

**AMENDMENT NO. 3 TO AGREEMENT A4071A
BETWEEN THE SANTA CLARA VALLEY WATER DISTRICT
AND TAP INTERNATIONAL, INC.**

This Amendment No. 3 (Amendment), effective as of the date it is fully executed by the Parties, amends the terms and conditions of the Standard On-Call Consultant Agreement A4071A (Agreement) dated May 23, 2017 as amended by Amendment No. 1 dated June 7, 2019, Amendment No. 2 dated April 28, 2020 between SANTA CLARA VALLEY WATER DISTRICT hereinafter called (District) and TAP INTERNATIONAL, INC. (Consultant), collectively, the Parties.

RECITALS

WHEREAS, Consultant is currently performing Board independent audit and advisory services to the Board Audit Committee (BAC) under direction of the Board; and

WHEREAS, on May 23, 2017, the BAC recommended the Board to approve the implementation of three performance audits to be conducted by an on-call consultant agreement to perform Board Independent Auditing Services; and

WHEREAS, the Consultant was required to develop an annual audit work plan, assess operational risks, advise on potential audits to ensure the District is in full compliance with its policies, procedures, and regulations, and conducts audits as directed by the Board; and

WHEREAS, on September 26, 2018, the Consultant presented the final Risk Assessment Model to the BAC assessing operational risks to the District. The results of the risk assessment included input from the District's Board of Directors, management, and staff and was used to assist in the development of an Annual Audit Work Plan; and

WHEREAS, on December 3, 2018, the Consultant presented a draft Audit Work Plan to the BAC. The BAC reviewed the draft Audit Work Plan and on January 22, 2019, identified and recommended three audits for the full Board's input and approval; and

WHEREAS, on January 14, 2020, the Board approved the revised FY 2019-2021 Annual Audit Work Plan as recommended by the BAC. This Board-approved Annual Audit Work Plan extends the original scope of 16 audits to include: Grant Management Adhoc Desk Review; Hiring Practices Adhoc Desk Review; Board Agenda Preparation Adhoc Desk Review; and the Property Management Audit for implementing encroachment licensing program practices; and

WHEREAS, on April 28, 2020, the full Board approved the Board Audit Committee's recommendation for an amendment (Amendment No. 2) to extend the Board Independent Auditing Services Agreement (Agreement No. A4071A) with TAP International to June 30, 2021; and

WHEREAS, the Parties desire to increase the funding of the agreement to allow the Consultant to continue the performance audits as identified in the annual audit workplan by the Board of Directors.

Board Independent Auditor Consultant
Amendment No. 3 to Agreement A4071A
Admin-Gen – Standard On-Call Consultant Agreement + Sched OC
Version Date: 7/24/20

CAS File No. 4757

**AMENDMENT NO. 3 TO AGREEMENT A4071A
BETWEEN THE SANTA CLARA VALLEY WATER DISTRICT
AND TAP INTERNATIONAL, INC.**

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

1. STANDARD ON-CALL CONSULTANT AGREEMENT, SECTION TWELVE, MISCELLANEOUS PROVISIONS, subsection 20. Appendices. is amended to state as follows:

“The Revised Standard On-Call Consulting Agreement, and the following listed Appendices are incorporated herein by this reference as though set forth in full:

Revised Appendix One to the Revised Standard On-Call Consultant Agreement - Additional Legal Terms (UNCHANGED)
Revised Appendix Two to the Revised Standard On-Call Consultant Agreement - Dispute Resolution (UNCHANGED)
Revised Appendix Three to the Revised Standard On-Call Consultant Agreement - Task Order Template (UNCHANGED)
Revised Appendix Four to the Revised Standard On-Call Consultant Agreement - Insurance Requirements (REVISED)”

2. STANDARD ON-CALL CONSULTANT AGREEMENT, SECTION TWELVE, MISCELLANEOUS PROVISIONS, subsection 21. Scope of Services and Attachments. is amended to state as follows:

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

Revised Attachment One to the Revised Scope of Services - Fees and Payments (REVISED)
Revised Attachment Two to the Revised Scope of Services - Schedule of Completion (UNCHANGED)
Revised Attachment Three to the Revised Scope of Services - Consultant’s Key Staff and Subconsultants (UNCHANGED)
Attachment Four to the Revised Scope of Services - Reference Materials (UNCHANGED)”

3. New paragraph number 22 is added to Section Twelve (Miscellaneous Provisions) of the Agreement:

“22. 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.”

Board Independent Auditor Consultant
Amendment No. 3 to Agreement A4071A
Admin-Gen – Standard On-Call Consultant Agreement + Sched OC
Version Date: 7/24/20

CAS File No. 4757

**AMENDMENT NO. 3 TO AGREEMENT A4071A
BETWEEN THE SANTA CLARA VALLEY WATER DISTRICT
AND TAP INTERNATIONAL, INC.**

4. New paragraph number 23 is added to Section Twelve (Miscellaneous Provisions) of the Agreement:

"23. 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."

