

# CONSULTANT AGREEMENT

As of [DATE], Las Virgenes Municipal Water District, hereinafter called "Agency," and [CONSULTANT NAME], hereinafter called "Consultant," agree as follows:

## 1. Purpose.

Under this Agreement, Consultant shall provide [DESCRIPTION OF WORK AND FOR WHAT PROJECT].

## 2. Services.

The Consultant shall, in good workmanlike and professional manner, furnish the services as set forth in Exhibit "A" of this Agreement.

## 3. Consideration.

(a) The Agency shall compensate Consultant on a time-and-material basis, contingent on satisfactory performance of the work. The aggregate payments under this Agreement shall not exceed \$\_\_\_\_\_, as more fully described on Exhibit "A."

(b) The Consultant shall complete and submit invoices showing the dates of work, description of work performed, and amount of the invoice together with any supporting documentation. The Agency shall pay the Consultant within thirty (30) days of the receipt of an invoice.

## 4. Term.

(a) This Agreement shall commence on the date above written, and shall continue until completion of the services described above. The Agency may terminate or cancel this Agreement without liability to the Agency, if Consultant fails to perform or commits a substantial breach of the terms hereof.

(b) Either party may terminate this agreement on thirty (30) days written notice for any reason. If this contract is terminated by Agency without cause, Agency shall pay Consultant for work performed prior to the date the notice of termination is received by contractor. If the contract is terminated by Consultant without cause, Consultant shall reimburse Agency for additional costs to be incurred by Agency in obtaining the work from another consultant.

## 5. Ownership of Data, Reports, and Documents.

The Consultant shall deliver to Agency on demand or completion of the project, notes of surveys made, reports of tests made, studies, reports, plans, and other materials and documents which shall be the property of the Agency. If the Agency uses any of the data, reports, and documents furnished or prepared by the Consultant for projects other than the project shown on Exhibit "A," the Consultant shall be released from responsibility to third parties concerning the use of the data, reports, and documents. The Consultant may retain copies of the materials. The Agency may use or reuse the materials prepared by Consultant without additional compensation to Consultant.

**6. Subcontracts and Assignments.**

The Consultant shall not subcontract or assign responsibility for performance of any portion of this Agreement without the prior written consent of the Agency. Except as otherwise specifically approved by Agency, Consultant shall include appropriate provisions of this Agreement in subcontracts so rights conferred to Agency by this Agreement shall not be affected or diminished by subcontract. There shall be no contractual relationship intended, implied, or created between Agency and any subcontractor with respect to services under this Agreement.

Neither party hereto shall assign, sublet, or transfer interests hereunder without first obtaining written consent from the other party.

**7. Independent Contractor.**

The Consultant is an independent contractor and not an employee of Agency. Except as Agency may specify in writing, Consultant shall have no authority, expressed or implied, to act on behalf of Agency in any capacity whatsoever as an agent. Consultant shall have no authority, expressed or implied, pursuant to this Agreement to bind Agency to any obligation whatsoever.

**8. Licensing.** Consultant represents and declares to Agency that it has all licenses, permits, qualifications, and approvals of whatever nature that is legally required to practice its profession. Consultant represents and warrants to Agency that Consultant shall, at its sole cost and expense, keep in effect at all times during the term of this Agreement, any license, permit, or approval, which is legally required for Consultant to practice its profession.

**9. Indemnification.**

Consultant shall defend, indemnify, and hold harmless Agency, its officers, employees and agents, from and against loss, injury, liability, or damages arising from any act or omission to act, including any negligent act or omission to act by Consultant or Consultant's officers, employees, or agents in rendering services under this Agreement. Consultant's duty to indemnify and defend does not extend to the damages or liability caused by the agency's sole negligence, active negligence, or willful misconduct.

**10. Compliance with Applicable Law.**

(a) Consultant agrees to comply with all federal, state, county, and local laws, ordinances, and regulations applicable to the work under this Agreement.

(b) Consultant shall pay prevailing wages to the extent required by law, including Labor Code Section 1720.

(1) A determination of the general prevailing rates of per diem wages and holiday and overtime work where the work is to be performed is on file at the Agency's offices. Should the prevailing wage rules apply to any of the work described in Exhibit A, Consultant shall post one copy of the prevailing rates of wages at the job site, and Consultant shall forfeit, as penalty to the Agency, a sum of not more than \$200.00 for each calendar day, or portion thereof, for each worker paid less than

the prevailing rates. This penalty shall be in addition to any shortfall in wages paid.

## **11. Insurance.**

(a) Consultant shall procure and maintain, for the duration of this Agreement, insurance against claims for injuries to persons or damages to property arising from, or in connection with, the performance of the work hereunder by the Consultant, officers, agents, employees, or volunteers.

(b) Consultant shall provide the following coverages:

(1) Commercial general liability insurance written on an occurrence basis, in the amount of \$1,000,000 combined single limit per occurrence for bodily injury, personal injury, and property damage. The insurance policy shall be amended to provide that the general aggregate limit applies separately to the work under this Agreement, or the general aggregate limit shall be twice the required per occurrence limit.

(2) Business automobile liability insurance shall be provided for all owned, non-owned, and hired automobiles, in the amount of \$1,000,000 combined single limit per accident for bodily injury and property damage.

