

**AGREEMENT FOR PROFESSIONAL SERVICES**  
by and between  
**SAN LORENZO VALLEY WATER DISTRICT**  
and  
**[INSERT LEGAL NAME OF CONSULTANT IN ALL CAPS]**

**CONTRACT NO. 22/23- \_\_**

**RATE STUDY**

Scope of study to include a cost of service analysis for water and sewer services and recommendations related to rates to be implemented by the District.

**PREAMBLE**

This agreement for the performance of professional services (“Agreement”) is made and entered into as of this \_\_ day of \_\_\_\_ 202\_ (“Effective Date”), by and between [Insert legal name of consultant including the entity type, e.g., Acme, Inc., a California corporation] with its principal place of business located at [Insert street address for consultant’s principal place of business], hereinafter referred to as “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, hereinafter referred to as “District.” District and Consultant may be referred to individually as a “Party” or collectively as the “Parties.”

**RECITALS**

- A. WHEREAS, on \_\_\_\_\_, 202\_, District issued a Request for Proposals for analysis of cost and projected rate schedule; and
- B. WHEREAS, Consultant represents and warrants that it possesses the professional qualifications and expertise required by District as set forth under the Request for Proposals and this Agreement.

Now, THEREFORE, the Parties mutually agree as follows:

**1. SCOPE OF SERVICES**

- A. Consultant agrees to perform the services (the “Services”) provided for in **Exhibit A**, entitled “Scope of Services” attached hereto and incorporated herein. Except as otherwise specified in this Agreement, Consultant shall furnish all technical, legal and professional services, including labor, material, equipment, transportation, supervision and expertise to satisfactorily complete the Services at Consultant’s sole risk and expense.
- B. Consultant shall be responsible for the quality, technical accuracy, and coordination of Services furnished by it under this Agreement. Consultant will provide the Services in a manner consistent with the level of care and skill ordinarily exercised by other professionals providing the same or similar services

in the region. Consultant shall be solely responsible to District for the performance of Consultant, and any of its employees, agents, subcontractors, subconsultants, or suppliers, that provide any Services or work under this Agreement.

**2. TERM OF AGREEMENT**

Consultant shall provide the Services commencing upon the Effective Date. Consultant shall complete the Services by \_\_\_\_\_, 20\_\_\_. Any extension shall be by amendment.

**3. CONSULTANT COMPENSATION**

- A. Consultant shall bill District on a monthly basis for any Services provided by Consultant during the preceding month, pursuant to the rates set forth in **Exhibit B**, "Consultant Compensation," attached hereto and incorporated herein. In no event shall the amount of this Agreement exceed \$\_\_\_\_\_.00. Any increase of this not-to-exceed amount shall be by amendment.
- B. Consultant may begin Services prior to the execution and the Effective Date of this Agreement solely at its own risk, with the understanding that District may elect in its sole and absolute discretion whether or not to compensate Consultant for any Services so provided.

**4. GUARANTEED MAXIMUM COSTS**

- A. District's obligation hereunder shall not at any time exceed the amount of this Agreement as stated herein. Any increase of the not-to-exceed amount shall be by amendment.
- B. Officers and employees of District are not authorized to request, and District is not required to reimburse Consultant for, commodities or services beyond the agreed upon scope of Services unless the changed scope is authorized by amendment.
- C. Officers and employees of District are not authorized to offer or promise, nor is District required to honor, any offered or promised additional funding in excess of the maximum amount of funding for which the contract is authorized without an amendment authorizing additional funding.

**5. PAYMENT; INVOICE FORMAT**

- A. Invoices furnished by Consultant under this Agreement must be in a form acceptable to the District Manager or designee.
- B. Payment shall be made by District to Consultant at the address specified in the Section entitled "Notices to the Parties."
- C. District may withhold payment in any instance in which Consultant has failed or refused to satisfy any material obligation provided for under this Agreement.

- D. Payment by District typically will be made within thirty (30) days of the date of receipt of Consultant's invoice by District. However, in no event shall District be liable for interest or late charges for any late payments.

**6. PAYMENT DOES NOT IMPLY ACCEPTANCE OF WORK**

The granting of any payment by District, or the receipt thereof by Consultant, shall in no way lessen the liability of Consultant to replace unsatisfactory work, equipment, or materials, although the unsatisfactory character of such work, equipment or materials may not have been apparent or detected at the time such payment was made. Materials, equipment, components, or workmanship that do not conform to the requirements of this Agreement may be rejected by District and in such case must be replaced by Consultant without delay. This Section shall survive termination of this Agreement.

