

PROFESSIONAL SERVICES CONTRACT

THIS CONTRACT (Contract) is entered into and is effective on February 8, 2023 by and between Carpinteria Valley Water District, hereinafter called "CVWD", and <Consultant>, hereinafter called "Consultant."

WHEREAS, CVWD desires certain services hereinafter described and Consultant is qualified and desires to provide such service.

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

SECTION I

SCOPE OF SERVICES

- 1.1 The services to be performed under this Contract are as described in Appendix Two hereunto attached and by this reference made a part hereof. In the event that a conflict or contradiction is discovered between the proposal language and this Contract, this Contract shall prevail. Such service shall be performed by individuals as employees of the Consultant, as an independent consultant, and not by or as employees of CVWD.

SECTION II

DUTIES OF CONSULTANT

- 2.1 Standards. All work performed by Consultant or under its shall be rendered in accordance with the accepted practices and to the standards of Consultant's profession.

All service hereunder shall be performed by employees or agents of Consultant who are experienced and skilled in their business and in accordance with the standards of work in their respective professions. Consultant's findings, recommendations and professional advice shall be based on practices and procedures customary in its profession.

- 2.2 Additional Work. Consultant shall not undertake any work beyond the scope of this Contract unless such additional work is approved in advance and in writing by CVWD. The cost of such additional work shall be reimbursed to Consultant by CVWD on the same basis as provided in Section IV.

- 2.3 Security and Safety. If, in the prosecution of the work, it is necessary to conduct field operations, security and safety of the job site will be the responsibility of Consultant, excluding, nevertheless, the security and safety of any facility of CVWD within the job site, but not under the control of Consultant.

In providing its services hereunder, Consultant shall not be responsible for identification, handling, containment, abatement, or in any other respect, for any asbestos or

hazardous material if such is present in connection with the project. In the event that CVWD becomes aware of the presence of asbestos or hazardous material at the job site, CVWD shall be responsible for complying with all applicable federal and state rules and regulations and shall immediately notify Consultant, which shall then be entitled to cease any of its services that may be affected by such presence, without any liability to Consultant arising therefrom.

- 2.4 Consultations. Consultant shall meet with CVWD personnel, or third parties as necessary, on matters connected with carrying out of Consultant's services described in Appendix Two. Such meetings shall be held at the request of either party hereto. Review and CVWD approval of completed work shall be obtained monthly, or at such intervals as may be mutually agreed upon, during the course of this work.
- 2.5 Data. Consultant agrees that all data and information, including without limitation specifications, designs, drawings, reports, models and blueprints, generated in the performance of this Contract and data and information that are specified to be delivered or which are, in fact, delivered pursuant to this Contract (hereinafter "Documents") shall become and remain the sole property of CVWD upon Consultant's receipt of payment in full for services rendered under this Agreement. Consultant understands and agrees that all rights under copyright and patent laws under this Contract to drawings, records, data or other work product belong to CVWD upon Consultant's receipt of payment in full for services rendered under this Agreement, unless otherwise stated. Upon Consultant's receipt of payment in full for services rendered under this Agreement, Consultant hereby assigns any and all rights under copyright and patent law to CVWD and agrees to reasonably assist CVWD in perfecting the same. Upon Consultant's receipt of payment in full for services rendered under this Agreement, Consultant shall deliver all records, drawings, data, information and work product resulting from this Contract to CVWD upon CVWD's request and in any event upon the completion of all work hereunder or the termination or expiration hereof, whichever shall first occur, and shall be fully responsible for the care and protection thereof until such delivery. Except as otherwise provided in this Contract, Documents shall be delivered to CVWD without additional cost to CVWD. CVWD agrees to indemnify and hold harmless the Consultant, its officers, directors, employees and subconsultants (collectively, Consultant) against any damages, liabilities or costs, including reasonable attorney's fees and defense costs, arising from or allegedly arising from or in any way connected with the unauthorized use or modification of the Documents by CVWD or any person or entity that acquires or obtains the Documents from or through CVWD without the written authorization of the Consultant.
- 2.6 Subcontracting. Performance of this Contract may not be subcontracted in whole or in part without the prior written consent of CVWD. Any subcontractors under this Contract with an estimated cost greater than \$1,000 shall not be awarded without CVWD's prior written approval. Lists of proposed subcontracts and proposed subcontractors shall be submitted to CVWD.

