



**BOARD OF DIRECTORS SPECIAL
SAN LORENZO VALLEY WATER DISTRICT
AGENDA
January 23, 2018**

MISSION STATEMENT: Our Mission is to provide our customers and future generations with reliable, safe and high quality water at an equitable price; to create and maintain outstanding service and community relations; to manage and protect the environmental health of the aquifers and watersheds; and to ensure the fiscal vitality of the San Lorenzo Valley Water District.

Notice is hereby given that a special meeting of the Board of Directors of the San Lorenzo Valley Water District will be held on Tuesday, January 23, 2018 at 12:30 p.m., 13057 Highway 9, Boulder Creek, California.

In compliance with the requirements of Title II of the American Disabilities Act of 1990, the San Lorenzo Valley Water District requests that any person in need of any type of special equipment, assistance or accommodation(s) in order to communicate at the District's Public Meeting can contact the District Secretary's Office at (831) 430-4636 a minimum of 72 hours prior to the scheduled meeting.

Agenda documents, including materials related to an item on this agenda submitted to the Board of Directors after distribution of the agenda packet, are available for public inspection and may be reviewed at the office of the District Secretary, 13060 Highway 9, Boulder Creek, CA 95006 during normal business hours. Such documents are also available on the District website at www.slvwd.com subject to staff's ability to post the documents before the meeting.

1. Convene Meeting/Roll Call

2. Additions and Deletions:

Additions to the Agenda, if any, may only be made in accordance with California Government Code Section 54954.2 (Ralph M. Brown Act) which includes, but is not limited to, additions for which the need to take action is declared to have arisen after the agenda was posted, as determined by a two-thirds vote of the Board of Directors (or if less than two-thirds of the members are present, a unanimous vote of those members present).

3. Oral Communications:

This portion of the agenda is reserved for Oral Communications by the public for items which are on the Agenda. Any person may address the Board of Directors at this time, on items on the agenda. Normally, presentations must not exceed three (3) minutes in length, and individuals may only speak once during Oral Communications. No actions may be taken by the Board of Directors on any Oral Communications presented; however, the Board of Directors may request that the matter be placed on a future agenda. Please state your name and town/city of residence at the beginning of your statement for the record.

4. New Business:

- a. RESOURCE CONSERVATION DISTRICT CONTRACT
Discussion by the Board regarding the RCD Contract for the Fall Creek Fish Ladder.

5. Adjournment

Certification of Posting

I hereby certify that on January 22, 2018 I posted a copy of the foregoing agenda in the outside display case at the District Office, 13060 Highway 9, Boulder Creek, California said time being at least 24 hours in advance of the special Meeting of the Board of Directors of the San Lorenzo Valley Water District (Government Code Section 54954.2).

Executed at Boulder Creek, California on January 22, 2018.

Holly B. Hossack
District Secretary

MEMO

TO: Board of Directors

FROM: District Manager

PREPARED BY: Environmental Analyst

SUBJECT: Discussion and Possible Action Regarding approving the Scope and Budget for a contract with the Resource Conservation District

DATE: January 22, 2018

RECOMMENDATION

It is recommended that the Board of Directors review this memo and approve the attached Scope and Budget for the Permit Requirements for the Fall Creek Fish Ladder Replacement Project and Operations & Maintenance Manual.

BACKGROUND

Fall Creek is the primary source for drinking water delivered to the town of Felton. The diversion on Fall Creek is located one half mile up-stream of the confluence with the San Lorenzo River. In 1979 at the diversion site, a fish ladder was constructed by Citizens Utilities to allow salmon and steelhead to migrate into upstream habitat for spawning. In 2013, the District completed an emergency temporary repair on the Fall Creek Fish Ladder, with the agreement with California Department of Fish and Wildlife (CDFW) that the District would construct a ladder that is passable for all lifestages of Salmon and Steelhead as soon as possible.