**7. GRANT REQUIREMENTS**

[Intentionally omitted.]

**8. DISALLOWANCE**

[Intentionally omitted.]

**9. QUALIFIED PERSONNEL**

Services and work under this Agreement shall be performed only by competent personnel under the supervision of and in the employment of Consultant, except as may be allowed pursuant to the Section of this Agreement entitled "Subcontracting." Consultant will comply with District's reasonable requests regarding assignment of personnel, but all personnel, including those assigned at District's request, must be supervised by Consultant. Consultant shall commit adequate resources to complete the project within the project schedule specified in this Agreement.

**10. SUBCONTRACTING**

- A. Consultant is prohibited from subcontracting this Agreement or any part of it unless such subcontracting is first approved by District in writing. Neither Party shall, on the basis of this Agreement, contract on behalf of or in the name of the other Party. An agreement made in violation of this provision shall confer no rights on any Party and shall be null and void.
- B. Nothing contained in this Agreement or otherwise, shall create any contractual relation between District and any subcontractors or subconsultant, and no subcontract shall relieve Consultant of its responsibilities and obligations hereunder. Consultant agrees to be as fully responsible to District for the acts and omissions of its subcontractors or subconsultants and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the Consultant. Consultant's obligation to pay its subcontractors or subconsultants is an independent obligation from District's obligation to make payments to Consultant.

- C. Any subcontract entered into as a result of this Agreement, shall contain all the applicable grant requirements and provisions stipulated in this Agreement to be applicable to subcontractors or subconsultants.
- D. Any substitution of subcontractors or subconsultants must be approved in writing by District advance of assigning work to a substitute subcontractor or subconsultant.

**11. PROMPT PROGRESS PAYMENT TO SUBCONSULTANTS**

A prime consultant shall pay to any subcontractor or subconsultant not later than seven days of receipt of each progress payment by District, in accordance with the provision in Section 7108.5 of the California Business and Professions Code concerning prompt payment to subconsultants. The 7-day period is applicable unless a longer period is agreed to in writing. Prime consultants are prohibited from holding retainage from subcontractors or subconsultants. Any violation of Section 7108.5 shall subject the violating consultant to the penalties, sanctions, and other remedies of that Section. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the prime consultant in the event of a dispute involving a late payment or nonpayment, deficient subconsultant or subcontractor performance, and/or noncompliance by a subconsultant or subcontractor.

**12. PROPRIETARY OR CONFIDENTIAL INFORMATION OF DISTRICT**

Consultant understands and agrees that, in the performance of the work or Services under this Agreement or in contemplation thereof, Consultant may have access to private or confidential information which may be owned or controlled by District and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to District. Consultant agrees that all information disclosed by District to Consultant shall be held in confidence and used only in performance of the Agreement. Consultant shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary data. Nothing furnished to Consultant that is otherwise generally known to the public or is of public record shall be deemed confidential under this Section. This Section shall survive termination of this Agreement.

**13. OWNERSHIP OF RESULTS**

Any interest of Consultant or its subcontractors or subconsultants, in drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files and media or other documents prepared by Consultant or its subcontractors or subconsultants in connection with services to be performed under this Agreement, shall become the property of and will be transmitted to District. However, Consultant may retain and use copies for reference and as documentation of its experience and capabilities. This Section shall survive termination of this Agreement.

**14. WORKS FOR HIRE**

If, in connection with services performed under this Agreement, Consultant or its subcontractors or subconsultants create artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes or any other original works of authorship, such works of authorship shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works are the property of District. If it is ever determined that any works created by Consultant or its subcontractors or subconsultants under this Agreement are not works for hire under U.S. law, Consultant hereby assigns all copyrights to such works to District, and agrees to provide any material and execute any documents necessary to effectuate such assignment. With the approval of District, Consultant may retain and use copies of such works for reference and as documentation of its experience and capabilities. This Section shall survive termination of this Agreement.