SECTION III

DUTIES OF CVWD

- 3.1 Provision of Information. CVWD shall make available to Consultant all data and information in the possession of CVWD which CVWD deems necessary to the preparation of the work, and CVWD shall actively aid and assist Consultant in obtaining such information from other agencies and individuals. Except as specifically provided in the scope of services, Consultant shall be entitled to rely upon the accuracy of data and information provided by CVWD or others without independent review or evaluation.
- 3.2 Review of Progress of Work. CVWD Management may authorize a staff person as a representative to confer with Consultant relative to Consultant's services hereunder. The work in progress hereunder shall be reviewed from time to time by CVWD at the discretion of CVWD or upon the request of Consultant. If the work meets the Standards (as per section 2.1), it will be approved. If the work does not meet the Standards (as per section 2.1), CVWD will inform Consultant of the changes or revisions necessary to secure approval.

SECTION IV

FEES AND PAYMENTS

- 4.1 Payment Schedule. Payment for the services hereinabove described shall be made upon a schedule and within the limit or limits shown upon Appendix Two hereunto attached and made a part hereof, and such payment shall be considered as full compensation for all personnel, materials, supplies, and equipment used in carrying out the work. In the event that a conflict or contradiction is discovered between the proposal language and this Contract, this Contract shall prevail.
- 4.2 Statements. Unless otherwise specified in said Appendix Two, Consultant's fees shall be payable on monthly statements; such statements shall give a detail of time worked by each class of employee, services (or tasks) performed, and the itemized expenses incurred and accompanied by receipts for which billing is made and shall contain the following affidavit signed by a principal of the firm of Consultant:

"I hereby certify as principal of the firm of _____ that the charge of \$_____ as summarized above and shown in detail on the attachments is fair and reasonable, is in accordance with the terms of the Contract dated _____, 20___, and has not been previously paid."

Compensation is clearly outlined in Appendix Two. This information includes rates by individual/title grouping, the not-to-exceed amount of the Contract, whether the payments will be periodic or paid in a lump sum, and a list of expenses for which the Consultant(s) will, or will not, be reimbursed.

SECTION V

CHANGES IN WORK

- 5.1 Extra/Changed Work. CVWD may propose major changes in scope or character of the work, either decreasing or increasing the amount of Consultant's services. Increased compensation for major changes shall be determined in accordance with schedule of fees included in with Appendix Two hereof, or as otherwise agreed to, in writing, between the parties. Upon mutual agreement in writing, major scope changes will be attached in Appendix Two of this agreement.
- 5.2 Change of Schedule. In the event that major changes are required, the schedule for completion as stated in Appendix Two hereto will be adjusted by negotiation between Consultant and CVWD. Upon mutual agreement in writing, major schedule changes will be attached in Appendix Two of this agreement.
- 5.3 Change Authorization. No representative of CVWD, other than the General Manager, is authorized to obligate CVWD to pay the cost or value of services beyond the scope thereof as herein described.

SECTION VI

TIME OF BEGINNING AND SCHEDULE FOR COMPLETION

- 6.1 Commencement of Work. Consultant shall begin work upon receipt of written Notice to Proceed from CVWD which said notice shall not be issued until after this Contract has been approved and authorized by CVWD.
- 6.2 Completion Schedule. The schedule for completion of the work shall be as shown upon Appendix Two hereunto attached and made a part hereof. Consultant shall complete the work set forth in Appendix Two in accordance with the schedule for completion shown.
- 6.3 Suspension of Services. CVWD may, at any time and without cause, suspend all or a portion of the services of Consultant for a period of not more than ninety (90) days by notice in writing to Consultant. Consultant shall resume the service on receipt from CVWD of a notice of resumption of services. Any change to the contract, price or time of completion sought by Consultant as a result of suspension hereunder, shall be processed as a change order under the provisions of Section V hereof.

SECTION VII

DELAYS AND EXTENSIONS

- 7.1 Delays. In the event Consultant is delayed in performance of its services by circumstances beyond its control, it will be granted a reasonable adjustment in the Schedule for Completion as described in Appendix Two. All claims for adjustments in

the Schedule for Completion must be submitted to CVWD by Consultant within thirty (30) calendar days of the time of occurrence of circumstances necessitating the adjustment. Notwithstanding the foregoing, CVWD agrees that the Consultant is not responsible for damages arising directly or indirectly from any delays for causes beyond the Consultant's control.

