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July 22, 2019

Board of Directors
Triunfo Water & Sanitation District
Ventura County, California

TWSD CONTRACT NO. T19-001 – GANNETT FLEMING, INC. FOR LAKE SHERWOOD VARIABLE GRADE GRAVITY SEWER SYSTEM IMPROVEMENTS

Summary

On January 22, 2018, the Triunfo Sanitation District (District) Board approved a contract amendment with KEH & Associates for Engineering Services for the Design-Build (DB) concept for the Lake Sherwood sewer rehabilitation project. Scope of these services was to support the RFP and DB procurement process through contract negotiations. Due to a number of factors, the submission of the proposals was delayed until June 7, 2019, which did not allow for time to complete the process. With the contract already at its limit for being amended, staff recommends a new contract with Gannett Fleming, Inc. (GF), who acquired KEH & Associates, to complete the DB process and contract negotiations. Once a new scope of work is determined for other potential work, staff will provide an amendment to this contract in support of those efforts. The \$27,000 cost for these services was already on the previous TSD No. T14-002-4 contract and those remaining funds will be encumbered to this contract. The \$27,000 total contract maintains the previously Board approved not-to-exceed contract total of \$633,026 for the GF contract.

Please contact me at 805-658-4621 or email marknorris@vrsd.com if you have any questions or need additional information.

Fiscal Impact

Funding the \$27,000 for this contract will be through a rollover of the remaining funds on TSD Contract No. T14-002-4 and included in the FY 2019-2020 Wastewater Capital Project Budget.

Recommendation

It is recommended the Board:

- A. Authorize the Chair to sign TWSD Contract No. T19-001 for \$27,000 to complete the Design-Build procurement process and contract negotiations for the Lake Sherwood Project with a term to June 30, 2020; and
- B. Approve a rollover of the remaining funds of \$27,000 from TSD Contract No. T14-002-4 to TWSD Contract No. T19-001 within the Wastewater CIP Project budget; or
- C. Provide alternative directions to staff.

REVIEWED AND APPROVED:



Mark Norris - General Manager

Attachment: TWSD Contract No. T19-001

CONTRACT NO. T19-001

**AGREEMENT FOR CONSULTING SERVICES
BETWEEN
TRIUNFO WATER & SANITATION DISTRICT
AND
GANNETT-FLEMING, INC.**

THIS AGREEMENT is made and entered into this 22nd day of July 2019, by and between the TRIUNFO WATER & SANITATION DISTRICT, a public agency formed pursuant to California Health & Safety Code Section 4700 et seq. (“DISTRICT”) and GANNETT-FLEMING, Inc., a California corporation (“CONSULTANT”).

RECITALS

A. DISTRICT has a need to engage the specialized services of an experienced firm to complete the Design-Build procurement process for the Variable Grade Gravity Sewer System (VGGSS) Project (“PROJECT”), a system owned and operated by the DISTRICT.

B. On September 1, 2018, CONSULTANT acquired KEH & Associates, Inc., former consultant on the PROJECT.

C. CONSULTANT represents it possesses the necessary skills and experience to perform the services required to complete the PROJECT, and is willing to contract with DISTRICT.

D. The parties enter into this AGREEMENT to set forth their respective rights and obligations.

AGREEMENT

ARTICLE 1: RECITALS

The foregoing Recitals are hereby incorporated by reference as if set forth in full herein.

ARTICLE 2: SCOPE OF WORK; SCHEDULE; CHANGES

A. *Scope of Work.* DISTRICT hereby retains CONSULTANT to perform services required to complete the PROJECT, which services are more specifically described in Task #4 in the SCOPE OF WORK attached hereto as Exhibit “A” and incorporated herein by this reference.

B. *Schedule.* The time for performance by CONSULTANT will begin upon issuance of Notice to Proceed by the DISTRICT. The work shown in the Scope of Work shall be completed within the term specified within the SCHEDULE. CONSULTANT shall diligently pursue and coordinate the various tasks contained in the SCHEDULE, as set forth in this AGREEMENT. The SCHEDULE may be modified by written consent of the DISTRICT, but only in the event that such modifications are necessary due to revisions in the SCOPE OF WORK caused by the DISTRICT or for reasons beyond the control of the CONSULTANT or it is mutually agreed upon and a written request for modification is made at least

10 days prior to the end of the SCHEDULE. Completion of additional services will be done pursuant to Article 2, Section C – Changes.

