.4.6.1.2 Verify on a monthly basis the accuracy and completeness of the Contractor's records against the control and record set of plans and specifications; and
 - 1.4.6.1.3 Review and maintain records of marked-up as-built drawings and specifications so that the Record Documents will be consistent with the construction in progress; the marked-up as-built drawings and specifications shall be neat, clean, and accurately reflect work as constructed. The marked-up as-built drawings shall include accurate graphical representations of construction changes, including redlines, detailed drawings, sketches, call-outs, and notes. The marked-up specifications shall include redlines and text describing the specific changes. Just referencing RFIs, submittals, design clarifications, or change order documents on the marked-up as-built drawings and specifications will not be sufficient or acceptable.
- 1.3.4.3 After confirming the completeness, coordinate the transmittal of Record Documents to District.
- 1.3.4.4 After confirming completeness and review of compliance with the Contract Documents, secure from Contractor and transmit to District the required guarantees, warranties, bonds, waivers, all keys, manuals, as-built drawings, maintenance stocks, and originals of all other Contract Documents and papers, including correspondence.
- 1.3.5 **Quality Assurance and Quality Control (QA/QC) Program.** Consultant will develop and implement a QA/QC program. The objective of the Consultant's QA/QC program is to document the Consultant's procedures so that the Consultant's services and deliverables meet District requirements, accepted practices and standard of the Consultant's profession, and also to monitor and report whether Contractor is in compliance with the Contract Documents and permit requirements. The QA/QC program will address all aspects of the Consultant's work requirements. Consultant will:

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- 1.3.5.1 Perform thorough QA inspections to identify and address potential defects in construction. Inspections provided by the Consultant will be documented in daily reports, tests and certifications to provide confirmation of work quality. To document work quality, the Contractor's QC report will be submitted monthly and the Consultant's inspection reports will be logged into the Consultant-provided web-based Document Control System (DCS) daily. The materials and specialty inspection tests reports will be provided to the Consultant by testing agencies as they are performed and subsequently entered into the DCS.
- 1.3.5.2 Develop, coordinate, manage, and implement a QA/QC program which will:
- 1.4.6.1.1 Identify the roles of the Consultant on QA/QC;
- 1.4.6.1.2 Include policies and specific inspection procedures to monitor and report whether construction is performed according to the Contract Documents; and
- 1.4.6.1.3 Monitor and report whether construction is in compliance with applicable codes, standards, and regulations.
- 1.3.5.3 Establish the Field Quality Assurance Program, including development of a Field Quality Assurance Manual (FQAM), to provide procedures and guidelines to enforce Contractor's QA/QC activities, and to monitor and report whether construction is performed according to the Contract Documents, as well as in compliance with applicable codes, standards, and regulations.
- 1.3.5.4 Develop and implement as part of the Field Quality Assurance Program the procedures and guidelines that consist of:
 - a. Review and approval of Contractor's QA/QC plan;
 - b. Field design change control;
 - c. Monitoring of special processes;
 - d. Quality assurance of material control;
 - e. Manufacturing source inspection and witness testing;
 - f. Quality assurance of Inspections and test control;
 - g. Special and specialty inspections;
 - h. Verification of calibration of measuring and test equipment;
 - i. Quality assurance records;
 - j. Control of deficiencies;
 - k. Control of nonconformance; and
 - l. Quality assurance of intermediate and final surveys.
- 1.3.5.5 Regular audit of Contractor's QA/QC program.
- 1.3.5.6 Regular audit of Contractor's Field Quality Control Program methods for inspections and verifications that consist of:
 - a. Inspection of civil work, including excavation and backfill, pile driving, concrete construction, paving, bridge underpinning, tunnel construction;
 - b. Inspection of structural work;

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- c. Mechanical equipment inspection;
 - d. Electrical inspection and testing;
 - e. Field welding and inspection;
 - f. Hydrostatic and pneumatic testing; and
 - g. Special and Specialty Inspections.
- 1.3.5.7 Verify the Contractor's compliance with QC plan including materials testing requirements in accordance with District's Construction Manual and Consultant's CM best practices as applicable and appropriate.
- 1.3.5.8 Provide for and coordinate QA/QC verification testing by specialty firms or subconsultants provided by Consultant.

Subtask 1.3 – Deliverables

1. Coordination and communications report
2. Construction risk management issues, action item and decisions log
3. Master Calendar
4. Master Project directory
5. Correspondence drafts and finals
6. Progress coordination meeting agenda, minutes
7. Construction data and communications as compiled within the DCS
8. Automated secure, internet-based DCS and website including protocols, instructions, and training on use of the DCS and affiliated systems
9. Construction Manager's marked-up (redline) record documents
10. Verification documentation of Contractor's records
11. QA/QC program, Field Quality Assurance Program, Field Quality Assurance Manual
12. QA verification test reports and QA verification non-conformance reports
13. QC test reports and QC non-conformance reports

Subtask 1.3 – Assumptions

1. Consultant will use and maintain EADOCS Document Control System.
2. Contractor will develop the Field Quality Control Program and Plan.

1.4 – Construction Administration and Change Management

Consultant will perform the administration, and change management, the coordination and management of the submittal process, coordinate and manage the submittal and request for information process, manage construction scheduling, and the review of Contractor's invoices and payment recommendations, and the following tasks as described below.

- 1.4.1 Document Clarification.** The Consultant will perform services relating to changes to the Contract Documents including change orders and potential change orders (PCO). Consultant will:
- 1.4.1.1 Develop a Change Management Process to manage and control changes to the Contract Documents, including claims in accordance with the District's Construction

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Manual and Consultant's CM best practices as applicable and appropriate. This process will also include the preparation and continuous updating of all relevant information maintained in the dispute file by Consultant;

- 1.4.1.2 Manage timely processing of documents in accordance with the Contract Documents;
- 1.4.1.3 Work with Contractor to mitigate field conditions that could result in added work or completion schedule delays;
- 1.4.1.4 Institute a screening process for change requests initiated by the District, District's design consultant, or Contractor; and
- 1.4.1.5 Initiate appropriate negotiation, approval, payment, and documentation of changes to be shown in the Construction Contract Monthly Progress Reports.
- 1.4.2 Change Administration.** Consultant will administer the changes as follows:
 - 1.4.2.1 Review District design consultant's Contract Document Clarifications (CDCs), provide technical input, and provide written comments related to conformance of the CDCs with the original design concept, the drawings, and the specifications, and to log these CDCs in the Construction Contract Monthly Progress Report to the District;
 - 1.4.2.2 Evaluate the contractual basis of the CDCs, and determine, in consultation with District and District's Design Consultant, if a CDC is a potential change order;
 - 1.4.2.3 Upon District's approval, issue CDCs or PCOs as appropriate;
 - 1.4.2.4 If PCOs are issued, request Contractor prepare a proposal to perform the PCO work; and
 - 1.4.2.5 Prepare and reconcile with District and/or District's design consultant, the Consultant's independent cost estimate and schedule analysis for PCO work; Consultant's independent cost estimate and schedule analysis shall be signed and dated by the individual who prepared the estimate.
- 1.4.3 Potential Change Orders (PCOs).** For each PCO, Consultant will log the PCO activities as appropriate in the Construction Contract Monthly Progress Report and will:
 - 1.4.3.1 Receive Contractor's proposal and perform technical analysis for negotiations of final term and price;
 - 1.4.3.2 Analyze Contractor's requests for time extensions with analytical software and generate an independent fragnet schedule, and prepare findings of fact for extending or not extending time;
 - 1.4.3.3 Compare and evaluate Contractor's proposal with the reconciled and District-approved independent cost estimate and schedule analysis;