(3) Workers' Compensation insurance as required by the Labor Code of the State of California with the statutory limits required by the Labor Code and Employers Liability for \$1,000,000 per accident for bodily injury or disease. Consultant and subcontractors shall cover or insure their employees working on or about the site, regardless of whether such coverage or insurance is mandatory or merely elective under the law.

(4) Professional liability insurance covering loss resulting from errors or omissions of Consultant with a liability limit of at least \$1,000,000 per occurrence.

(c) The insurance policies required above shall contain or be endorsed to contain all of the following specific provisions:

(1) Commercial general liability and automobile liability:

(i) Agency and its Board members, officers, employees, agents and volunteers shall be added as additional insureds.

(ii) Consultant's insurance shall be primary insurance as respects the Agency, its Board members, officers, employees, agents, and volunteers and any insurance or self-insurance maintained by Agency shall be in excess of Consultant's insurance and shall not contribute to it.

(iii) Any failure to comply with the claim reporting provisions of the policies or any breach of a policy warranty shall not affect coverage under the policy provided to Agency, its Board members, officers, employees, agents and volunteers.

(iv) The policies shall contain a waiver of transfer rights of recovery ("waiver of subrogation") against Agency, its Board members, officers, employees, agents, and volunteers, for any claims arising out of the work of Consultant.

(v) The policies may provide coverage that contains deductible or self-insured retentions. Such deductible and/or self-insured retentions shall not be applicable with respect to the coverage provided to Agency under such policies. Consultant shall be solely responsible for deductible and/or self-insured

retention and Agency, at its option, may require Consultant to secure the payment of such deductible or self-insured retentions by a surety bond or an irrevocable and unconditional letter of credit. The insurance policies that contain deductibles or self-insured retentions in excess of \$25,000 per occurrence shall not be acceptable without the prior approval of Agency.

(vi) Prior to start of work under this Agreement, Consultant shall file with Agency evidence of insurance as required above from an insurer or insurers certifying to the required coverage. The coverage shall be evidenced on a certificate of insurance signed by an authorized representative of the insurer(s). Should the required coverage be furnished under more than one policy of insurance, Consultant may submit as many certificates of insurance as needed to provide the required amounts.

(2) Each policy required by this section shall contain a policy cancellation clause that provides the policy shall not be cancelled or otherwise terminated by the insurer or the Consultant, or reduced in coverage or in limits, except after thirty (30) days written notice by certified mail, return receipt requested, has been given to the Agency, Attention: Director of Finance & Administration.

(d) Insurance required by this Agreement shall be placed with insurers licensed by the State of California to transact insurance business of the types required herein. Each insurer shall have a current Best Insurance Guide rating of not less than A: VII unless prior approval is secured from the Agency as to the use of such insurer.

(e) Consultant shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein. Consultant shall maintain evidence of compliance with the insurance requirements by the subcontractors at the job site and make them available for review by Agency.

## **12. Notices.**

Notices shall be deemed received when deposited in the U. S. Mail with postage prepaid and registered or certified addressed as follows, unless advising in writing to the contrary:

Las Virgenes Municipal Water District  
ATTN: General Manager  
4232 Las Virgenes Road  
Calabasas, CA 91302

[CONSULTANT]  
ATTN: THEIR PM  
MAILING ADDRESS  
CITY, STATE ZIP

## **13. Invalidity of Part Shall Not Invalidate the Whole.**

The invalidity or partial invalidity of any portion of this Agreement will not affect the validity of any other provision. In the event that any provision of this Agreement is held to be invalid, the remaining provisions shall be deemed to be in full force and effect as if they had been executed by both Parties subsequent to the expungement or judicial modification of the invalid provision.

**14. Attorneys' Fees.**

If an action at law or in equity is brought to enforce any provision of this Agreement, the prevailing party shall be entitled, in addition to such other relief as may be granted to an award in the same or a subsequent proceeding, to reasonable attorneys' fees and costs.

**15. Integration.**

This Agreement represents the entire understanding of Agency and Consultant as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This Agreement may not be modified or altered, except in writing, signed by both parties.

**16. Arbitration and Waiver of Jury Trial.**

Consultant and Agency further agree as follows: In the event any dispute shall arise between the Parties to this Agreement, the same shall be resolved by arbitration conducted by the American Arbitration Association in accordance with the Commercial Arbitration Rules of the American Arbitration Association, as then in effect. Such arbitration shall be conducted at a location within Los Angeles County, California agreeable to both Parties before three (3) arbitrators who shall be selected by mutual agreement of the Parties; if agreement is not reached on the selection of arbitrators within fifteen (15) days, then each of the Parties shall select an arbitrator and the two (2) arbitrators so selected shall select a third. The provisions of the Commercial Arbitration Rules of the American Arbitration Association shall apply and govern such arbitration except that the prevailing party shall be entitled to recover from the other party its attorney's fees and costs actually incurred in such amount as may be determined by the arbitrators.

**17. Governing Law.**

This Agreement shall be interpreted and construed under, and the rights of the parties will be governed by, the laws of the State of California.

**IN WITNESS WHEREOF**, the parties hereby have caused this Agreement to be executed the date first above written.

APPROVED:  
**Las Virgenes Municipal Water District**

APPROVED:  
**[Consultant]**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

# EXHIBIT "A"