The District completed the design for the fish ladder with 6 inch jump heights as required by National Oceanic and Atmospheric Administration (NOAA), and were prepared to go to bid when NOAA notified the District that the project would not be eligible to be permitted under the Resource Conservation District's (RCD) programmatic umbrella permit. The District was notified that a Biological Opinion would be required to evaluate the Districts diversion and bypass flows on Fall Creek before a permit to proceed with the construction of the Fish Ladder Repair would be issued. This change in requirement also means that the District would have to acquire 8 separate permits instead of one umbrella permit.

In order to inform the Biological Opinion provided by NOAA, the District completed a Critical Riffle Study in 2016/17 as required.

The Resource Conservation District had been the firm working with the district to secure the permit for the project. Upon the change in requirements, it is necessary to change the scope and budget for the RCD contract.

It is recommended that the Board of Directors review and approve the attached scope and budget for the Permit Requirements for the Fall Creek Fish Ladder Replacement Project and Operations & Maintenance Manual with the Resource Conservation District.

FISCAL IMPACT: \$60,000
Account #: 01-000-1565
Task: CAP 1516007A



January 11, 2018

Jen Michelsen
Environmental Programs Manager
San Lorenzo Valley Water District
(831) 430-4627
Jmichelsen@slvwd.com

Subject: *Scope of Work & Cost Estimate – Fall Creek Fish Ladder Improvement Project*

Dear Jen,

Thank you for the opportunity to assist the San Lorenzo Valley Water District with preparation of permits for the proposed Fall Creek Fish Ladder Improvement Project. Please let me know if you have any questions or comments.

The Resource Conservation District of Santa Cruz County (RCDSCC) is a special district organized under state law. The RCDSCC is also a public agency and has no enforcement or regulatory functions. The District works closely with the USDA Natural Resources Conservation Service, through a mutual agreement, in responding to the soil and water management needs of Santa Cruz County land users.

Sincerely,

A handwritten signature in blue ink that reads "K. Camara".

Kelli Camara
Program Director

***Resource Conservation District
of Santa Cruz County***

Enclosure

Project Understanding

The San Lorenzo Valley Water District (SLVWD) proposes to construct a fish ladder, which will allow passage for all life stages of California Coast Steelhead in Fall Creek. The fish ladder was originally constructed as part of the water intake for the local water district in Felton called Citizens Utilities Company of California, and is now owned and operated by the San Lorenzo Valley Water District.

The proposed improvements were designed to provide hydraulic conditions that are conducive to fish passage and satisfy the California Department of Fish and Wildlife (CDFW) and National Marine Fisheries Service (NMFS) fish passage design criteria. The proposed improvements would result in a configuration that would have five “adult” weirs with twelve-inch drop heights between each adult weir, and four intermediate “juvenile” weirs, located between the adult weirs, which would provide six-inch drop heights during the juvenile salmonid flow regime. The proposed weir configuration would provide satisfactory hydraulic performance for passage of for both juvenile and adult salmonid species. The adult weirs would have four-foot wide flash boards while the juvenile weirs would have eight-foot flashboards designed to be removed during high flow regimes when it is anticipated that juvenile salmonids would not be moving upstream through the fish ladder. Removal of the eight-foot wide juvenile flashboards during winter months would allow for a greater dispersion of turbulence caused by plunging flow over the adult weirs into the downstream pools. The concrete grade control weir would be placed upstream of the intake screen location and is designed to prevent scour of the streambed upstream of the fish ladder that might otherwise result from lowering the profile through the ladder.

Scope of Work

Task 1. Prepare Biological Assessment (BA) for United States Fish and Wildlife Service (USFWS)

Under this task, the RCD will review all relevant background information (e.g., California National Diversity Database, biological studies, etc.). If it is determined that the project has the potential to impact federally protected species or their habitats, the RCD will coordinate with USFWS to discuss permitting options. Based on this discussion, the RCD will coordinate with USFWS to comply with the Endangered Species Act through the development of a draft BA or not likely to adversely affect determination.