**15. INSURANCE REQUIREMENTS**

- A. Without in any way limiting Consultant's liability pursuant to the Section of this Agreement entitled "Hold Harmless/Indemnification," Consultant must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:
1. Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and
  2. Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident; and
  3. Commercial Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable; and
  4. Professional Liability Insurance with limits not less than \$2,000,000 per claim. Subconsultants or subcontractors providing professional services under this Agreement, if any, shall be added to Consultant's policy as additional insured, or shall provide evidence of their own professional liability insurance which is acceptable to District.
  5. Commercial General Liability and Business Automobile Liability insurance policies must provide the following:
    - (a) Name as Additional Insured the District, its Officers, Agents, and Employees; and
    - (b) That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims

arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.

- B. All policies required by this Agreement shall provide thirty days' advance written notice to District of cancellation at the address specified in the Section of this Agreement entitled "Notices to the Parties."
- C. Should any of the required insurance be provided under a claims-made form, Consultant shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.
- D. Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.
- E. Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until District receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, District may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.
- F. Prior to commencement of any work or Services under this Agreement, Consultant, shall, at its sole cost and expense, furnish to District certificates of insurance, and additional insured policy endorsements, in form and with insurers satisfactory to District, evidencing all coverages set forth above, and shall furnish complete copies of policies promptly upon District's request.
- G. Approval of the insurance by District shall not relieve or decrease the liability of Consultant hereunder. This subsection shall survive termination of this Agreement.

**16. RESPONSIBILITY FOR EQUIPMENT**

District shall not be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Consultant, or by any of its employees or agents, even though such equipment be furnished, rented or loaned to Consultant by District. This Section shall survive termination of this Agreement.

**17. CORRECTION OF SERVICES**

District may elect in its sole and absolute discretion, to give Consultant the opportunity to correct any incomplete, inaccurate or defective Services, and Consultant hereby agrees, if given such opportunity pursuant District's election under this Section, to correct such

Services at no further cost to District, when such defects are due to the negligence, errors or omissions of Consultant. This Section shall survive termination of this Agreement.

**18. HOLD HARMLESS/INDEMNIFICATION**

- A. Consultant shall indemnify and hold harmless District and its officers, agents and employees from any and all loss, damage, injury, liability, damages, judgments, claims of any and every kind resulting directly or indirectly from Consultant's performance of this Agreement, including, but not limited to, the use of Consultant's facilities or equipment provided by District or others, regardless of whether liability without fault is imposed or sought to be imposed on District, except to the extent that such indemnity is void or otherwise unenforceable under applicable law, and except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of District and is not contributed to by any act or omission of Consultant, its subcontractors or subconsultants or their agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs.
- B. Consultant shall indemnify and hold District harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons in consequence of the use by District, or any of its officers or agents, of articles or services to be supplied in the performance of this Agreement.
- C. This Section 18 shall survive termination of this Agreement.

**19. INCIDENTAL AND CONSEQUENTIAL DAMAGES**

Consultant shall be responsible for incidental and consequential damages resulting in whole or in part from Consultant's acts or omissions. Nothing in this Agreement shall constitute a waiver or limitation of any rights that District may have under applicable law. This Section shall survive termination of this Agreement.

**20. LIABILITY OF DISTRICT**

District's payment obligations under this Agreement shall be limited to the payment of the compensation provided for in the Section of this Agreement entitled "Consultant Compensation." Notwithstanding any other provision of this Agreement, in no event shall District be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits, arising out of or in connection with this Agreement or Services performed in connection with this Agreement. This Section shall survive termination of this Agreement.

**21. DEFAULT; REMEDIES**

- A. Each of the following shall constitute an event of default ("Event of Default") under this Agreement:

1. Consultant fails or refuses to perform or observe any term, covenant or condition contained in any of the following Sections of this Agreement: 7 ("Grant Requirements"), 9 ("Qualified Personnel"), 10 ("Subcontracting"), 12 ("Proprietary or Confidential Information of District"), 15 ("Insurance Requirements"), 17 ("Correction of Services"), 27 ("Compliance with Laws"), 28 ("Fair Employment"), 29 ("Compliance with Americans with Disabilities Act"), 30 ("Drug Free Workplace"), 31 ("Submitting False Claims; Monetary Penalties"), or 38 ("Assignment").
  2. Consultant fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, and such default continues for a period of ten days after written notice thereof from District to Consultant.
  3. Consultant (i) is generally not paying its debts as they become due, (ii) files, or consents by answer or otherwise to the filing against it of, a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction, (iii) makes an assignment for the benefit of its creditors, (iv) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Consultant or of any substantial part of Consultant's property or (v) takes action for the purpose of any of the foregoing.
  4. A court or government authority enters an order (A) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Consultant or with respect to any substantial part of Consultant's property, (B) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction or (C) ordering the dissolution, winding-up or liquidation of Consultant.
- B. On and after any Event of Default, District shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement or to seek specific performance of all or any part of this Agreement. In addition, District shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Consultant any Event of Default; Consultant shall pay to District on demand all costs and expenses incurred by District in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. District shall have the right to offset from any amounts due to Consultant under this Agreement or any other agreement between District and Consultant all damages, losses, costs or expenses incurred by District as a result of such Event of Default and any liquidated damages due from Consultant pursuant to the terms of this Agreement or any other agreement. This subsection shall survive termination of this Agreement.
- C. All remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way