SECTION VIII

TERMINATION

- 8.1 Termination by Owner. CVWD may terminate this Contract at any time by giving Consultant written notice thereof. Upon termination, Consultant will be paid for that portion of the work completed prior to termination.
- 8.2 Termination by Consultant. Consultant may terminate this Contract upon written notice to CVWD should CVWD materially breach the terms of this Contract.
- 8.3 Effect Upon Records. Upon termination and Consultant's receipt of payment in full for services rendered under this Agreement Consultant shall turn over to CVWD all of the documents, records, papers and other work product related to this Contract, which shall become CVWD property. CVWD shall not be liable for any costs to transfer said records other than as specified in this Contract.
- 8.4 Examination of Records. CVWD shall, until the expiration of three (3) years after final payment under this Contract, have access to and the right to examine any directly pertinent books, documents, papers and records of Consultant involving transactions related to this Contract.
- 8.5 Change in Consultant's Status. The financial capability and status of Consultant were substantial inducements for CVWD to enter into this Contract. Therefore, Consultant shall, and hereby specifically acknowledges its duty to do so, notify CVWD of any significant financial change, or significant change in status of Consultant within seven (7) days of significant financial change or significant change in status. "Significant financial change" or "significant change in status" shall mean the following:
- Any action(s) by which Consultant shall consolidate with, merge, or convert the Consultant into another (partnership or corporation),
 - Any filing of bankruptcy by the Consultant (or any of its partners),
 - Loss of Consultant's professional qualifications, and
 - The fact that Consultant is no longer in compliance with federal or state equal opportunity laws.

SECTION IX

ATTORNEYS' FEES

- 9.1 If either party brings an action or proceeding against the other party by reason of default of any term or condition of this Contract, or otherwise arising out of this Contract, the prevailing party in such action or proceeding shall be entitled to recover, as part of

prevailing party's total damages, reasonable attorneys' fees as determined by a court of competent jurisdiction or as agreed upon by the parties in settlement.

SECTION X

INDEMNIFICATION/HOLD HARMLESS

- 10.1 Consultant agrees to indemnify and hold CVWD, its officers, directors and employees, harmless from and against all claims, damages and causes of actions, but only to the extent such claims, damages, and causes of action were actually caused by the negligent acts or negligent errors or omissions of Consultant in the performance of its services pursuant to this Contact. Consultant shall have no duty to provide or to pay for an up-front defense against unproven claims or allegations, but shall promptly reimburse Client for reasonable attorney's fees and costs of suit actually incurred by Client in defense of those claims which are determined in the final judgment to have been caused by Consultant's negligent act or negligent error or omission.

SECTION XI

DISPUTE RESOLUTION

- 11.1 The parties shall attempt in good faith to resolve all disputes ("Controversy") promptly by negotiation, as follows. Any party may give the other party written notice of any Controversy not resolved in the normal course of business. Senior Staff of both parties involved in the Controversy shall meet at a mutually acceptable time and place within five business days after delivery of such notice, and thereafter as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the Controversy. If the matter has not been resolved within thirty days from the referral of the Controversy to the managers, or if no meeting has taken place within ten days after such referral, either party may initiate mediation as provided hereinafter. All negotiations pursuant to this clause are confidential and shall be treated as compromise and settlement negotiations for purposes of the Federal Rules of Evidence and state Rules of Evidence.
- 11.2 Mediation. In the event that any Controversy arising out of or relating to this Agreement is not resolved in accordance with the procedures provided herein, such Controversy shall be submitted to mediation with a mutually agreed upon mediator. The mediation shall be filed at the regional office of the agreed upon mediator closest to the Project Site or the CVWD Office. The mediation shall take place at a mutually agreeable location. If the mediation process has not resolved the Controversy within thirty days of the submission of the matter to mediation, or such longer period as the parties may agree to, the mediation process shall cease. All mediation documents and discussions pursuant to this clause are confidential and shall be treated as compromise and settlement negotiations for purposes of the Federal Rules of Evidence and state Rules of Evidence. Nothing herein shall limit the rights and remedies that the parties may have under this Agreement or under other legal and equitable proceedings. Cost for mediation shall be equally divided between the parties.