An administrative draft BA will be prepared for SLVWD review. The BA will evaluate potential construction-related and operational effects to federally listed species and include all relevant information required by USFWS such as a detailed project description, a summary of species and habitat potentially affected, a description of baseline conditions, and an effects determination. The BA will include an evaluation of the potential effects of existing operations on all life stages of listed species and their habitat. If potential adverse effects are identified, appropriate avoidance and minimization measures will be recommended.

Upon receiving SLVWD comments on the administrative draft BA, a draft BA for submittal to USFWS will be prepared. Submittal of a draft BA to USFWS for review prior to formal BA submittal to the U.S. Army Corps of Engineers (Corps) is recommended to solicit USFWS input on the adequacy of the proposed avoidance and minimization measures and avoid subsequent delays. This scope of work and cost estimate assumes that USFWS comments will be minor, requiring limited effort to finalize the BA for submittal to the Corps. Should USFWS require major changes in the effects analysis, a separate scope of work and cost estimate will be prepared.

TOTAL COST: \$6,000

Task 2. Prepare Biological Assessment (BA) and Essential Fish Habitat Evaluation for National Marine Fisheries Service (NMFS)

Under this task, Mike Podlech will review all relevant background information (e.g., water rights permits, existing operations, fish passage assessment, etc.) and a site visit to the project site will be conducted.

An administrative draft BA (including EFH evaluation) will be prepared for SLVWD review. The BA will evaluate potential construction-related and operational effects to federally listed Central California Coast (CCC) steelhead and CCC coho salmon, and include all relevant information required by NMFS, such as a detailed project description, a summary of species and habitat potentially affected, a description of baseline conditions, and an effects determination. The BA will include an evaluation of the potential effects of existing operations, including permitted bypass requirements, on all life stages of listed species and their habitat. If potential adverse effects are identified, appropriate avoidance and minimization measures will be recommended.

Upon receiving SLVWD comments on the administrative draft BA, a draft BA for submittal to NMFS will be prepared. Submittal of a draft BA to NMFS for review prior to formal BA submittal to the U.S. Army Corps of Engineers (Corps) is recommended to solicit NMFS input on the adequacy of the proposed avoidance and minimization measures and avoid subsequent delays. This scope of work and cost estimate assumes that NMFS comments will be minor, requiring limited effort to finalize the BA for submittal to the Corps. Should NMFS require major changes in the effects analysis, a separate scope of work and cost estimate will be prepared.

TOTAL COST: \$12,720

Task 3. Army Corps of Engineers Nationwide Permits (NWP) #3 and 33

Based on the direction of SLVWD, the RCD will prepare NWP #3, Maintenance and NWP #33, Temporary Construction, Access, and Dewatering. NWP applications will be prepared for SLVWD review. Upon receiving SLVWD comments, final applications will be provided to SLVWD for submittal with the NMFS BA and appropriate documentation for USFWS.

TOTAL COST: \$3,000

Task 4. Prepare CEQA Certificate of Determination or Initial Study and permit applications for Santa Cruz County

Section 21084 of the Public Resources Code provides a CEQA exemption for those projects which have been determined not to have a significant effect on the environment. It is anticipated that the proposed project may qualify for Categorical Exemption Section 15333, Small Habitat Restoration, as described in the CEQA guidelines. This exemption is for projects less than 5 acres in size that allow for the maintenance, restoration, enhancement, or protection of habitat for fish, plants, and/or wildlife. The determination as to whether the proposed activity would qualify for an exemption under CEQA would be made by the lead agency. Under this task, Vinnedge Environmental Consulting will prepare the documentation necessary to facilitate the decision-making process with the CEQA lead agency - Santa Cruz County (County).

Under this task, Brook Vinnedge will attend a single meeting either in person or by phone with the RCD and County representatives to discuss the CEQA approach for the project. If the RCD and County determine the project is not exempt from CEQA, an Initial Study (IS) checklist for the proposed project will be prepared. The project description

will describe goals for the proposed project, as well as a description of the actions to be undertaken during construction and operation, with as much detail as is available.