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- 1.4.3.4 Upon District's approval, negotiate with Contractor the cost and any time extensions associated with the PCO work; if mutually agreeable terms cannot be negotiated on change orders, submit to the District's Project Manager all pertinent facts and a recommendation of what action should be taken. For any change order on which agreement has not been reached on the amount of time or equitable adjustment, if any, prior to commencing work, Consultant shall inspect Contractor performance, and make detailed records of equipment, material, and labor utilized, the impact of changed and unchanged work, and other data or information pertinent to a determination of the amount of equitable adjustment of contract price and time of performance;
- 1.4.3.5 Prepare a change order package for approval and execution by the District and Contractor; for each change order package, prepare and submit to the District a change order negotiation memorandum. The memorandum shall document:
- a. Scope of the change;
 - b. Reason for the change;
 - c. Contractual basis meriting the change;
 - d. Price reasonableness of the change;
 - e. Agreed cost and time modifications; and
 - f. Provide other information regarding the change order.
- 1.4.3.6 Issue Directed Change Order (DCO) to Contractor for the purpose of unilaterally modifying the Contract Documents if:
- a. Contractor fails to submit a proposal for PCO work within the time specified;
 - b. District and Contractor cannot agree on the terms and conditions of PCO work within a reasonable amount of time as determined by District and Consultant; or
 - c. In the judgment of District, it is impractical because of the nature of the change or for any other reason, such as the best interests of the District or the public, for District and Contractor to determine and agree on the costs and schedule impacts before the change must be performed.
- 1.4.3.7 Prepare a draft DCO with a cover letter for District's Project Manager's approval before issuing; and
- 1.4.3.8 Negotiate with Contractor mutually acceptable terms and conditions of a change order to replace a DCO, if deemed appropriate by the District.
- 1.4.4 Construction Change Order Management System.** Consultant will establish and implement a Construction Contract change order management system to track the status of proposed and executed changes in the work of the Contractor, in a format acceptable to, or prescribed by, the District. In the Monthly Progress Report, Consultant shall prepare and distribute a change order report. The report shall list all District-approved and pending change orders by identification number, provide a brief description of the change order work, indicate the Consultant's independent estimate

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of the value of the change order, and state the cost proposed by the Contractor or negotiated for the Contractor change.

1.4.4.1 Consultant will maintain a record of all modifications to the Contract Documents on appropriate forms and submit copies to the District with monthly report; and

1.4.4.2 Consultant will keep District informed of potential changes. All changes affecting Project design, quality, schedule, or costs are subject to approval by the District.

1.4.5 Submittal Process. Consultant will develop for the District's approval a procedure for review and approval of submittals. The Project design requires specialized materials, equipment, and performance of tasks which are specified within the Contract Documents. The submittal process will provide an understanding between the Contractor, District's design consultant, and the District of the acceptability of products or procedures proposed by the Contractor. Upon approval of the submittal procedure, Consultant will coordinate and manage the submittal review process and hold all parties, including Consultant, accountable and responsible to follow the procedure and meet the review schedule. All submittals will be included in the weekly or bi-weekly meeting/conference Call notes by Consultant in a submittal log, and all documents related to the submittal will be kept as part of the Project documents.

1.4.5.1 Product information or proposed procedures will be submitted to the Consultant and processed with reviews by District's design consultant, the District, and the Consultant. Submittals will be reviewed and stamped (approving or not approving) in accordance with the Contract Documents, with the comments provided. Submittals not meeting specification requirements will be returned to the Contractor for correction. Complete submittals when approved will be distributed to all parties and provide for a common understanding of the acceptable materials to be incorporated into construction. Consultant's review of all submittals shall be in accordance with the District's Construction Manual and Consultant's CM best practices as applicable and appropriate. As part of the submittal log, Consultant will:

1.4.5.1.1 Review Contract Documents and prepare anticipated submittal list;

1.4.5.1.2 Receive, log, review submittals for format, confirm compliance with submittal requirements, and general completeness prior forwarding to District for review, and monitor the submittals to achieve timely return to Contractor;

1.4.5.1.3 Forward submittal within two business days to District from time of receipt from Contractor;

1.4.5.1.4 Forward or return to Contractor all submittals within two business days from time of receipt from District;

1.4.5.1.5 Prepare the submittal tracking log in accordance with District standards;

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- 1.4.5.1.6 Maintain a computerized submittal base showing submittal number, description, date received, dates forwarded to and returned from District, date returned to Contractor and approval status;
- 1.4.5.1.7 Develop a tracking procedure to enable follow-up on the status of materials and equipment through the entire duration of construction;
- 1.4.5.1.8 Develop lists and monitor status of manufacturer's certificates, services, spare parts, manuals, and warranties;
- 1.4.5.1.9 Receive, log and file manufacturer's certificates, including warranties; review for compliance with Contract Documents;
- 1.4.5.1.10 Receive, log, and turn over spare parts to District; and
- 1.4.5.1.11 Receive, log, and distribute manufacturer's O&M manuals for review and acceptance; review for compliance with the Contract Documents.
- 1.4.6 Request for Information Process.** Consultant will coordinate and manage a formal Request for Information (RFI) review and approval process. RFIs submitted by the Contractor will be processed into the DCS by the Consultant and routed to the District for information and comment. The Consultant, District's design consultant, and District review comments will be coordinated and a response is logged into the DCS by the Consultant and provided to the Contractor. All RFIs will be included in the weekly or bi-weekly meeting/conference call notes by Consultant in an RFI log, and all documents related to the RFI will be kept in the Project documents.
- 1.4.6.1 In accordance with the District's Construction Manual and Consultant's CM best practices as applicable and appropriate, Consultant will: Receive, review, analyze, log, and monitor the RFIs to achieve timely return to Contractor;
- 1.4.6.1.2 Determine required response suspense date to avoid Contractor delay;
- 1.4.6.1.3 Review RFIs for appropriateness, format, content, and completeness prior to forwarding to District;
- 1.4.6.1.4 Provide a brief recommended draft response to District when RFI does not involve a specific design related issue;
- 1.4.6.1.5 Distribute each RFI to District within two business days of receipt from Contractor;
- 1.4.6.1.6 Track the status of all RFIs and simultaneously advise the District of unusual site conditions affecting RFI review; and
- 1.4.6.1.7 Forward or return all RFIs within two business days from time of receipt by Consultant.
- 1.4.6.2 Develop and maintain a computerized RFI database showing RFI number, general description, date received, responsible party or parties, dates forwarded to and returned from party or parties, date returned to Contractor, and disposition status;

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continually monitor status of RFIs to ensure timely responses and/or compliance with contract specified turn-around times, as applicable;

- 1.4.6.3 In the case that an RFI requests a change, or a response to an RFI results in a change, provide input based on the contractual merit of the request or response;
- 1.4.6.4 Monitor status of responses for compliance with agreed or contract specified turn-around times; and
- 1.4.6.5 Track reasons for each RFI, such as unforeseen conditions or design issues. Note whether RFI is answerable in existing Contract Documents.
- 1.4.7 Contract Compliance Verification.** The Consultant will administer the Contract Documents to verify Contractor compliance with its terms and conditions including prosecution and progress of work, quality control administration, daily documentation of work, and measurement and payment. Consultant will:
 - 1.4.7.1 When necessary and appropriate, consult and coordinate with District's design consultant regarding interpretation of the Contract Documents; notify District in writing in cases of disagreements regarding such interpretations that require resolution. Consultant will analyze such disagreements and provide input to District;
 - 1.4.7.2 Verify Contractor-obtained permits, licenses, insurance, bonds, warranties, and guarantees in accordance with the Contract Documents;
 - 1.4.7.3 Monitor and verify that all documentation required from Contractor is received in a timely manner and that Project records are complete; and
 - 1.4.7.4 Review and document compliance with the Contract Documents.
- 1.4.8 Construction Schedule Monitoring.** The Consultant will manage contract time through the implementation of Project controls on the construction schedule.
 - 1.4.8.1 The Consultant will thoroughly review the Contractor's preliminary and baseline construction schedules prior to commencement of work to verify that the full scope of construction work is included and properly sequenced, and that adequate time is provided for the performance of construction activities;
 - 1.4.8.2 Based on detailed monthly reviews and monitoring of Contractor's construction schedule and progress, provide early feedback on deviations from the baseline schedule and identify trends which could lead to construction delay;
 - 1.4.8.3 To validate the construction schedule for measuring work progress, the Consultant will confirm the schedule updates provided by the Contractor are consistent with the work actually performed;
 - 1.4.8.4 In order to maintain an accurate accounting of construction time from the Notice to Begin Work to Project completion, each schedule update will be compared with