C. Changes. Changes to this AGREEMENT or to the Scope of Work of the PROJECT shall become effective only when a written change order is executed by the DISTRICT and CONSULTANT in compliance with this provision. CONSULTANT agrees to notify DISTRICT promptly of any factor, occurrence, or event coming to its attention that may affect CONSULTANT’s ability to meet the requirements of this AGREEMENT, or that is likely to occasion any material delay in the SCHEDULE.

D. Representations and Warranties. CONSULTANT hereby represents and warrants that it will perform all work under this AGREEMENT in a workmanlike manner, with professional diligence and skill, and in accordance with applicable law. This warranty shall extend for the term of this AGREEMENT. CONSULTANT further represents that all work product and deliverables delivered by CONSULTANT to DISTRICT under this AGREEMENT may be lawfully used by DISTRICT.

ARTICLE 3: CONSULTANT REPRESENTATIVE

CONSULTANT shall designate a representative who shall represent CONSULTANT and be its sole contact and agent in all consultations with DISTRICT during fulfillment of the terms of this AGREEMENT. CONSULTANT’s representative shall be Ray H. Fakhoury, Vice-President Gannett-Fleming, Inc.. In the event (name of representative) becomes unavailable, CONSULTANT shall immediately designate another representative satisfactory to DISTRICT. CONSULTANT shall use its best efforts in providing services to DISTRICT and shall cooperate with DISTRICT and provide DISTRICT with all available information and assistance in relation to the Project.

ARTICLE 4: DISTRICT STAFF COORDINATOR

DISTRICT shall assign a Staff Coordinator to work directly with CONSULTANT in connection with CONSULTANT’s services to be performed under this AGREEMENT. DISTRICT’s Staff Coordinator shall be Mark Norris, General Manager. In the event Mr. Norris becomes unavailable, DISTRICT shall immediately designate another representative satisfactory to CONSULTANT.

ARTICLE 5: EFFECTIVE DATE; TERM

This AGREEMENT shall be deemed effective upon full execution by both DISTRICT and CONSULTANT. Unless otherwise extended in writing by both parties, or otherwise terminated in accordance with the provisions of this AGREEMENT, this AGREEMENT shall automatically terminate on June 30, 2020.

ARTICLE 6: SUSPENSION/TERMINATION

All work shall be done in a diligent and professional manner to DISTRICT’s satisfaction. CONSULTANT specifically acknowledges and agrees that DISTRICT may suspend or terminate CONSULTANT’s services at any time with or without cause, regardless of whether CONSULTANT’s services or the Project are completed. Any termination or any special instructions hereunder from DISTRICT shall be made in writing. In the event of such termination or suspension exceeding three (3) months, CONSULTANT shall have the right to expend additional time to assemble the work in progress for the particular section of work for the purpose of proper filing and closing the job. Such additional time shall not exceed ten percent of the total time expended on the section or sections of work suspended at and to the date of the notice of suspension or termination, and shall not increase CONSULTANT’s total compensation beyond the maximum stated in Article 10.

In the event suspension of services exceeds twelve (12) months in duration, CONSULTANT may, by not less than thirty (30) days' written notice, terminate the services as they apply to the suspended portion of the project. In the event this AGREEMENT is terminated by either DISTRICT or CONSULTANT, all reports, specifications and appurtenant data shall be delivered by CONSULTANT to DISTRICT and may be used by DISTRICT.

A. *Suspension/Termination without Cause.* All work shall be done in a diligent and professional manner to DISTRICT's satisfaction. CONSULTANT specifically acknowledges and agrees that DISTRICT may, at any time and in its sole discretion, suspend or terminate any or all work outstanding, or any portion thereof, immediately upon written notice to CONSULTANT. Any special instructions related to CONSULTANT's suspension or termination hereunder from DISTRICT shall be made in writing.

Upon CONSULTANT's receipt of notice of suspension or termination, CONSULTANT shall inform DISTRICT, in writing, of the extent to which performance has been completed through such date and collect and deliver to DISTRICT, within fourteen (14) days from receipt of the notice of termination, all of CONSULTANT's work product and deliverables, including, without limitation, all reports, specifications, and appurtenant data, then existing. CONSULTANT hereby represents and warrants that said work product and deliverables provided by CONSULTANT may be used by DISTRICT.