The draft IS will be provided to SLVWD and County for review and comment, and then a final version will be prepared. Once the project impacts and the CEQA IS checklist are finalized, a recommended approach for moving forward with CEQA compliance for the project will be provided. Based on a selected approach, an administrative draft Mitigated Negative Declaration (MND) to meet the requirements contained in §15063(d) of the State CEQA Guidelines and the County's environmental procedures will be prepared. The 1st Administrative Draft IS/MND will consist of the following elements:

- Description of the proposed project;
- Description of the environmental baseline;
- Description of the environmental setting for each resource topic evaluated;
- Description of each of the environmental effects of the proposed project, including their level of significance. An explanation for each checklist answers, with the explanation more or less detailed depending upon the extent to which the proposed project affects a specific environmental topic;
- Identification and discussion of mitigation measures necessary to reduce identified significant effects to a less-than-significant level;
- A consistency evaluation of the proposed project with respect to state and local laws and regulations;
- A listing of all reference materials used in preparing the IS/MND, and;
- A listing of the preparers of the IS/MND.

It is assumed, that for efficiency, SLVWD and County will provide a single, consolidated set of comments on the administrative draft MND. The MND will be revised to produce a screen check draft IS/MND, which will be submitted for final review before submitting to the County. This final review is intended to capture minor inconsistencies and errors; it is not expected that substantial comments on the document will result from this review, nor that new analyses or substantial new text preparation will be required.

Vinnedge will incorporate any edits to the IS/MND resulting from the County's review of the screen check draft IS/MND, and will prepare the public review version of the IS/MND. The County, as the CEQA lead agency, will be responsible for completing all required noticing, reproduction, and public circulation/distribution of the IS/MND.

Under this task, the RCD will attend meetings with the County of Santa Cruz and facilitate execution of the necessary permits, as determined by the County. All fees will be paid by SLVWD.

TOTAL COST: \$13,667

Task 5. Regional Water Quality Control Board 401 Water Quality Certification

Under this task, the RCD will prepare a 401 Water Quality Certification for review by SLVWD. Upon receiving SLVWD comments, a final application will be provided to SLVWD for submittal to RWQCB with the appropriate fees.

TOTAL COST: \$4,800



Task 6. Project Management

Under this task, the RCD will execute sub-contracts to Mike Podlech and Vinnedge Environmental Consulting, prepare and process invoices, conduct project coordination between sub-consultants and SLVWD, coordinate with permitting agencies, and conduct project management.

TOTAL COST: \$10,995.44

Indirect Cost (16.88%): \$8,639.60

Total Cost: \$59,822.04

Assumptions

This proposal assumes all technical studies necessary to evaluate impacts of project activities have been prepared or will be prepared prior to our environmental assessment. No additional studies are included in this scope and budget.

The RCD will provide the consultant team with all technical studies, engineering drawings, project figures, and project plans and other information about the proposed project necessary to complete the CEQA exemption compliance.

Protocol level surveys for federally endangered species will not be conducted under this scope of work. Cultural resource searches and/or surveys will not be completed in support of this scope of work.

If there are any significant changes to the proposed project then this scope and cost will be revised accordingly.

Timeline

This proposal assumes that a contract will be executed between SLVWD and the RCD by January 17, 2018 with all work completed by March 31, 2018,