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previous submissions, noting its progress compared to observations of current and planned work activities;

- 1.4.8.5 Negotiated adjustments in contract time and schedule will be evaluated by analyzing each PCO and change order for its impact;
- 1.4.8.6 Include and evaluate rain delays, work disruptions and other impacts to Contractor's schedule for adjustments to construction completion;
- 1.4.8.7 Incorporating the baseline schedule with the time adjustments made during change management will provide a basis for evaluating timely completion, evaluating potential assessment of liquidated damages, and the resolution of potential claims;
- 1.4.8.8 Review construction baseline schedule and monthly updates for conformance with the Contract Documents with regard to activity sequencing, logic, milestones, constraints, in accordance with the District's Construction Manual and Consultant's CM best practices as applicable and appropriate; check for proper preparation and accuracy of the Contractor's schedule and recommend acceptance or rejection to District;
- 1.4.8.9 Review monthly construction schedule updates and evaluate progress and associated effect on construction cost;
- 1.4.8.10 Monitor and verify actual start and finish dates;
- 1.4.8.11 Verify individual activity duration and sequencing through comparisons with daily inspector's reports;
- 1.4.8.12 Identify critical and sub-critical activities, including District's operational requirements; check that work is scheduled in an acceptable sequence with reasonable manning, and includes appropriate time for shop drawing preparation, review, material fabrication and shipping, complete installation, finishing, systems testing, and delivery of third party's material and equipment; verify that all submittals are included in the schedule and that schedule includes an acceptance-testing period and indicates milestone completion for each separate portion and/or phase of work;
- 1.4.8.13 Review activities that interface or tie in within the same construction contract, or with other construction contracts or District activities to facilitate adequate preparation for the coordination of these interfaces or tie-ins;
- 1.4.8.14 Verify that initial schedules submitted by Contractor pending complete schedule submittal are adequate to pursue initial construction work;
- 1.4.8.15 Conduct a pre-schedule submission meeting with Contractor to inform the Contractor of its contract responsibilities regarding the development and submission of the preliminary and baseline schedules;
- 1.4.8.16 After prior approval by the District's Project Manager, Consultant shall require Contractor to prepare and submit a recovery schedule demonstrating its program and

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proposed plan to make up a lag in scheduled progress and to demonstrate completion of the work within the contract time. Consultant shall review Contractor's recovery schedule for compliance with the Contract Documents and coordination with the overall Project and submit it to the District's Project Manager with written recommendation for acceptance or rejection as part of the Construction Contract Monthly Progress Report;

- 1.4.8.17 On a monthly basis as part of the Construction Contract Monthly Progress Report, review the progress of construction, evaluate the percentage complete of each construction activity as indicated in the Contractor's updated schedule, review such percentages with Contractor, and prepare Construction Schedule Report. The Construction Schedule Report shall be included in the Construction Contract Monthly Progress Report to be prepared by Consultant and distributed to the District and District's design consultant. The report shall include narrative and schedule summary of construction completed to date and indicate the actual progress compared to scheduled progress, and shall address any significant deviations from the most recently approved schedule. Consultant shall advise and make recommendations to the District concerning actions required to keep the Project on schedule;
- 1.4.8.18 After District's acceptance, use the accepted Contractor's updated schedule to monitor progress. When significant changes are made to the Contract Documents or when time extensions are granted, Consultant shall direct Contractor to immediately revise the schedule based on the changed conditions. Progress payments can be withheld if Contractor has not furnished an acceptable schedule or revision to the schedule;
- 1.4.8.19 Review and complete an analytical program run on the Contractor schedule updates which are required to be submitted with each request for payment; and monitor the progress of Contractor relative to established schedules and recommend approval/disapproval of each schedule update as part of the Construction Contract Monthly Progress Report;
- 1.4.8.20 Develop system/methods for overseeing progress achieved by Contractor; the system should compare actual progress to the master construction schedule, as modified. Consultant will document this method as part of the Construction Contract Monthly Progress Report. The schedule oversight system should take into consideration progress of construction, staffing levels, progress payments, submittal status reports, phasing, or any other time-sensitive activities. Consultant should be constantly aware of the status of actual construction progress as compared to planned progress;
- 1.4.8.21 Evaluate potential delays and advise the District accordingly. Consultant shall highlight such matters during each weekly progress meeting;
- 1.4.8.22 Observe the Contractor's progress with the construction and evaluate whether completion will occur within the specified time and will conform with the requirements of the Contract Documents. If a delay in the construction is identified or it appears that the construction is not progressing such that the construction can be completed within the specified time, or if the construction is beyond the completion date and still not

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complete, inform District promptly, in writing, giving details of pertinent facts, applicable contract provisions, including an assessment of the impact of the delay and a determination if the delay is excusable or not, and recommend appropriate course(s) of action to overcome or mitigate the delay and Consultant's recommendation as to action to be taken by District; and

- 1.4.8.23 If delays continue and it appears likely that the Contractor is not cooperating in correcting the problem, Consultant shall immediately consider and recommend appropriate contract enforcement actions to District.

1.4.9 Contractor Invoices and Payment Recommendations. The Consultant will review the Contractor's proposed schedule of values for reasonableness and ease of monitoring in progressing payments. Changes will be negotiated as needed to provide for accurate valuation, ease of verification and processing payments. Once approved, the schedule of values will be entered into the District's standard payment forms and submitted for District approval. The approved payment form will be used by the Consultant and Contractor in preparing monthly payment requests. The progress payments will incorporate Contract Document changes, payment for materials on hand, and retentions withheld.

- 1.4.9.1 In reviewing the Contractor's payment request, Consultant will consider compliance with permits, SBE participation, prevailing wages, quality of work, current insurance certificates, and other items. Each month, Consultant will review the progress payment with the Contractor to confirm progress of the work and its conformance with the Contract Documents and will document its work in the Monthly Progress Report.
- 1.4.9.2 Consultant will, in accordance with the District's Construction Manual and Consultant's CM best practices as applicable and appropriate:
- 1.4.9.2.1 Review the Contractor's initial cost breakdown (Schedule of Values) for reasonableness and ease of monitoring; examine the Schedule of Values to verify no front-loading; that the work is sufficiently itemized to determine appropriate progress payments; and the work item values are realistic and provide written comments;
- 1.4.9.2.2 Provide an independent assessment of progress, quantities of materials placed and equipment delivered and installed based upon acceptability of work;
- 1.4.9.2.3 Verify Contractor has updated record drawings and provided monthly construction schedule update;
- 1.4.9.2.4 Review applications for payment with Contractor for compliance with contract requirements and verify that payment requested comprises payment due based on work completed as related to the schedule of values, and materials and equipment furnished but not incorporated into the work;
- 1.4.9.2.5 Prepare payment recommendations, and submit Contractor's invoices with written payment recommendations to the District each month;

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- 1.4.9.2.6 Provide contract compliance support which includes checking certified payrolls, monitoring SBE performance and monitoring Contractor's certificates of insurance;
- 1.4.9.2.7 Prepare monthly progress payment using District's standard form. The payment application review period will comply with review period requirements established in the Construction Contract; and
- 1.4.9.2.8 Prepare monthly cost reports showing total-to-date payments for each item on the schedule of values, change orders, and effect on the construction budget.