be deemed to waive any other remedy. This subsection shall survive termination of this Agreement.

**22. EARLY TERMINATION FOR CONVENIENCE**

- A. District shall have the option, in its sole discretion, to terminate this Agreement, at any time during the term hereof, for convenience and without cause. District shall exercise this option by giving Consultant written notice of termination. The notice shall specify the date on which termination shall become effective.
- B. Upon receipt of the notice, Consultant shall commence and perform, with diligence, all actions necessary on the part of Consultant to effect the termination of this Agreement on the date specified by District and to minimize the liability of Consultant and District to third parties as a result of termination. All such actions shall be subject to the prior approval of District. Such actions shall include, without limitation:
1. Halting the performance of all Services and other work under this Agreement on the date(s) and in the manner specified by District.
  2. Not placing any further orders or subcontracts for materials, services, equipment or other items.
  3. Terminating all existing orders and subcontracts.
  4. At District's direction, assigning to District any or all of Consultant's right, title, and interest under the orders and subcontracts terminated. Upon such assignment, District shall have the right, in its sole discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.
  5. Subject to District's approval, settling all outstanding liabilities and all claims arising out of the termination of orders and subcontracts.
  6. Completing performance of any Services or work that District designates to be completed prior to the date of termination specified by District.
  7. Taking such action as may be necessary, or as District may direct, for the protection and preservation of any property related to this Agreement which is in the possession of Consultant and in which District has or may acquire an interest.
- C. Within 30 days after the specified termination date, Consultant shall submit to District a final invoice for Services performed under the Agreement.
- D. In no event shall District be liable for costs incurred by Consultant or any of its subcontractors or subconsultants after the termination date specified by District.

- E. In arriving at the amount due to Consultant under this Section 22, District may deduct: (1) all payments previously made by District for work or other Services covered by Consultant's final invoice; (2) any claim which District may have against Consultant in connection with this Agreement; (3) any invoiced costs or expenses excluded pursuant to the immediately preceding subsection; and (4) in instances in which, in the opinion of District, the cost of any Service or other work performed under this Agreement is excessively high due to costs incurred to remedy or replace defective or rejected Services or other work, the difference between the invoiced amount and District's estimate of the reasonable cost of performing the invoiced Services or other work in compliance with the requirements of this Agreement.
- F. District's payment obligation under this Section 22 shall survive termination of this Agreement.

**23. RIGHTS AND DUTIES UPON TERMINATION OR EXPIRATION**

Upon any termination of this Agreement prior to expiration of the term specified in Section 2 (entitled "Term of Agreement") this Agreement shall terminate and be of no further force or effect except as otherwise expressly provided herein. Consultant shall transfer title to District, and deliver in the manner, at the times, and to the extent, if any, directed by District, any work in progress, completed work, supplies, equipment, and other materials produced as a part of, or acquired in connection with the performance of this Agreement, and any completed or partially completed work which, if this Agreement had been completed, would have been required to be furnished to District. This Section shall survive termination of this Agreement.

**24. LIQUIDATED DAMAGES**

[Intentionally omitted.]

**25. AUDIT AND INSPECTION OF RECORDS OF CONSULTANT**

Consultant agrees to maintain and make available to District, during regular business hours, accurate books and accounting records relating to its work under this Agreement. Consultant will permit District to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. Consultant shall maintain such data and records in an accessible location and condition for a period of not less than three years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any federal agency having an interest in the subject matter of this Agreement shall have the same rights conferred upon District by this Section. This Section shall survive termination of this Agreement.