Cost Estimate for RCD Services for Fall Creek Fish Ladder

Scope of Work	Budget			
	Est Qty	Units	Rate	Total
Task 1. Draft US Fish and Wildlife Service (USFWS) Biological Assessment, if needed, and coordinate with USFWS issuing a Biological Opinion, if needed.				
Technical Program Director	50	\$ per hr	\$120.00	\$6,000.00
Subtotal				\$6,000.00
Task 2. Draft National Marine Fisheries Service (NMFS) Biological Assessment and coordinate with NMFS issuing the Biological Opinion.				
Technical Program Director	25	\$ per hr	\$120.00	\$3,000.00
Sub-consultant, Mike Podlech	72	\$ per hr	\$135.00	\$9,720.00
Subtotal				\$12,720.00
Task 3. Draft Army Corps of Engineers (ACOE) Nationwide Permit Application (NWP #3 & #33) and coordinate with ACOE issuing NWP.				
Technical Program Director	25	\$ per hr	\$120.00	\$3,000.00
Subtotal				\$3,000.00
Task 4. Coordinate with the County of Santa Cruz to obtain necessary permits, including drafting Initial Study, if applicable.				
Technical Program Director	25	\$ per hr	\$120.00	\$3,000.00
Sub-consultant, Brook Vinnedge				\$10,667.00
Subtotal				\$13,667.00
Task 5. Draft 401 Water Quality Certification to Regional Water Quality Control Board (RWQCB) and coordinate with RWQCB issuing 401 Certification				
Technical Program Director	40	\$ per hr	\$120.00	\$4,800.00
Subtotal				\$4,800.00
Task 6. Project Management tasks including ongoing project coordination/correspondence, invoicing, etc.				
Grant Administrator	36	\$ per hr	\$63.49	\$2,285.64
Executive Director	40	\$ per hr	\$94.83	\$3,793.20
Technical Program Director	40	\$ per hr	\$120.00	\$4,800.00
Mileage	220	\$ per mi	\$0.530	\$116.60
Subtotal				\$10,995.44
Indirect (17%)				\$8,639.60
TOTAL				\$59,822.04

AGREEMENT FOR PROFESSIONAL SERVICES
by and between the
SAN LORENZO VALLEY WATER DISTRICT (District)
and
RESOURCE CONSERVATION DISTRICT OF SANTA CRUZ COUNTY (Consultant)

PREAMBLE

This agreement for the performance of professional services (“Agreement”) is made and entered into on this **17** day of **January, 2018** (“Effective Date”), by and between **Resource Conservation District of Santa Cruz County** with its principal place of business located at **820 Bay Avenue, Suite 136, Capitola, California 95010** (“Consultant”) and the San Lorenzo Valley Water District, a California County Water District, with its principal place of business located at 13060 Highway 9, Boulder Creek, CA 95006 (“District”). District and Consultant may be referred to individually as a “Party” or collectively as the “Parties” or the “Parties to this Agreement.”

RECITALS

- A.** District desires to secure professional services as described in Exhibit A, entitled “Scope of Services”; for **Permit requirements for the Fall Creek Fish Ladder Replacement Project and Operations & Maintenance Manual.**
- B.** Consultant represents that it possesses the professional qualifications and expertise to provide such services and
- C.** The Parties have specified herein the terms and conditions under which such services will be provided and paid for.

The Parties agree as follows:

AGREEMENT PROVISIONS

1. SCOPE OF SERVICES

Except as specified in this Agreement, Consultant shall furnish all technical and professional services, including labor, material, equipment, transportation, supervision and expertise (collectively referred to as “Services”) to satisfactorily complete the work required by District at its own risk and expense. Services to be provided to District are more fully described in Exhibit A, entitled “Scope of Services.”. All of the exhibits referenced in this Agreement are attached and incorporated by this reference.

2. TERM OF AGREEMENT

Consultant shall provide the services under the requirements of this Agreement commencing upon the date of execution of this Agreement by the parties. Consultant shall complete services within the time limits set forth in Scope of Services or as mutually determined in writing by Parties.

3. RESPONSIBILITY OF CONSULTANT

Consultant shall be responsible for the quality, technical accuracy, and coordination of services furnished by it under this Agreement as outlined in Exhibit A. Consultant will endeavor to provide services in a manner consistent with the level of care and skill ordinarily exercised by other professionals providing the same service in the same

locale. Consultant shall be solely responsible to District for the performance of Consultant, and any of his or her employees, agents, subcontractors, or suppliers, under these Agreement Documents.