Subtask 1.4 – Deliverables.

- 1. Change Management Process (Draft, Draft Final, and Final)
- 2. CDC log (include in weekly progress meeting documentation)
- 3. Change order log identifying PCOs, COs and Directed COs (include in weekly progress meeting documentation)
- 4. Change order reports, records, and analysis, including but limited to the Change Order Negotiation Memorandums and issued COs and issued Directed COs
- 5. Independent fragnet schedule and findings of fact
- 6. Submittal log (include in weekly progress meeting documentation); Submittal records including responses
- 7. Logs of manufacturers' certificates, spare parts, and O&M manuals
- 8. Document review and compliance with Contract Documents
- 9. RFI log (include in weekly progress meeting documentation)
- 10. RFI records
- 11. Dated master construction schedule reflecting Contractor's updates
- 12. Contractor's preliminary and baseline schedule analysis
- 13. Construction Contract Monthly Progress Report
- 14. Contractor's recovery schedule with Consultant's analysis and recommendation
- 15. Consultant's notes regarding verification of payment records for Construction Contract Monthly Progress Report
- 16. Consultant's notes regarding Contractor's monthly progress payment applications in the Construction Contract Monthly Progress Report

Subtask 1.4 – Assumptions

- 1. Contractor's recovery schedule analysis and resulting recommendation services will be provided under Supplemental Services.

1.5 – Safety Management

Consultant will perform services relating to safety management of the work site.

- 1.5.1 Safety Program.** Consultant will review, provide written comments to the District, and coordinate the Consultant's safety program with the District safety rules and Contractor's safety program and will implement these practices to provide for a coordinated approach to construction safety.

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- 1.5.2 Safety Training.** Safety training will be provided to Consultant's Project staff in accordance with Cal/OSHA requirements and along with routine refresher training. Each member of the team and visitors to site will have appropriate personal protection equipment (PPE) and be provided with safety instructions. Training and safe work records will be maintained and posted at the construction site to promote safety and make working safely a visible and important part of the daily work responsibilities.
- 1.5.3 Consultant Safety Activities.** Consultant will document all safety activities in safety oversight records and will, in accordance with the District's Construction Manual and Consultant's CM best practices as applicable and appropriate:
- 1.5.3.1 Review, monitor and adhere to Contractor's safety program and work activities for compliance with the Contract Documents and safety regulations such as Cal/OSHA;
 - 1.5.3.2 Implement safety oversight activities as identified in Consultant's construction specific Safety Management Plan portion of the CMWP;
 - 1.5.3.3 Ensure and verify that Consultant's own field employees are trained and training is current with refresher training in accordance with the applicable Cal/OSHA regulations;
 - 1.5.3.4 Ensure that Consultant's employees be provided with safety instructions in accordance with Cal/OSHA's General Safety Orders prior to exposure to hazards of the job site. This includes the Consultant's own subconsultants and others providing services, including District staff and District's design consultant who may frequently or occasionally visit the site to conduct business related to the construction;
 - 1.5.3.5 Maintain records of training on file for all persons working or entering the site relating to work on the construction;
 - 1.5.3.6 At all times comply with all safety rules and regulations enacted or implemented by the District and any local, state or federal agency that are applicable to Consultant's Services; and
 - 1.5.3.7 Monitor, identify, and notify Contractor and District promptly, of any potential safety issues; comply with all applicable required safety provisions and requirements.

Subtask 1.5 – Deliverables

1. Review Contractor's safety program, including compliance with Cal/OSHA and District safety program standards
2. Submittal comments on Contractor's safety program
3. Consultant's safety oversight records maintained on site
4. Logs of Consultant staff safety training

Subtask 1.5 – Assumptions

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1. Safety training includes eight hours per person annually.

1.6 – Training, Testing, Start-Up, and Commissioning

Consultant will perform services relating to the training of District staff, start-up, and commissioning, and the following tasks described below.

1.6.1 District Staff Training. Consultant will coordinate Contractor-provided District staff training.

- 1.6.1.1 Consultant will arrange for manufacturer-provided District staff training, if required, Consultant will:

- 1.6.1.1.1 Review Contractor's training schedules and training plans;

- 1.6.1.1.2 Coordinate and provide all logistics for the training; and

- 1.6.1.1.3 Provide required documentation of training attendance for Contractor and subcontractors

1.6.2 Testing, Start-Up, and Commissioning. Consultant will coordinate training once the equipment has arrived and installation is advanced sufficiently to provide for manufacturer inspections and certification of proper installation.

- 1.6.2.1 A representative of the manufacturer or manufacturers will visit the site and examine installation to confirm proper installation. After all necessary adjustments are made, the manufacturer's representative will certify the proper installation of equipment and provide operations staff with training on operation and maintenance. Consultant will:

- 1.6.2.1.1 Coordinate functional and operational testing activities with Contractor, manufacturers, District's design consultant and District;

- 1.6.2.1.2 Review Contractor's test procedures; witness Contractor's testing; and receive and review Contractor's test reports;

- 1.6.2.1.3 Provide a start-up manager to lead, plan, manage, and document all work included in, or directly related to, start-up and commissioning;

- 1.6.2.1.4 Form, lead, and document the activities of an on-site start-up team of supervisory staff qualified as a team in all elements of the start-up process, utilizing Consultant staff, District staff and District's design consultant, Contractor, and Contractor's mechanical, electrical and instrumentation subcontractors, and others as appropriate for the testing, start-up and commissioning. Activities to be performed consist of:

- 1.6.2.1.4.1 Develop example templates and content to communicate start up plan submittal expectations.

- 1.6.2.1.4.2 Facilitate the review of Contractor's submittals for startup plans.

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- 1.6.2.1.5 Prepare start-up and commissioning plans;
- 1.6.2.1.6 Coordinate and schedule start-up and commissioning activities;
- 1.6.2.1.7 Lead, coordinate, direct, and manage day-to-day start-up and commissioning activities; and
- 1.6.2.1.8 Develop detailed start-up and commissioning schedules integrated with the Contractor's construction schedule.

Subtask 1.6 – Deliverables

- 1. On-site training facilities to be provided as described in 1.6
- 2. Operator training and assistance will be provided during testing, start-up and commissioning
- 3. Coordination of manufacturer-provided training during testing, start-up and commissioning
- 4. Start-up and Commissioning Plans and implementation
- 5. Weekly reports of start-up and commissioning activities
- 6. Logs of Contractor and subcontractors attendance to required trainings

Subtask 1.6 – Assumptions

- 1. All recommended and required training, including any video training, will be conducted at a field office, in a District office, or in the Consultant's San Jose office as requested by the District.
- 2. All of Consultant's staff is required to have appropriate biological, environmental, safety training in accordance with federal, state, and local laws, regulations, and ordinances as required to complete the CM Consultant's tasks and responsibilities identified in this Contract.

Task 2 – Construction Inspections

The Consultant will perform services relating to construction inspection, special and specialty inspection services and will provide immediate feedback to the District and Contractor on construction activities, site and operational safety conditions, and will document the work performed in detailed daily reports. The reports will be logged and made readily available for viewing by District. The inspection reports will provide a detailed account of the work performed and serve to determine whether work is completed in accordance with the Contract Documents. The Consultant will utilize the inspection reports in preparing the monthly progress payments to identify work progress on the schedule of values and address any items of nonconforming work.