**26. CONFLICT OF INTEREST**

Consultant acknowledges that it is familiar with the provisions of §87100 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitute a violation of said provisions.

**27. COMPLIANCE WITH LAWS**

Consultant shall keep itself fully informed of all local laws and regulations applicable to District, and of all state, and federal laws in any manner affecting the performance of this Agreement, Consultant must at all times comply with such local laws and regulations and all applicable state and federal laws as they may be amended from time to time.

**28. FAIR EMPLOYMENT**

During the performance of the Agreement, Consultant shall not discriminate against any person or group of persons on account of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or any other category or characteristic protected by law. Consultant confirms that it has an equal employment opportunity policy ensuring equal employment opportunity without regard to race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, or sexual orientation; and that it maintains no employee facilities segregated on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, and any other category or characteristic protected by law. Consultant further agrees that any violation of this prohibition on the part of Consultant, its employees, agents or assigns will constitute a material breach of this Agreement.

**29. COMPLIANCE WITH AMERICANS WITH DISABILITIES ACT**

Consultant acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Consultant shall provide the services specified in this Agreement in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. Consultant agrees not to discriminate against, or fail to make reasonable accommodation of any person covered by the ADA, or fail to comply with any provision of the ADA in the course of its performance of its obligations under the Agreement, or in any way connected with District. Consultant shall defend, indemnify, protect, and hold harmless the District its directors, officers, employees, agents, or authorized volunteers, and each of them, from any and all damages, losses, claims, suits, costs, liabilities, or actions of every kind or description (including attorneys' fees) incurred or brought for, or on account of, Consultant's violation or alleged violation of the ADA in the course of performance of its obligations under the Agreement, or in any way connected to District. Consultant further agrees that any violation of this prohibition on the part of Consultant, its employees, agents or assigns will constitute a material breach of this Agreement.

**30. DRUG FREE WORKPLACE**

Consultant acknowledges that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on District premises. Consultant agrees that any violation of this prohibition by Consultant, its employees, agents or assigns will be deemed a material breach of this Agreement.

**31. SUBMITTING FALSE CLAIMS; MONETARY PENALTIES**

Pursuant to California Government Code Sections 12650 et seq., any contractor, subcontractor or consultant who submits a false claim shall be liable to District for three times the amount of damages that District sustains because of the false claim. A contractor, subcontractor or consultant who submits a false claim shall also be liable to District for the costs of a civil action brought to recover any of those penalties or damages, and may be liable to District for a civil penalty for up to \$10,000 for each false claim. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to District if the contractor, subcontractor or consultant: (a) knowingly presents or causes to be presented to an officer or employee of District, a false claim for payment or approval; (b) knowingly makes, uses or causes to be made or used a false record or statement to get a false claim paid or approved by District; (c) conspires to defraud District by getting a false claim allowed or paid by District; (d) has possession, custody, or control of public property or money used or to be used by District and knowingly delivers or causes to be delivered less property than the amount for which the person receives a certificate or receipt; (e) is authorized to make or deliver a document certifying receipt of property used or to be used by District and knowingly makes or delivers a receipt that falsely represent the property used or to be used; (f) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to District; (g) is a beneficiary of an inadvertent submission of a false claim to District, subsequently discovers the falsity of the claim, and fails to disclose the false claim to District within a reasonable time after discovery of the false claim. This Section shall survive termination of this Agreement.

**32. 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, within ten (10) days of the commencement of such condition, notifies the District Manager who shall thereupon ascertain the facts and extent of any necessary delay, and may extend the time for performing Services. The District Manager's determination shall be final and conclusive upon the Parties to this Agreement.

**33. ENTIRE AGREEMENT**

This contract sets forth the entire Agreement between the Parties in connection with the subject matter hereof, and supersedes any and all other oral or written communications or provisions. This contract may be modified or amended only as provided in the Section

directly below, entitled "Amendments." This Section shall survive termination of this Agreement.

**34. AMENDMENTS**

It is mutually understood and agreed that this Agreement may not be amended or modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement. This Section shall survive termination of this Agreement.

**35. NON-WAIVER**

The omission by either Party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other Party at the time designated, shall not be a waiver of any such default or right to which the Party is entitled, nor shall it in any way affect the right of the Party to enforce such provisions thereafter. This Section shall survive termination of this Agreement.