4. RESPONSIBILITY OF DISTRICT

- A.** District has established a budget for professional services including all costs as outlined in Exhibits A and B. The District Manager, or designee, shall be District's authorized representative and will ensure all required budget, purchase orders, service orders and any other internal documentation necessary to comply with the terms of this Agreement are properly and timely prepared in order to enable Consultant to commence and continue services according to terms of the Agreement.
- B.** On behalf of District, the District Manager, or designee, shall be District's authorized representative in the interpretation and enforcement of all work performed in connection with this Agreement. The District Manager, or designee, shall render decisions in a timely manner pertaining to documents submitted by Consultant in order to avoid unreasonable delay in the orderly and sequential progress of Consultant's services. Consultant shall promptly comply with instructions from District Manager or designee. The District Manager will ensure all required budget, purchase orders, service orders and any other internal documentation necessary to comply with the terms of this agreement are properly and timely prepared in order to enable Consultant to continue services according to the terms of this Agreement.

5. PAYMENT OF COMPENSATION

- A.** In consideration for Consultant's performance of services, District shall pay Consultant for all services rendered by Consultant pursuant to Consultant's Standard Rate Schedule, the current version of which is outlined in Exhibit B, "Services Fee Schedule." Payments made by District under this Agreement shall be the amounts charged for Services provided and billed by Consultant, subject to verification by District, pursuant to the standard rates set forth in the "Services Fee Schedule" attached as Exhibit B. Consultant may begin services prior to the effective date of this agreement at its own risk, with the understanding that, upon District approval, District may choose to compensate consultant for services performed prior to authorization by District's Board of Directors, with the limits of the District Manager's authority.
- B.** Consultant shall bill District on a monthly basis for services provided by Consultant during the preceding month, subject to verification by District. Payment to Consultant for services will be made within thirty (30) days of date of Consultant invoice.
- C.** Compensation for the services hereunder shall be capped at **\$ 60,000** unless changed in writing by District.

6. RIGHT TO TERMINATION

Both parties reserve the right to terminate this Agreement at any time, with or without cause, upon thirty (30) days written notice to the other party. As of the date of termination, Consultant shall immediately cease all services hereunder, except such as may be specifically approved by both Consultant and District's authorized

representative. Consultant shall be entitled to compensation for all services rendered prior to termination and for any services authorized by the authorized representative thereafter.

7. NO ASSIGNMENT OF AGREEMENT/SUCCESSORS IN INTEREST

This Agreement is a contract for professional services. District and Consultant bind themselves, their partners, successors, assigns, executors and administrators to all covenants of this Agreement. Except as otherwise set forth in this Agreement, no interest in this Agreement shall be assigned or transferred, either voluntarily or by operation of law, without the prior written approval of both parties.

8. NO AGENCY

Consultant shall not have authority, expressed or implied, to act on behalf of District as an agent, or to bind District to any obligations whatsoever, unless specifically authorized in writing by the District Manager or authorized representative.

9. NO THIRD PARTY BENEFICIARY

This Agreement shall not be construed to be an Agreement for the benefit of any third party or parties and no third party or parties shall have any claim or right of action under this Agreement for any cause whatsoever.

10. CONSULTANT IS AN INDEPENDENT CONSULTANT

It is agreed that in performing the work required under this Agreement, Consultant and any person employed by or contracted with Consultant to furnish labor and/or materials under this Agreement is neither an agent nor employee of District. Consultant has full rights to manage its employees subject to the requirements of the law.

11. CONFIDENTIALITY OF MATERIAL

All memoranda, specifications, plans, data, drawings, descriptions, documents, discussions or other information received by or for Consultant and all other written information submitted to Consultant in connection with the performance of this Agreement shall be held confidential by Consultant and shall not, without the prior written consent of District, be used for any purposes other than the performance of the services nor be disclosed to an entity not connected with performance of the services. Nothing furnished to Consultant, which is otherwise known to Consultant or becomes generally known to the public or is of public record, shall be deemed confidential.