2.1 Inspections. During inspections, Consultant will:

- 2.1.1 Have qualified staff present during construction work hours to verify whether work is accomplished in accordance with the Contract Documents;
- 2.1.2 Provide for monitoring of the construction work and field verification of Contractor's QA/QC program;

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- 2.1.3 Plan and coordinate with the Contractor inspections of construction work to provide the needed special and specialty inspections. Inspections will focus on Contractor compliance with Contract Documents, and permit requirements;
- 2.1.4 Provide with the inspection reports a written and photographic record of observations including weather conditions, Contractor work force and equipment, and significant material or equipment deliveries;
- 2.1.5 Verify work quality with the Consultant inspection staff through visual inspection, materials testing, and will utilize as-needed special and specialty inspections; and
- 2.1.6 During inspections, advise the Contractor of any nonconforming work observed and, if not corrected within designated timeframes, notify the District.
- 2.2 Nonconforming Work.** Nonconforming work, corrected or not corrected in accordance with designated timeframes, will both be recorded on deficiency lists and addressed in QA/QC meetings as well as the monthly progress meetings. Consultant will:
 - 2.2.1 Provide sufficient qualified, experienced inspection staff to monitor all major work activities associated with work performed on all shifts and days worked by Contractor, and to perform all inspections, special and specialty inspections as required per the QA/QC Program;
 - 2.2.2 Inspect materials, equipment, construction procedures, work in progress, and completed work for compliance with the Contract Documents;
 - 2.2.3 Monitor Contractor's look-ahead schedule and confer with Contractor so that qualified personnel including specialty inspectors are scheduled on an as-needed basis to inspect and monitor quality control for all major work activities;
 - 2.2.4 Inspect completed work for contract compliance and generate appropriate deficiency lists;
 - 2.2.5 Prepare Daily and Weekly Inspection Reports detailing weather conditions, status of work, and the location and type of work performed by Contractor, in accordance with the District's Construction Manual and Consultant's CM best practices as applicable and appropriate. These reports should include:
 - a. For each work activity, document the number and classification of craft labor, supervision, equipment (including idle equipment), and materials used;
 - b. Note material and equipment deliveries or off-hauls, any non-adherence to safety procedures along with corrective action taken, delays – including cause of delay, equipment breakdowns or other field problems, visitors, and other pertinent observations. Augment reports with sketches and digital photographs; and
 - c. Maintain a chronological photographic record of construction.

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- 2.2.6 Verify progress of work for payment purposes and determine whether Contractor's progress payment request reflects the submitted schedule of values and the work actually performed and document these activities in the monthly progress report; and
- 2.2.7 Develop and implement a written communication system and database notifying Contractor of all nonconforming work and safety violations.
- 2.3 Division 1 and Special Provisions Compliance.** The Special Provisions section of the Contract Documents state work requirements for the construction including phasing and sequencing, construction coordination, and permit compliance. The Special Provisions section of the Contract Documents also includes restrictions on work hours, traffic control, and limiting impacts to surrounding neighborhood.
- 2.3.1 The Consultant will monitor Contractor compliance with the Special Provisions, Contract Documents, and mitigation measures thereby reducing risk during construction. Key areas of monitoring by the Consultant include the Stormwater Pollution Prevention Program (SWPPP), environmental compliance, discharge permits, and disruption to the neighborhood. Consultant will provide the Contractor with written notification when the Consultant observes work activities or job conditions violating requirements of the Special Provisions. These noncompliance notifications will be logged into the DCS and notification will be provided to the Contractor and the District. These concerns will be followed up at weekly construction meetings and at QA/QC meetings to assure the Contractor mitigates previous actions and performs work in accordance with Special Provisions. Consultant will, in accordance with the District's Construction Manual and Consultant's CM best practices:
 - 2.3.1.1 Monitor Contractor compliance with all Division 1 and Special Provisions specifications consisting of mitigation commitments, wildlife protection and environmental permits, discharge permits and erosion and sedimentation control requirements;
 - 2.3.1.2 Monitor Contractor's noise, vibration, traffic, and odor control mitigation plans for contract requirements;
 - 2.3.1.3 Provide written notification to Contractor and District with a compliance concern; and
 - 2.3.1.4 Provide immediate notification to Contractor and District of noncompliance with specifications and permits.
- 2.4 Special and Specialty Inspections.** Special and specialty inspections require certifications or in some cases professional registrations in accordance with California Building Code and governing regulations. Consultant will provide such certifications or registrations for the Project.
- 2.4.1 Consultant will, based on and in accordance with the District's Construction Manual, the Special and Technical Provisions of the Project Construction Contract Specifications, applicable ASME Code and relevant industry standards and best

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practices, provide, conduct, and/or verify the compliance with and completion of special inspections, as applicable and appropriate, for the Project.

- 2.4.2 At a minimum, Consultant will provide, conduct, and/or verify the compliance with and completion of all special inspections, as applicable and appropriate, for Alternate Materials and Systems, Soil (Grading, Excavation, and Backfill), Foundations, Asphalt Concrete, Reinforcing Steel, Concrete, Masonry, Structural Steel, High Strength Bolting, Nondestructive Testing, Fire-Resistant Materials (Sprayed and Mastic & Intumescent), Glulam and Truss Joists, Post installed Anchors and Dowels (Installation and Proof Loading), Seismic and Wind Resistance Requirements, and Architectural and Building System Requirements.

- 2.5 Permit-Required Training.** Consultant will attend and complete necessary training identified in all the Project permits. As identified in the Central Coast Regional Water Quality Control Board permit certification, all personnel who engage in construction activities or have oversight at the Project site must attend trainings on the conditions of the permit certification and how to perform their duties in compliance with those conditions.

Task 2 – Deliverables

1. Maintain Daily Inspection Reports
2. Maintain weekly inspection summary reports
3. Photographic records (in both digital and printed forms)
4. Deficiency lists
5. Notifications of non-conformance to the Contractor and the District
6. Special inspection verification reports
7. Written communication system and database notifying Contractor of all nonconforming work and safety violations
8. Maintain compliance records with Daily Inspection Reports
9. Maintain compliance records that all personnel engaging in construction activities are aware of all permit requirements and conditions, including the regulatory permits included in the Project Specifications, and take the necessary training
10. Maintain records on correspondence to Contractor on compliance issues
11. Perform special inspections
12. Maintain records regarding specialty inspection

Task 2 – Assumptions

1. Photographs will be taken daily by inspection staff during regular inspection hours and included in Daily Inspection Reports.
2. Consultant will satisfactorily complete the necessary environmental, biological, safety training required to complete the contract tasks in accordance with federal, state, and local laws, regulations, and ordinances required for the construction of the Project.
3. Construction Contractor will conduct all biological inspections, monitoring, and reporting. Consultant will provide regulatory compliance oversight to confirm Contractor's work and verify compliance with Project permits and Specifications.
4. The District will be the point of contact with the regulatory agencies.

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5. Regulatory compliance violations will be reported by the Consultant to the District immediately upon discovery.
6. District will provide survey services.
7. Consultant will obtain District's approval before commencing any asphalt concrete testing.

Task 3 – Partnering, Claims and Disputes Management

Consultant will attend the partnering sessions, which will include the initial partnering session and follow-up sessions, as directed by District. To address the potential of construction claims and disputes, the Consultant will facilitate a claims management process including organizing selection of the District's representative and coordinating activities of the Dispute Review Board (DRB), if requested by the District. These steps will include reasonable efforts to address disputes and prepare position papers for presentation to the DRB. A claims and disputes management plan will be included in the Construction Management Work Plan (CMWP) to provide strategies for identifying, organizing, managing and addressing potential claims.