Upon CONSULTANT's delivery of all work product and deliverables as required by this provision, DISTRICT shall pay CONSULTANT any unpaid amounts for CONSULTANT's work up until the date CONSULTANT received its notice of suspension or termination. Those unpaid amounts shall be calculated based upon CONSULTANT's hourly rates as specified in Exhibit "B" and hours worked as evidenced by an invoice submitted by CONSULTANT in sufficient detail to show the total amount of work done and materials furnished by CONSULTANT and incorporated into the work from the date of CONSULTANT's last payment up to the date of suspension or termination. When possible, such invoice shall include the name and title of each person performing work, date, and brief description of the work performed, number, and type of hours worked, and labor rate. DISTRICT shall review and approve CONSULTANT's invoice for accuracy and agree with CONSULTANT on any adjustments that may be appropriate. Such approvals shall not be unreasonably withheld. DISTRICT shall pay CONSULTANT for all approved work and materials within 30 days of agreement on the amount of the invoice. In the event of disagreement with CONSULTANT on adjustments or disallowances, said amounts and disputes shall be withheld until resolved. Upon resolution of the disagreements, payment of the approved amount shall be made within 30 days. In no case shall the above-referenced unpaid amounts increase CONSULTANT's total compensation beyond the maximum stated in Article 10.

B. *Termination with Cause.* This AGREEMENT may be terminated by either party upon fifteen (15) days written notice to the other party in the event of a breach of a material provision of the AGREEMENT by the other party, provided that, during the fifteen (15) day period, the breaching party fails to cure such breach.

C. *Survival.* In the event of any termination of this AGREEMENT, all obligations and responsibilities of CONSULTANT shall survive and continue in effect and shall inure to the benefit of and be binding upon the parties and their legal representatives, heirs, successors, and assigns. The termination of any provision of this AGREEMENT shall not excuse a prior breach of that provision.

ARTICLE 7: INDEPENDENT CONTRACTOR RELATIONSHIP

A. It is expressly understood between the parties that no employee/employer relationship is intended, the relationship of CONSULTANT to DISTRICT being that of an independent contractor. Nothing in this AGREEMENT shall constitute the arrangement to be employment, a joint venture, or a partnership. CONSULTANT shall be solely responsible for and shall hold DISTRICT harmless for any and all claims for taxes, fees, or costs, including, without limitation, withholding, income tax, health benefits, FICA, and workers compensation.

B. CONSULTANT is solely responsible for selecting the means, methods, and procedures for performing its services hereunder as assigned by DISTRICT and for coordinating all portions of the work so the results will be satisfactory to DISTRICT. CONSULTANT will supply all tools and instrumentalities required to perform its services under this AGREEMENT.

C. CONSULTANT pursuant to this AGREEMENT is rendering professional services only and any payments made to it are compensation solely for such services as it may render and recommendations it may make in the performance of services.

D. DISTRICT does not undertake by this AGREEMENT or otherwise to perform any obligation of CONSULTANT, whether by regulation or contract. In no way is CONSULTANT or its employees, agents, or authorized subconsultants to be construed as the agent or to be acting as the agent of DISTRICT in any respect, any other provisions of this AGREEMENT notwithstanding.

ARTICLE 8: COMPLIANCE WITH LAWS

CONSULTANT shall be solely responsible for giving all notices and complying with all applicable laws, ordinances, rules, regulations, and lawful orders of any public authority relating to CONSULTANT's work, the safety of the persons or property involved, and their protection from damage or injury. CONSULTANT shall defend, indemnify, and hold DISTRICT harmless from and against all claims, demands, payments, suits, actions, proceedings, and judgments of every nature and description, including attorneys' fees and costs, brought or recovered against DISTRICT, for or on account of any negligent violation of said laws, ordinances, rules, regulations, and orders in connection with work performed by CONSULTANT under this AGREEMENT.

ARTICLE 9: CONFIDENTIAL RELATIONSHIP/TITLE TO DOCUMENTS

CONSULTANT agrees that all dealings of the parties under this AGREEMENT shall be confidential and no report, data, information, or communication developed, prepared or assembled by CONSULTANT under this AGREEMENT, or any information made available to CONSULTANT by DISTRICT, shall be revealed, disseminated, or made available by CONSULTANT to any person or entity other than DISTRICT without the prior written consent of DISTRICT. All data, calculations, drawings, and other documents developed, prepared, completed, or acquired by CONSULTANT during the performance of its services hereunder shall be turned over to DISTRICT upon termination of this AGREEMENT. Costs to assemble, package and transmit information submitted to DISTRICT shall be entirely the responsibility of CONSULTANT and subconsultants and shall not be chargeable in any way to the DISTRICT.

ARTICLE 10: PAYMENT TO CONSULTANT

A. Total fees to be paid by DISTRICT to CONSULTANT for CONSULTANT's services described herein shall not exceed \$27,000, unless another amount is mutually agreed upon by the parties

in a written amendment to this AGREEMENT. Except as may otherwise be provided in this AGREEMENT, DISTRICT shall pay CONSULTANT in accordance with the schedule for Task #4 attached hereto as Exhibit "C" and incorporated herein by this reference.