12. RIGHT OF DISTRICT TO INSPECT RECORDS OF CONSULTANT

District, through its authorized employees, representatives or agents shall have the right during the term of this Agreement and for three (3) years from the date of final payment for goods or services provided under this Agreement, to audit the books and records of Consultant for the purpose of verifying any and all charges made by Consultant in connection with Consultant's compensation under this Agreement, including termination of Consultant. Consultant agrees to maintain sufficient books and records in accordance with generally accepted accounting principles to establish the correctness of all charges submitted to District. District shall disallow any expenses not so recorded.

Consultant shall submit to District any and all reports concerning its performance under this Agreement that may be requested by District in writing. Consultant agrees to assist District in meeting District's reporting requirements to the State and other agencies with respect to Consultant's services hereunder.

13. CORRECTION OF SERVICES

Consultant will be given the opportunity and agrees to correct any incomplete, inaccurate or defective services at no further cost to District, when such defects are due to the negligence, errors or omissions of Consultant.

14. FORCE MAJEURE

The time for performance of services to be rendered pursuant to this Agreement may be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of Consultant, including, but not restricted to, acts of God or of any public enemy, acts of the government, fires, earthquakes, floods, epidemic, quarantine restrictions, riots, strikes, freight embargoes and unusually severe weather if Consultant shall, within ten (10) days of the commencement of such condition, notify the District Manager who shall thereupon ascertain the facts and extent of any necessary delay, and extend the time for performing services for period of enforced delay when and if the District Manager's determination shall be final and conclusive upon the parties to this Agreement.

15. FAIR EMPLOYMENT

Consultant shall not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, condition of physical handicap, religion, ethnic background, or marital status, in violation of state or federal law.

16. HOLD HARMLESS/INDEMNIFICATION

Consultant agrees, to the fullest extent permitted by law, to indemnify and hold District, its Board members, officers, and employees, harmless from any damage, liability or cost (including reasonable attorneys' fees and costs of defense) to the extent caused by Consultant's negligent acts, errors or omissions in the performance of professional services under this Agreement and those of his or her sub-consultants or anyone for whom Consultant is legally liable.

Consultant is not obligated to indemnify District in any manner whatsoever for District's own negligence.

17. INSURANCE REQUIREMENTS

A. Without limiting Contractor's indemnification of District, and prior to commencing any Services required under this Agreement, Consultant shall purchase and maintain in full force and effect, at its sole cost and expense, the following insurance policies with at least the indicated coverages, provisions and endorsements:

1. Commercial General Liability Policy (bodily injury and property damage):
Policy limits are subject to review, but shall in no event be less than, the following:

\$1,000,000 Each Occurrence

\$1,000,000 General Aggregate
\$1,000,000 Products/Completed Operations Aggregate
\$1,000,000 Personal Injury

2. Workers' Compensation Insurance Policy as required by statute and employer's liability with limits of at least one million dollars (\$1,000,000) policy limit Bodily Injury by disease, one million dollars (\$1,000,000) each accident/Bodily Injury and one million dollars (\$1,000,000) each employee Bodily Injury by disease.
3. Comprehensive Business Automobile Liability Insurance Policy with policy limits at minimum limit of not less than one million dollars (\$1,000,000) each accident using. Liability coverage shall apply to all owned, non-owned and hired autos.
4. Professional Liability or Errors and Omissions Insurance as appropriate shall be written on a policy form coverage specifically designed to protect against acts, errors or omissions of Consultant. Coverage shall be in an amount of not less than one million dollars (\$1,000,000) per claim/aggregate.

B. EVIDENCE OF COVERAGE

Prior to commencement of any services under this Agreement, Consultant, shall, at its sole cost and expense, purchase and maintain not less than the minimum insurance coverage with endorsements and deductibles indicated in this Agreement. Consultant shall file with District all certificates for required insurance policies for District's approval as to adequacy of insurance protection.

18. AMENDMENTS

It is mutually understood and agreed that no alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the Parties and incorporated into this Agreement. Such changes, which are mutually agreed upon by District and Consultant, shall be incorporated in amendments to this Agreement.

19. WAIVER

No term or provision hereof shall be deemed waived and no default or breach excused, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented to such breach. The consent by any party to, or waiver of, a breach or default by the other shall not constitute a consent to, waiver of, or excuse for, any other different or subsequent breach or default.