- 3.1 Partnering.** Consultant will attend the partnering sessions, after construction commences, if requested by District.
- 3.2 Claims Management.** Consultant will perform services relating to claims and management of disputes. Beginning with commencement of this Agreement, Consultant will identify key risks and implement proactive strategies to address potential claims and disputes before they occur. One method of addressing disputes that may arise during construction of the Project is through implementation of a Dispute Review Board (DRB). Consultant will:
 - 3.2.1 Implement District-approved procedures including processes for analyzing claims, coordination and communication on disputed issues with Project team, and tracking progress of claim and disputes;
 - 3.2.2 Participate with the District in the Dispute Review Board process, including:
 - 3.2.2.1 Coordinate selection of District's DRB member;
 - 3.2.2.2 Attend DRB meetings and update the DRB on construction progresses and any potential issues that require DRB's resolution; and
 - 3.2.2.3 Prepare written "position papers" and verbal presentations to be reviewed by District and which may be used for presentation(s) to the DRB as needed.
 - 3.2.3 Implement a claims and disputes management plan, with regard to issues remaining unresolved, as identified in Consultant's CMWP in accordance with the District's Construction Manual and Consultant's CM best practices as applicable and appropriate. Consultant will implement prescriptive procedures from the CMWP and coordinate continued efforts to resolve the claims or disputes with the District and Project team, including notification, compiling supporting documentation and records, and claims analysis;

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- 3.2.4 Apply management skills to avoid or minimize claims during construction by maintaining a positive working relationship with the Contractor, and make all reasonable efforts to review and resolve disputes on behalf of District as approved by District;
- 3.2.5 Identify and resolve claims for additional compensation early and equitably;
- 3.2.6 Apply procedures for enabling work to proceed in the event differences arise over the responsibility for, or cost of, added work;
- 3.2.7 Document events and activities accurately to provide a reliable basis for investigation at a later date.
 - 3.2.7.1 Maintain documentation and records on all relevant decisions and facts relating to disputes on an ongoing basis.
 - 3.2.7.2 Maintain records in an orderly manner and make available to District Project personnel upon request.
- 3.2.8 Analyze claims for additional time and/or compensation submitted by Contractor and prepare responses;
- 3.2.9 Perform claims administration, including coordination and monitoring, perform claims resolution negotiations, log and track claims status, and inform the District on the status of claims or potential claims;
- 3.2.10 If Contractor files a notice of potential claim or dispute in accordance with the Contract Documents, Consultant will:
 - 3.2.10.1 Promptly notify the Contractor the Notice was received;
 - 3.2.10.2 Notify District and District's Design Consultant of the dispute; and
 - 3.2.10.3 Assign a dispute tracking number to the dispute and create a dispute file.
- 3.2.11 The following information shall be prepared and continuously updated and maintained in the dispute file by Consultant:
 - a. All formal data, pertinent data, and records such as daily Contractor reports, progress pay reports, special meeting notes, reports, summaries;
 - b. Summary of the dispute, by issue, clearly stating the Contractor's position on each issue. The summary will include:
 - 1) A summary sheet with a chronological listing of events and/or items such as letters to Contractor, meetings, and a brief statement of content;
 - 2) Documentation of pertinent conversations with Contractor;
 - 3) All pertinent inspection reports; and

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- 4) Captioned and dated photos and video tape.
- c. Additional documents, such as:
 - 1) Drawings, shop drawings and Technical Specifications with the areas in question highlighted or noted by other appropriate means;
 - 2) Correspondence between Consultant and Contractor, Consultant and District's Design Consultant; and
 - 3) Any other documentation that supports the positions of the Contractor, Consultant, and District.
- 3.2.12 If a potential or finalized claim is not resolved by the completion of the Project, Consultant shall prepare a formal written claims report stating the Consultant's recommendation for resolution of each pending dispute, potential, and finalized claim. The claims report shall be prepared in the appropriate format and shall be provided to the District.

Task 3 – Deliverables

- 1. Organize Dispute Review Board (DRB) and generate DRB agenda and meeting minutes
- 2. Maintain documentation regarding potential and actual disputes to provide for a reliable basis for investigation
- 3. Written position statements, verbal presentations, regular updates on progress of Project to DRB
- 4. Maintain a dispute file
- 5. Claim status reports (Draft, Draft Final, and Final)
- 6. Claim analysis reports (Draft and Final)
- 7. Formal claims report as needed (Draft, Draft Final, Final)

Task 3 – Assumptions

- 1. Costs for DRB board members are not included in this agreement.

Task 4 – Acceptance and Close-Out

The Consultant will facilitate commissioning in accordance with the completion of the construction phases and facilitate acceptance of each construction milestone and the construction once their respective commissioning period has been completed and shall document all such activities in the weekly progress report. During the later stages of construction for each milestone, the Consultant will meet with the Contractor and develop deficiency lists based on records of inspection and observed non-compliant work and document such activities in the weekly progress report. The Consultant will regularly follow up with the Contractor to address the deficient work items prior to commencement of operational testing. Included with system acceptance will be obtaining required warranties and guarantees from equipment manufacturers and contractors which fully comply with the Contract Documents.

- 4.1 Acceptance and Contract Close-Out.** The Consultant will begin the process of milestone acceptance near the conclusion of each milestone and the process of construction acceptance and Construction Contract close-out near the conclusion of the

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construction. The Consultant will implement the steps called out in the District's Construction Manual and Consultant's CM best practices as applicable and appropriate. Each step will be documented and include a complete review of contract administration, quality assurance and inspection, and operations.

- 4.1.1 A complete review of the Document Control System (DCS) will be made to identify any unresolved issues for RFIs, submittals, deliveries, warranties, services, or certifications. Documentation for each step of the close-out process will be assembled along with a calendar of warranty inspection and follow-up activities. This information will be incorporated into a Milestone Completion Report and a Final Project Report prepared by the Consultant recommending acceptance of the milestone and the completion of the construction, respectively. This will include confirmation activities, submitting final photos for each milestone and assisting District staff with preparation of recommendation for milestone acceptance and construction acceptance.
- 4.1.2 Consultant will review the deficiency list and manage the deficiency list process in accordance with the Consultant's CM best practices.
 - 4.1.2.1 Coordinate the efforts of District's design consultant, District, permit authorities to develop a list of deficiencies and provide the list to the District's Project Manager. District's Project Manager will be the primary point of contact between the Consultant and the District's design consultant, District staff, and permit authorities;
 - 4.1.2.2 Coordinate with Contractor and other parties to correct the deficiencies including a description of the final disposition of the deficiency in the Milestone Completion Report and Final Project Report;
 - 4.1.2.3 Conduct an inspection of the completed work for each milestone, and of the entire jobsite, and review all documents to determine if all construction efforts are in compliance with the Contract Documents and provide written documentation;
 - 4.1.2.4 Verify closure, completeness, and delivery of all RFIs, submittals, O&M documents, spare parts, training and testing activities, record documents, construction photographs, warranties, guarantees, maintenance bonds, non-conformance reports;
 - 4.1.2.5 Provide District with complete documentation required for each milestone acceptance and the final construction acceptance and closeout of the Construction Contract;
 - 4.1.2.6 Coordinate warranty services with Contractor and the District through completion of each milestone as required and through final completion and acceptance of the construction; and
 - 4.1.2.7 Provide District with warranty calendars with recommended warranty inspection dates prior to warranty expirations.

Task 4 – Deliverables

- 1. Completion Reports for Milestones 1 and 2
- 2. Final Project Report
- 3. Deficiency List process lists, reports, documentation

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4. Documentation required for final acceptance and closeout of Milestones 1 and 2, including one digital copy and two printed copies of all construction photographs organized by major facility and by construction timeline
5. Warranty calendars

Task 4 – Assumptions

None.