**36. 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. This Section shall survive termination of this Agreement.

**37. CONSULTANT IS AN INDEPENDENT CONTRACTOR**

A. Consultant or any agent or employee of Consultant shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by District under this Agreement. Consultant or any agent or employee of Consultant is liable for the acts and omissions of itself, its employees and its agents. Nothing in this Agreement shall be construed as creating an employment or agency relationship between District and Consultant or any agent or employee of Consultant.

B. Any terms in this Agreement referring to direction from District shall be construed as providing for direction as to policy and the result of Consultant's work only, and not as to the means by which such a result is obtained. District does not retain the right to control the means or the method by which Consultant performs Services or work under this Agreement.

C. This Section 37 shall survive termination of this Agreement.

**38. ASSIGNMENT**

The Services to be performed by Consultant are personal in character and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by the Consultant unless first approved by District by written instrument executed and approved in the same manner as this Agreement. This Section shall survive termination of this Agreement.

**39. CONSTRUCTION**

All section headings are for reference only and shall not be considered in construing this Agreement. No provision of this Agreement shall be construed against any Party hereto by reason of such Party's being deemed to have drafted such provisions. This Section shall survive termination of this Agreement.

**40. SEVERABILITY**

Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed without further action by the Parties to the extent necessary to make such provision valid and enforceable. This Section shall survive termination of this Agreement.

**41. NOTICE TO THE PARTIES**

Unless otherwise indicated elsewhere in this Agreement, all written communications sent by the Parties shall be sent via email with a copy by U.S. mail or by express overnight courier with tracking, addressed as follows:

To District:

Rick Rogers  
District Manager  
San Lorenzo Valley Water District  
13060 Highway 9  
Boulder Creek, CA 95006  
Email: [rrogers@slvwd.com](mailto:rrogers@slvwd.com)

To Consultant:

[Insert name of Consultant's POC for notice]  
[Insert notice address]  
[City, State, ZIP]  
Email: [Insert email address of Consultant's POC for notice]

Any notice of default must be sent by email with a copy by registered mail or by express overnight courier with tracking.

**42. ADMINISTRATIVE REMEDY FOR AGREEMENT INTERPRETATION**

Should any question arise as to the meaning and intent of this Agreement, the question shall, prior to any other action or resort to any other legal remedy, be referred to District's General Manager, who shall decide the true meaning and intent of the Agreement. This Section shall survive termination of this Agreement.

**43. DISPUTE RESOLUTION**

- A. District may elect in its sole and absolute discretion to submit any controversies between Consultant and District regarding the construction or application of this Agreement, and claims arising out of this Agreement or its breach, to non-binding mediation, within thirty (30) days after notice of a mediation request is given by one Party to the other Party.
- B. The Parties may agree on one mediator. If the Parties cannot agree on one mediator, the Party requesting mediation may 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 such mediation shall be borne by the Parties equally.
- D. Mediation under this Section 43, if elected by District, is a condition precedent to filing an action in any court.
- E. This Section 43 shall survive termination of this Agreement.

**44. ATTORNEY FEES**

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. This Section shall survive termination of this Agreement.

**45. VENUE**

The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be exclusively in the state courts of the State of California, County of Santa Cruz, or if jurisdiction is exclusively federal, in the United States District Court, Northern District of California, San Jose. This Section shall survive termination of this Agreement.

**46. EXECUTION IN COUNTERPARTS**

This Agreement may be executed in counterparts each of which shall be deemed an original but all of which shall constitute one and the same instrument.

47. **AUTHORITY**

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.

[Signatures on Following Page(s)]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the day first mentioned above, as evidenced by the signatures of their duly authorized representatives set forth below.

**SAN LORENZO VALLEY WATER DISTRICT** **[INSERT NAME OF CONSULTANT IN ALL CAPS]**

\_\_\_\_\_  
Richard M. Rogers  
District Manager  
San Lorenzo Valley Water District

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

ATTEST:

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Holly Hossack  
District Secretary  
San Lorenzo Valley Water District

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
City, State, ZIP

APPROVED AS TO FORM:

\_\_\_\_\_  
Phone Number

\_\_\_\_\_  
Gina Nicholls  
District Counsel  
Nossaman LLP

\_\_\_\_\_  
License Number(s) (if applicable)

**Exhibit A**

**Scope of Services**

[See Following Page(s)]

**Exhibit B**

**Consultant Compensation**

[See Following Page(s)]