The failure of either party to insist upon or enforce strict conformance by the other party of any provision of this Agreement or to exercise any right under this Agreement shall not be construed as a waiver or relinquishment of such party's right unless made in writing and shall not constitute any subsequent waiver or relinquishment.

20. INTEGRATED DOCUMENT - TOTALITY OF AGREEMENT

This Agreement embodies the Agreement between District and Consultant and its terms and conditions. No other understanding, agreements, conversations or otherwise, with any officer, agent or employee of District prior to execution of this Agreement shall affect

or modify any of the terms or obligations contained in any documents comprising this Agreement. Any such verbal agreement shall be considered as unofficial information and in no way binding upon District.

Agreement Documents comprise the entire Agreement between District and Consultant concerning the work to be performed for this project. Agreement Documents are complementary; what is called for in one of the Agreement Documents is binding as if called for by all of them.

21. SEVERABILITY CLAUSE

In the event any one or more of the provisions contained herein shall, for any reason, be held invalid, illegal or unenforceable in any respect, it shall not affect the validity of the other provisions, which shall remain in full force and effect.

If any part of this agreement is for any reason held to be excessively broad as to time, duration, geographical scope, activity or subject, it will be construed, by limiting or reducing it, so as to be enforceable to the extent reasonably necessary for the protection of the parties.

22. NOTICES

All notices to the Parties shall, unless otherwise requested in writing, be sent to District addressed as follows:

Brian C. Lee
District Manager
San Lorenzo Valley Water District
13060 Highway 9
Boulder Creek, CA 95006

And to Consultant addressed as follows:

Chris Coburn
Executive Director
Resource Conservation District of Santa Cruz County
820 Bay Avenue, Suite 136
Capitola, California 95010

23. STATUTES AND LAW GOVERNING AGREEMENT

This Agreement shall be governed and construed in accordance with the statutes and laws of the State of California.

24. WAIVER OF CONSEQUENTIAL DAMAGES

District and Consultant mutually agree to waive all claims of consequential damages arising from disputes, claims, or other matters relating to this Agreement.

25. DISPUTE RESOLUTION

A. Unless otherwise mutually agreed to by the Parties, any controversies between Consultant and District regarding the construction or application of this Agreement, and claims arising out of this agreement or its breach, shall be submitted to

mediation within thirty (30) days of the written request of one Party after the service of that request on the other Party.

- B. The Parties may agree on one mediator. If they cannot agree on one mediator, the Party demanding mediation shall request that the Superior Court, State of California, County of Santa Cruz appoint a mediator. The mediation meeting shall not exceed one day or eight (8) hours. The Parties may agree to extend the time allowed for mediation under this Agreement.
- C. The costs of mediation shall be borne by the Parties equally.
- D. Mediation under this section is a condition precedent to filing an action in any court. In the event any legal action or proceeding is commenced to interpret or enforce the terms of, or obligations arising out of this Agreement, or to recover damages for the breach thereof, the Party prevailing in any such action or proceeding shall be entitled to recover from the non-prevailing Party all reasonable attorneys' fees, costs and expenses incurred by the prevailing Party.

26. VENUE

In the event that suit shall be brought by either Party, the Parties agree that the venue shall be exclusively vested in the state courts of the State of California, County of Santa Cruz, or where otherwise appropriate, exclusively in the United States District Court, Northern District of California, San Jose.

27. SIGNATURES

The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Agreement on behalf of the respective legal entities of Consultant and District.

The Parties acknowledge and accept the terms and conditions of this Agreement as evidenced by the following signatures of their duly authorized representatives. It is the intent of the Parties that this Agreement shall become operative on the Effective Date.

SAN LORENZO VALLEY WATER DISTRICT,

Brian C. Lee
District Manager
San Lorenzo Valley Water District

Chris Coburn
Executive Director
Resource Conservation District of Santa Cruz

Approved as to form:

Gina R. Nicholls
District Counsel