SECTION XII

MISCELLANEOUS PROVISIONS

- 12.1 Gratuities. Consultant warrants that neither it nor any of its employees, agents, or representatives has offered or given any gratuities to CVWD's employees, agents, or representatives with a view toward securing this Contract or securing favorable treatment with respect thereto.
- 12.2 Interpretation. The parties hereto acknowledge and agree that each has been given the opportunity to independently review this Contract with legal counsel, and/or has the requisite experience and sophistication to understand, interpret, and agree to the particular language of the provisions of this Contract.
- 12.3 Project Manager. CVWD Management reserves the right to approve the project manager assigned by Consultant to said work.
- 12.4 Limitation on Assignment. This Contract shall not be assigned without first obtaining the express written consent of CVWD.
- 12.5 Status of Consultant. Consultant is employed to render a professional service only and any payments made to Consultant are compensation solely for such services as Consultant may render. Consultant shall at all times retain the status of an independent consultant with CVWD. Nothing within this Contract shall be construed so as to make Consultant, or any of its agents or employees, the employee(s), partner(s), or joint venturer(s) of or with CVWD.
- 12.6 Licensing. Consultant warrants that they have complied, and shall comply, with any and all applicable state licensing requirements.
- 12.7 Entire Contract. This Contract supersedes any and all other Contracts, either oral or in writing, between the parties hereto with respect to the subject matter hereof, and no other Contract, statement, or promise related to the subject matter of this Contract which is not contained in this Contract shall be valid or binding.
- 12.8 Ownership of Work. All work performed pursuant hereto shall, upon completion and Consultant's receipt of payment in full for services rendered under this Agreement, become the property of CVWD. In the event the work is not completed due to termination of Consultant's services, the completed portions thereof shall become the property of CVWD upon Consultant's receipt of payment in full for services rendered under this Agreement.
- 12.9 Waiver. Either party to this Contract may specifically and expressly waive, in writing, compliance by the other party hereto with any term, condition or requirements set forth in this Contract. Either party to this Contract may specifically and expressly waive, in writing, any breach of any term, condition, or requirement of this Contract by the other party hereto. However, in the event that either party makes or gives such a waiver, such action shall not constitute a further or continuing waiver of any preceding or succeeding breach, or requirement of compliance with, the same or any other provision or

contractual requirement, unless a specific statement to the contrary is contained within such waiver. The waiving party may, at any time thereafter, require further compliance by the other party hereto with the requirements or provisions of this Contract that have been so waived. The consent of one party to any act by the other party for which such written consent was required shall not be deemed to imply consent or waiver of the necessity of obtaining such written consent for the same or similar acts in the future. No waiver or consent shall be implied from the silence or from the failure of any party to an act, except as otherwise specified in this Contract.

- 12.10 Job Costing. Any opinion of the Construction Cost prepared by Consultant represents its judgment as a design professional and is supplied for the general guidance of CVWD. Since Consultant has no control over the cost of labor and material, or over competitive bidding or market conditions, Consultant does not guarantee the accuracy of such opinions as compared to consultant bids or actual cost to CVWD.
- 12.11 Notices. Any notice, request, demand, consent or approval, or other communication required or permitted hereunder by law, shall be validly given and made only if in writing and delivered in person to an officer or duly authorized representative of the party, or by certified mail with return receipt requested, express mail, in each case during regular business hours and addressed to the party for whom intended as follows:
- To CVWD: Carpinteria Valley Water District
 Attention: General Manager
 1301 Santa Ynez Ave
 Carpinteria, CA 93013
- To Consultant: <Consultant>
 Attention: Rob Morrow
 805 Aerovista Lane Suite 201
 San Luis Obispo, CA 93401
- 12.12 Jurisdiction. The parties hereby understand and agree that this Contract, and the attachments hereto, have been negotiated and executed in the State of California and shall be governed by, and construed under, the laws of the State of California. The parties hereto do expressly agree that in the event of a dispute concerning the terms hereof, venue for any legal action shall be with the appropriate court of the County of Santa Barbara, State of California.
- 12.13 Amendments. No addition to, or modification of, any provision contained in this Contract shall be effective unless fully set forth in writing signed by the authorized representative of both of the parties hereto.
- 12.14 Signatories. The signatories hereto do warrant that they are appropriately authorized to execute this Contract on behalf of the party for which they signed.

SECTION XIII

INSURANCE

13.1 Insurance requirements shall be as set forth in Appendix One hereto attached.

IN WITNESS WHEREOF, the parties have executed this Contract the day first hereinabove written.

CONSULTANT

CARPINTERIA VALLEY WATER DISTRICT

By: _____
Principal

By: _____
Matthew Roberts, Board President

Print
Name: _____

Board Approved: **February 8, 2023**

APPENDIX ONE

INSURANCE REQUIREMENTS

Minimum Insurance Requirements: Consultant shall procure and maintain for the duration of the contract insurance against claims for injuries or death to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Consultant, his agents, representatives, employees or sub-contractors.