Task 5 – Supplemental Services

The District may require, and the Consultant will perform, Supplemental Services on an as-needed basis. Prior to performing any Supplemental Services, Consultant must receive approved Task Order issued by the District and executed by both Parties. Refer to the Standard Consultant Agreement, Section Twelve Miscellaneous Provisions, subsection 13. Task Orders, and Appendix Three Task Order Template.

5.1 Specific Supplemental Services. Specific examples of possible Supplemental Services include:

- 5.1.1 Additional or specialty inspections and associated reports;
- 5.1.2 Additional inspection services including shift/overtime expense;
- 5.1.3 Additional sampling and testing and reporting;
- 5.1.4 Additional services for detailed review of Contractor's Project schedules;
- 5.1.5 Additional environmental services;
- 5.1.6 Additional SWPPP, NPDES, and BMP services;
- 5.1.7 Additional regulatory compliance services;
- 5.1.8 Additional public outreach;
- 5.1.9 Additional services due to naturally occurring asbestos;
- 5.1.10 Additional services due to changed site conditions;
- 5.1.11 Additional tunnel construction inspection services;
- 5.1.12 Additional safety services;
- 5.1.13 Additional laboratory services.
- 5.1.14 Additional recovery schedule analysis services;
- 5.1.15 Additional claim status reports, claim analysis reports, and formal claims reports; and

SCHEDULE CM (CONSTRUCTION MANAGEMENT) SCOPE OF SERVICES

5.1.16 Additional survey services, including:

- 5.2.16.1 Provide periodic checks of work quality to include surveys to verify compliance with line, grade and coordinates;
- 5.2.16.2 Perform frequent checks, at least monthly or as the construction and other conditions dictate pursuant to the District's Construction Manual and construction management best practices, of line and grade for structures to verify in-progress and as-built coordinates, prior to structures or piping being backfilled; and perform as-built surveys at end of construction and document these activities in the monthly progress report; and
- 5.2.16.3 Verify baseline survey points prior to and after construction and document these activities in the monthly progress report.
- 5.2.16.4 Additional partnering and DRB meetings, updates, position papers, and presentation.
- 5.2.16.5 Additional partnering sessions as needed. Partnering sessions will include key Project staff from the District, Designer, Consultant, and may from time to time, include other essential parties including stakeholders, permitting regulators, and other personnel as may be appropriate and necessary.
- 5.2.16.6 Assist in defending against any claim or action related to or arising out of the Project and not due in part or full to the fault or negligence of the Consultant.
- 5.2.16.7 Provide services in connection with a mediation, or legal proceeding, except where Consultant is a party thereto, or there are allegations of professional errors or omissions or negligence against Consultant.

5.2 Additional Services. The Consultant will provide additional quantities of previously identified services as requested by District. Consultant will provide additional services for any quantity of tasks and deliverables beyond those stated in Task 1 through 4 as Task 5 Supplemental Services, to include but not be limited to:

- 5.2.1 Additional meetings.
- 5.2.2 Additional time allotted for meetings;
- 5.2.3 Additional status/progress reports;
- 5.2.4 Additional phone conference calls; and
- 5.2.5 Additional pages or copies of technical memoranda, plans, reports.

**SCHEDULE CM (CONSTRUCTION MANAGEMENT)
SCOPE OF SERVICES**

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

Attachment One to Schedule CM - Fees and Payments

Attachment Two to Schedule CM - Schedule of Completion

Attachment Three to Schedule CM - Consultant's Key Staff and Subconsultants

Attachment Four to Schedule CM - Reference Materials

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ATTACHMENT ONE TO SCHEDULE CM FEES AND PAYMENTS

1. Total Authorized Funding

- A. Total payment for Services performed, to the satisfaction of District, as described in the Schedule(s) will not exceed a total amount of **\$13,019,441.89** (Not-to-Exceed Fees or NTE). The NTE cost breakdown amounts are allocated between Phase 2A (NTE: \$6,244,747.45) and Phase 2B (NTE: \$6,774,694.44) as shown in the Cost Breakdown table below. Under no conditions will the total compensation to the Consultant exceed this NTE payment amount without prior written approval in the form of an amendment to this Agreement executed by the District's Board of Directors (Board), or Chief Executive Officer, or designee, as authorized by the Board.
- B. The District intends to issue two separate Notices to Proceed (NTP) to Consultant. The first NTP will be issued for Phase 2A services, with an initial term of approximately 36 months, including approximately 6 months for preconstruction services, for the NTE amount stated in the Cost Breakdown table below. Only after the express approval of the District's Board of Directors, a second NTP may be issued for Phase 2B services, with an initial term of approximately 42 months, including 6 months for preconstruction services, for the NTE amount stated in the Cost Breakdown table below.

2. Cost Breakdown

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

Task	Description	Phase 2A	Phase 2B	Not-to-Exceed Fees
1	Construction Administration	\$2,816,446.30	\$2,280,499.86	\$5,096,946.16
2	Construction Inspections	\$2,615,177.36	\$3,322,579.00\$	\$5,937,756.36
3	Partnering, Claims, and Disputes Management	\$90,919.80	\$119,351.78	\$210,271.58
4	Acceptance and Close-Out	\$24,583.99	\$46,363.80	\$70,947.79
5	Supplemental Services	\$697,620.00	\$1,005,900.00	\$1,703,520.00
Total Not-to-Exceed Fees		\$6,244,747.45	\$6,774,694.44	\$13,019,441.89

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

3. Terms and Conditions

Payments for Services performed, as described in this 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 rates are effective for the term of this Agreement unless otherwise revised as indicated. After 12 months from the date this Agreement is entered into by parties ("anniversary date"), and each 12 months thereafter, these hourly rates may be negotiated by the Consultant and the District, provided Consultant submits written notice to District of Consultant's request to revise the hourly rates 90 calendar days prior to the anniversary date of this Agreement. Both parties will use as a benchmark for negotiations the percent change for the previous 12 months of the "Employment Cost Index (ECI), for total compensation for private industry workers, for the San Francisco-Oakland-San Jose, CA CSA Census region and metropolitan area (not seasonally adjusted)" as published by the U.S. Department of Labor, Bureau of Labor Statistics, or 3%, whichever is less. A negative index will result in rates remaining the same. Such rate revisions are subject to written approval by the District's Deputy Operating Officer.

C. Reimbursable Expenses

- 1. All reimbursable expenses not already covered in overhead may include, but are not limited to, mapping, rendering, printouts, leased equipment, mailing and delivery services, printing services, film and processing, plotting, and supplies. These other direct expenses as approved by the District Project Manager will be billed on a monthly basis at actual cost plus 5% linked to each Agreement Task, provided that the Task total NTE amount is not exceeded. Consultant shall provide receipts for each other direct expense item(s) with monthly invoices submitted. The 5% markup will be applied only once, either by Consultant or by its subconsultants, subcontractors, or vendors.
- 2. Equipment purchased on behalf of the District that costs \$50 or more must receive the prior written approval of the District Project Manager. All equipment purchased on behalf of the District and paid for by the District shall become the property of the District and be delivered to District prior to expiration of this Agreement.
- 3. Travel expenses are reimbursed at actual costs. Travel and overnight accommodations, including per diem, required for performance of this Agreement will be paid at reasonable cost not to exceed the U.S. General Services Agency Per Diem Rates for Sunnyvale/Palo Alto/San Jose, California area, provided prior approval for such travel has been obtained from the District Project Manager. For air travel, District will pay the cost of a coach class or equivalent ticket. Where air travel is required, District will pay the total cost of taxi, rideshare, public transportation, or a rental car, which may include insurance, gas, fees, and taxes, and will be paid for the

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

actual costs incurred. Vehicle rental is limited to a compact or economy model, unless prior approval has been obtained from the District Project Manager for a different type of vehicle.