5. New paragraph number 24 is added to Section Twelve (Miscellaneous Provisions) of the Agreement:

"24. Debt Limitation

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

6. Appendix Four to the Standard Consultant Agreement, Insurance Requirements, is modified to read in its entirety as set forth in the attached Revised Appendix Four, Insurance Requirements.
7. Attachment One to the Scope of Services, Fees and Payments, is amended as set forth in the attached Revised Attachment One, Fees and Payments, and is incorporated herein by this reference.
8. All other terms and conditions stated in Agreement A4071A, Amendment No. 1, and Amendment No. 2 not otherwise amended as stated herein, remain in full force and effect.

(SIGNATURES FOLLOW ON NEXT PAGE)

(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK)

**AMENDMENT NO. 3 TO AGREEMENT A4071A
BETWEEN THE SANTA CLARA VALLEY WATER DISTRICT
AND TAP INTERNATIONAL, INC.**

**IN WITNESS WHEREOF, THE PARTIES HAVE SET FORTH BELOW THEIR CONSENT TO
THE TERMS AND CONDITIONS OF THIS AMENDMENT NO. 3 TO AGREEMENT A4071A
THROUGH THE SIGNATURES OF THEIR DULY AUTHORIZED REPRESENTATIVES.**

SANTA CLARA VALLEY WATER DISTRICT
District

TAP INTERNATIONAL, INC.
Consultant

By:

Nai Hsueh
Chair, Board of Directors

By:



Denise Callahan, MPA
Principal

Date:

Date:

7/25/2020

ATTEST:

Firm Address:
3436 American River Drive, Suite 9A
Sacramento, CA 95864

Michele L. King, CMC
Clerk, Board of Directors

(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK)

**AMENDMENT NO. 3 TO AGREEMENT A4071A
REVISED 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 Revised 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 valleywater@ebix.com.

The certificates will:

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

**Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, CA 95118
Agreement A4071A / CAS No. 4757**

Board Independent Auditor Consultant
Amendment No. 3 to Agreement A4071A
Admin-Gen – Standard On-Call Consultant Agreement + Sched OC
Version Date: 7/24/20

CAS File No. 4757

**AMENDMENT NO. 3 TO AGREEMENT A4071A
REVISED 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 Revised 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: valleywater@ebix.com
2. Provide the following information in the "Certificate Holder" box:

**Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, CA 95118
Agreement A4071A / CAS No. 4757**

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).

**AMENDMENT NO. 3 TO AGREEMENT A4071A
REVISED APPENDIX FOUR
INSURANCE REQUIREMENTS**

Required Coverages

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

\$1,000,000 per occurrence / **\$1,000,000** aggregate limits for bodily injury and property damage

General Liability insurance must include:

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

2. Business Auto Liability Insurance with coverage as indicated:

\$1,000,000 combined single limit for bodily injury and property damage per occurrence, covering all owned, non-owned and hired vehicles.

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

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

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

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

**AMENDMENT NO. 3 TO AGREEMENT A4071A
REVISED 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.

**AMENDMENT NO. 3 TO AGREEMENT A4071A
REVISED APPENDIX FOUR
INSURANCE REQUIREMENTS**

5. **Self-Insured Retentions or Deductibles:** Any deductibles or self-insured retentions must be declared to and approved by the District. At the option of the District, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the District, its officers, officials, employees and volunteers; or the Consultant shall provide a financial guarantee satisfactory to the Entity guaranteeing payment of losses and related investigations, claim administration, and defense expenses. Consultant agrees that in the event of a claim they will pay down any agreed upon SIR in a prompt manner as soon as bills are incurred in order to trigger the insurance related to the SIR.
6. **Subconsultants:** The Consultant shall secure and maintain or shall be responsible for ensuring that all subconsultants performing the Contract Services secure and maintain all insurance coverages appropriate to their tier and scope of work in a form and from insurance companies reasonably acceptable to the District.
7. **Amount of Liability not Limited to Amount of Insurance:** The insurance procured by Consultant for the benefit of the District must not be deemed to release or limit any liability of Consultant. Damages recoverable by the District for any liability of Consultant must, in any event, not be limited by the amount of the required insurance coverage.
8. **Coverage to be Occurrence Based:** Except for Professional Liability, all coverage must be occurrence-based coverage. Claims-made coverage is not allowed.
9. **Waiver of Subrogation:** Consultant agrees to waive subrogation against the District to the extent any loss suffered by Consultant is covered by any Commercial General Liability policy, Automobile policy, Workers' Compensation policy described in **Required Coverages** above. Consultant agrees to advise its broker/agent/insurer and agrees to provide evidence (either through the Certificate of Insurance, endorsement or language in the insurance contract) that subrogation has been waived by its insurer.
10. **Non-compliance:** The District reserves the right to withhold payments to the Consultant in the event of material noncompliance with the insurance requirements outlined above.