Coverage - Coverage shall be at least as broad as the following:

1. **Commercial General Liability (CGL)** - Insurance Services Office (ISO) Commercial General Liability Coverage (Occurrence Form CG 00 01) including products and completed operations, property damage, bodily injury, personal and advertising injury with limit of at least one million dollars (\$1,000,000) per occurrence or the full per occurrence limits of the policies available, whichever is greater. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (coverage as broad as the ISO CG 25 03, or ISO CG 25 04 endorsement provided to Carpinteria Valley Water District) or the general aggregate limit shall be twice the required occurrence limit.
2. **Automobile Liability** – (if necessary) Insurance Services Office (ISO) Business Auto Coverage (Form CA 00 01) or equivalent, covering Symbol 1 (any auto) or if Consultant has no owned autos, Symbol 8 (hired) and 9 (non-owned) with limit of one million dollars (\$1,000,000) for bodily injury and property damage each accident.
3. **Workers' Compensation Insurance** - as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease. **Waiver of Subrogation:** The insurer(s) named above agree to waive all rights of subrogation against the Carpinteria Valley Water District, its elected or appointed officers, officials, agents, authorized volunteers and employees for losses paid under the terms of this policy which arise from work performed by the Named Insured for the Agency; but this provision applies regardless of whether or not the Carpinteria Valley Water District has received a waiver of subrogation from the insurer.
4. **Professional Liability** - (Also known as Errors & Omission – *Technology Exposure – see pg. 3 Other Considerations) Insurance appropriate to the Consultant profession, with limits no less than \$1,000,000 per claim, and \$2,000,000 policy aggregate.

If Claims Made Policies:

1. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained and evidence of insurance must be provided for at least three (3) years after completion of the contract of work.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Consultant must purchase "extended reporting" coverage for a minimum of three (3) years after completion of contract work.

If the Consultant maintains broader coverage and/or higher limits than the minimums shown above, the Carpinteria Valley Water District requires and shall be entitled to the broader coverage and/or higher limits maintained by the Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the Carpinteria Valley Water District.

Other Required Provisions - The general liability policy must contain, or be endorsed to contain, the following provisions:

1. **Additional Insured Status:** Carpinteria Valley Water District and the, its directors, officers, employees, and authorized volunteers are to be given insured status (at least as broad as ISO Form CG 20 10 10 01), with respect to liability arising out of work or operations performed by or on behalf of the Consultant including materials, parts, or equipment furnished in connection with such work or operations.
2. **Primary Coverage:** For any claims related to this project, the Consultant's insurance coverage shall be primary at least as broad as ISO CG 20 01 04 13 as respects to the Carpinteria Valley Water District, its directors, officers, employees and authorized volunteers. Any insurance or self-insurance maintained by the Carpinteria Valley Water District its directors, officers, employees and authorized volunteers shall be excess of the Consultant's insurance and shall not contribute with it.

Notice of Cancellation: Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the Carpinteria Valley Water District.

Self-Insured Retentions - Self-insured retentions must be declared to and approved by the Carpinteria Valley Water District. The Carpinteria Valley Water District may require the Consultant to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or Carpinteria Valley Water District.

Acceptability of Insurers - Insurance is to be placed with insurers having a current A.M. Best rating of no less than A: VII or as otherwise approved by Carpinteria Valley Water District.

Verification of Coverage – Consultant shall furnish the Carpinteria Valley Water District with certificates and amendatory endorsements of the applicable coverage required by this clause.

All certificates and endorsements are to be received and approved by the Carpinteria Valley Water District before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Consultant's obligation to provide them.

Sub-contractors - Consultant shall require and verify that all sub-contractor maintain insurance appropriate for the services they are providing. Consultant shall ensure that Carpinteria Valley Water District its directors, officers, employees, and authorized volunteers are an additional insured are an additional insured on Commercial General Liability Coverage.

Other Contractual considerations:

Professional Services – Professional Liability coverage is normally required if the Consultant is providing a professional service regulated by the state (Examples of service providers regulated by the state are insurance agents, doctors, certified public accountants, lawyers, etc.). However, other professional Consultants, such as computer or software designers, and services providers such as claims administrators, should also have professional liability. If in doubt, consult with your risk management or JPIA Member Services.

APPENDIX TWO

SCOPE OF SERVICES, FEE & SCHEDULE

SCOPE

See scope attached hereto

FEE SCHEDULE

In the event that a conflict or contradiction is discovered between the proposal language and this Contract, this Contract shall prevail. CVWD's payment terms are Net 30.

Payments shall be periodic and reflective of deliverables at the receipt of an invoice. Rates by individual/title grouping shall apply for the life of the project. The following is a summary of the fees to be paid on a time and materials basis;

SCHEDULE FOR COMPLETION

The schedule for completion of work is attached and shall be subject to change by the Project Manager.