4. Expenses incurred by the Consultant for Subconsultants, subcontractors and vendors, including lab services, will be reimbursed at actual cost plus 5%. Consultant shall provide invoices for all such services regardless of cost. The 5% markup will be applied only once, either by the Consultant or by its subconsultants, subcontractors, or vendors.
- D. For staff with rates exceeding the rate of \$[RATE LIMIT] the Consultant must obtain written approval from the District Project Manager as to the number of hours per task prior to that individual working on the Project. [NOT USED]

E. Prevailing Wage Requirements

1. The Scope of Services described in Tasks 1 – 4 are not considered by the District to be “Public Works” requiring the payment of prevailing wages. See Standard Consultant Agreement Section Four Fees and Payments, subsection 3. Prevailing Wages.
2. In accordance with prevailing wage laws, the Director of the California Department of Industrial Relations (Director) has ascertained the general prevailing rate of wages and employer payments for health and welfare, pension, vacation, and similar purposes available to the particular craft, classification, or type of workers employed on the Project. These rates are set forth in the latest determination obtained from the Director, which is on file in the District’s Office of the Clerk of the Board of Directors and incorporated herein by reference the same as though set forth in full. The rates are also available on the State of California Department of Industrial Relations website at <http://www.dir.ca.gov>.

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

HOURLY/UNIT RATE TABLE

CLASSIFICATION	HOURLY/UNIT RATE
Consultant: Mott MacDonald Group	
Division Manager	\$305.00
Executive	\$305.00
Principal Project Manager	\$291.32
Resident Engineer	\$265.50
Assistant Resident Engineer	\$186.88
Office Engineer	\$108.36
Senior Project Manager	\$243.15
Lead Tunnel Inspector	\$179.67
Lead Civil Inspector	\$168.83
Civil Inspector	\$168.83
Civil Inspector (1.5 Time Rate)	\$196.14
Civil Inspector (Double Time Rate)	\$228.37
Senior Project Engineer	\$185.83
Project Engineer	\$157.20
Scheduler	\$227.40
Cost Estimator	\$227.40
Subconsultant: Dabri	
Document Control	\$120.50
Scheduling / Cost Estimator	\$239.69
Principal	\$239.69
Subconsultant: Keish Environmental	
Environmental Compliance Manager	\$245.07
Civil Inspector	\$146.21
Civil Inspector (1.5 Time Rate)	\$219.31
Civil Inspector (Double Time)	\$292.42
Certified Biologist	\$178.45
Environmental Inspector	\$93.19
Environmental Inspector (1.5 Time Rate)	\$139.78
Environmental Inspector (Double Time)	\$186.38
Subconsultant: Circlepoint	
Director	\$232.35
Project Manager	\$176.41
Sr. Art Director	\$217.43
Sr. Graphic Designer	\$139.37

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

CLASSIFICATION	HOURLY/UNIT RATE
Project Associate	\$100.85
Subconsultant: Inspection Services, Inc.	
Lead Inspector	\$115.78
Professional Engineer	\$192.98
Subconsultant: Alexander and Associates	
Land Surveyor	\$180.25
CAD Operator	\$128.75
Technician III	\$108.15

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**ATTACHMENT TWO
TO SCHEDULE CM
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, 2026 unless, prior to its expiration, its term is modified by a written amendment hereto and 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	Construction Administration	Term of Agreement
2	Construction Inspections	Term of Agreement
3	Partnering, Claims, and Disputes Management	Term of Agreement
4	Acceptance and Close-Out	Term of Agreement
5	Supplemental Services	Term of Agreement

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

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

Team Member	Classification	Project Role	Contact Information
Dave Young	Executive	Principal	2077 Gateway Place, Suite 550, San Jose, CA 95110 dave.young@mottmac.com 925-398-7268
Chris Metzger	Division Manager	Principal-in-Charge	2077 Gateway Place, Suite 550, San Jose, CA 95110 chris.metzger@mottmac.com 408-876-6039
Martin Nnam	Principal Project Manager	Project Manager	2077 Gateway Place, Suite 550, San Jose, CA 95110 martin.nnam@mottmac.com 408-592-1123
Scott Hensler	Resident Engineer	Resident Engineer	2077 Gateway Place, Suite 550, San Jose, CA 95110 scott.hensler@mottmac.com 408-722-0138
Scott Ball	Assistant Resident Engineer	Assistant Resident Engineer	2077 Gateway Place, Suite 550, San Jose, CA 95110 scott.ball@mottmac.com 925-997-0336
Vince DeNina	Lead Tunnel Inspector	Lead Tunnel Inspector	2077 Gateway Place, Suite 550, San Jose, CA 95110 vince.denina@mottmac.com 512-351-0239
Ritu Giri	Lead Civil Inspector	Lead Civil Inspector	2077 Gateway Place, Suite 550, San Jose, CA 95110 ritu.giri@mottmac.com 408-990-2763

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

Firm	Project Role	Contact Information
Dabri, Inc.	Budget / Project Controls	Ajay Singh 1904 Franklin Street, Ste. 201, Oakland, CA 94612 ajay@dabri.com 213-926-5114

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

Firm	Project Role	Contact Information
Keish Environmental	Environmental Services / Regulatory Compliance	Rachael Keish 6768 Crosby Court, San Jose, CA 95129 Rachael@keish-environmental.com 408-592-0223
Circlepoint	Public Outreach	Maily Chu 200 Webster Street, #200, Oakland, CA 94607 m.chu@circlepoint.com 510-285-6721
Inspection Services, Inc.	Materials Testing	Jay Lorenzo 1798 University Avenue Berkley, CA 94703 leslie@inspectionsservices.net 510-900-2100
Alexander & Associates	Surveying	Darryl Alexander 147 Old Bernal Ave. Suite 10, Pleasanton, CA 94566 surveyor@trivalley.com 925-462-2255

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**ATTACHMENT FOUR
TO SCHEDULE CM
REFERENCE MATERIALS**

Ref No.	Description
1	Santa Clara Valley Water District Non-Disclosure Agreement (NDA) and Personal Non-Disclosure Agreement (PNDA)
2	Santa Clara Valley Water District (District) Standards for GIS Products July 2017 version
3	Regulatory Agency Permits
4	Santa Clara Valley Water District, May 2020, 100% Construction Contract Documents for the Upper Llagas Creek Flood Protection Project, Phase 2A, to be provided to Consultant following District Board's approval of the Phase 2A portion of this Agreement.
5	Santa Clara Valley Water District, Date TBD, 100% Contract Documents for the Upper Llagas Creek Flood Protection Project Phase 2A, to be provided to Consultant following District Board's authorization to advertise Phase 2A for construction bids.
6	Santa Clara Valley Water District, Date TBD, 100% "Conformed Set" of Contract Documents for the Upper Llagas Creek Flood Protection Project, Phase 2A, to be provided to Consultant upon issuance of the "Conformed Set" by the District.
7	Santa Clara Valley Water District, May 2020, 100% Construction Contract Documents for the Upper Llagas Creek Flood Protection Project, Phase 2B, to be provided to Consultant following District Board's approval of the Phase 2B portion of this Agreement.
8	Santa Clara Valley Water District, Date TBD, 100% Contract Documents for the Upper Llagas Creek Flood Protection Project Phase 2B, to be provided to Consultant following District Board's authorization to advertise Phase 2B for construction bids.
9	Santa Clara Valley Water District, Date TBD, 100% "Conformed Set" of Contract Documents for the Upper Llagas Creek Flood Protection Project, Phase 2B, to be provided to Consultant upon issuance of the "Conformed Set" by the District.

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