**AMENDMENT NO. 3 TO AGREEMENT A4071A
REVISED APPENDIX FOUR
INSURANCE REQUIREMENTS**

CHECK LIST OF DOCUMENTS NEEDED

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

Appendix IV ConsultantGL1AL1PL1_rev. 5/11/20

(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK)

**AMENDMENT NO. 3 TO AGREEMENT A4071A
REVISED SCHEDULE OC
REVISED ATTACHMENT ONE
FEES AND PAYMENTS**

1. Total Authorized Funding (REVISED)

Total payment for Services performed, as described in the Revised Scope of Services and in all executed Task Orders will not exceed a total amount of **\$1,255,000** (Not-to-Exceed Fees or NTE). Under no conditions will the total compensation to the Consultant exceed this payment amount without prior written approval in the form of an amendment to this Agreement executed by the District's Board of Directors (Board), or Chief Executive Officer, or designee, as authorized by the Board. It is understood and agreed that this total is an estimate, and the total amount of Services to be requested by the District may be less. There is no guarantee, either expressed or implied, as to the actual dollar amount that will be authorized pursuant to this Agreement.

2. Terms and Conditions (UNCHANGED)

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

- A. The District will pay for Services provided by the Consultant according to the schedule of rates for professional, technical, and administrative personnel as well as materials and supplies listed below in the Hourly Rate Schedule.
- B. The stated hourly and unit rates are effective for the term of this Agreement unless otherwise revised as indicated. After 12 months from the Effective Date of this Agreement, and each 12 months thereafter, these hourly and unit rates may be negotiated by the Consultant and the District, provided Consultant submits written notice to District of Consultant's request to revise the hourly and unit rates ninety (90) calendar days prior to the Effective Date of this Agreement. Both Parties will use as a benchmark for negotiations the percent change for the previous 12 months of the "Employment Cost Index (ECI), for total compensation for private industry workers, for the San Francisco-Oakland-San Jose, CA CSA Census region and metropolitan area (not seasonally adjusted)" as published by the U.S. Department of Labor, Bureau of Labor Statistics, or 2.6% whichever is less. A negative index will result in rates remaining the same. Such rate revisions are subject to written approval by the District's Project Manager stated herein.

**AMENDMENT NO. 3 TO AGREEMENT A4071A
REVISED SCHEDULE OC
REVISED ATTACHMENT ONE
FEES AND PAYMENTS**

HOURLY RATE SCHEDULE (UNCHANGED)

CLASSIFICATION	ORIGINAL AGREEMENT HOURLY/ UNIT RATE EFFECTIVE MAY 23, 2017	AMENDMENT NO. 1 HOURLY/ UNIT RATE EFFECTIVE MAY 8, 2019	AMENDMENT NO. 2 HOURLY/ UNIT RATE EFFECTIVE MAY 8, 2020	AMENDMENT NO. 3 HOURLY/ UNIT RATE
Consultant: TAP International, Inc.				
Lead Auditor	\$190	\$195	\$200	-
Team Auditor	\$175	\$180	\$185	-
Staff Auditor	\$148	\$152	\$156	-
Advisory Services	\$200	\$205	\$210	-
Quality Assurance Reviewer	\$175	\$180	\$185	-

C. Reimbursable Expenses (UNCHANGED)

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 will be billed on a monthly basis at actual cost, as approved by the District Project Manager, provided that the Agreement total NTE amount is not exceeded. Consultant shall provide receipts for each other direct expense item(s) with monthly invoices submitted.
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 the District shall become the property of the District and be delivered to District prior to expiration of this Agreement.
3. Automobile travel mileage expenses will be paid at the current IRS rate. District will not reimburse Consultant and its subconsultants for travel to and from District Headquarters and surrounding campus located at 5700 Almaden Expressway, San Jose, California. District will reimburse Consultant and its subconsultants for mileage incurred from District Headquarters or Consultant's and subconsultants' firm address, whichever is closer to the destination, to project site and to meeting locations with regulatory agencies and community meetings, and partnering meetings, if directed or authorized by the District.

**AMENDMENT NO. 3 TO AGREEMENT A4071A
REVISED SCHEDULE OC
REVISED ATTACHMENT ONE
FEES AND PAYMENTS**

4. 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 has been obtained from the District Project Manager. For air travel, District will pay the cost of a coach class or equivalent ticket. Where air travel is required, District will pay the total cost of taxi, rideshare, public transportation, or a rental car, which may include insurance, gas, car fee, and taxes and will be paid at the actual costs incurred. Vehicle rental is limited to a compact or economy model.
 5. Expenses incurred by the Consultant for Subconsultants, subcontractors and vendors, including lab services, will be reimbursed at actual cost. Consultant shall provide invoices for all such services regardless of cost.
- D. For staff with rates exceeding the rate of \$210/hr., the Consultant shall obtain written approval from the District Project Manager as to the numbers of hours per task prior to that individual working on the Project.
- E. **Prevailing Wage Requirements – NOT USED**

(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK)

THIS PAGE INTENTIONALLY LEFT BLANK