B. In the event that the parties mutually agree to execute a written change order pursuant to ARTICLE 2, Section C, the fees to be charged by CONSULTANT related to said change order shall be based on CONSULTANT's hourly rates set forth in Exhibit "B." DISTRICT's District Manager is hereby authorized to execute on behalf of the DISTRICT any written change order, provided that any written change order resulting in the payment of additional fees to CONSULTANT exceeding \$2,500.00 be approved by the Board of Directors prior to execution by the District Manager. Any additional compensation to CONSULTANT resulting from a duly executed change order shall be added to and payable as part of the CONSULTANT's final payment.

C. No payment made under this AGREEMENT, except the final payment, shall be conclusive evidence of CONSULTANT's performance of the AGREEMENT, either wholly or in part, and no payment shall be construed to be an acceptance of CONSULTANT's services performed. DISTRICT shall provide CONSULTANT with written documentation of completion of work along with final payment.

ARTICLE 11: INDEMNIFICATION AND HOLD HARMLESS

A. To the fullest extent permitted by law, CONSULTANT shall immediately defend, indemnify and hold harmless the DISTRICT, its directors, officers, employees, agents or authorized volunteers, and each of them from and against:

1. Any and all claims, demands, causes of action, damages, costs, expenses, losses or liabilities, in law or in equity, of every kind or nature whatsoever for, but not limited to, injury to or death of any person including DISTRICT and/or CONSULTANT, or any directors, officers, employees, agents or authorized volunteers of DISTRICT or CONSULTANT and damages to or destruction of property of any person, including but not limited to, DISTRICT and/or CONSULTANT or their directors, officers, employees, agents or authorized volunteers, arising out of or in any manner directly or indirectly connected with the work to be performed under this AGREEMENT, however caused, regardless of any negligence of DISTRICT or its directors, officers, employees, agents or authorized volunteers (including passive negligence), except the sole negligence or willful misconduct or active negligence of DISTRICT or its directors, officers, employees, agents or authorized volunteers; CONSULTANT shall immediately defend upon the DISTRICT tender, at CONSULTANT'S own cost, expense and risk, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against DISTRICT, its officials, officers, employees, agents, authorized volunteers and representatives, notwithstanding whether CONSULTANT'S liability is or can be established;

2. Any and all actions, proceedings, damages, costs, expenses, penalties or liabilities, in law or equity, of every kind or nature whatsoever, arising out of, resulting from, or on account of the violation of any governmental law or regulation, compliance with which is the responsibility of CONSULTANT;

3. Any and all losses, expenses, damages (including damages to the work itself), attorneys' fees, and other costs, including all costs of defense, which any of them may incur with respect to the failure, neglect, or refusal of CONSULTANT to faithfully perform the work and all of the CONSULTANT'S obligations under the AGREEMENT. Such costs, expenses, and damages shall include all costs, including attorneys' fees, incurred by the indemnified parties in any lawsuit to which they are a party.

4. CONSULTANT shall defend, at CONSULTANT's own cost, expense and risk, any and all such aforesaid suits, actions, or other legal proceedings of every kind that may be brought or instituted against DISTRICT or its directors, officers, employees, or authorized volunteers. This duty to defend arises when such suits, actions or other legal proceedings are initiated and shall be independent of any finding of negligence. CONSULTANT shall provide legal counsel reasonably acceptable to the DISTRICT.

5. CONSULTANT shall pay and satisfy any judgment, award or decree that may be rendered against DISTRICT or its directors, officers, employees, agents or authorized volunteers, in any and all such suits, actions, or other legal proceedings.

6. CONSULTANT shall reimburse DISTRICT or its directors, officers, employees, agents or authorized volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided.

7. CONSULTANT'S obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the DISTRICT, or its directors, officers, employees, agents or authorized volunteers.

8. In addition to the foregoing, CONSULTANT shall pay DISTRICT costs, including attorney fees, incurred by the DISTRICT in handling, responding to, or litigating claims or other demands against money due to the CONSULTANT by CONSULTANT'S officers, agents, employees or subconsultants.

9. Except as may be otherwise allowed under applicable law, this provision or any other clause, covenants, or agreement contained in, collateral to, or affecting the District's contract with CONSULTANT is not intended to impose on CONSULTANT, or relieve the DISTRICT from liability for, the active negligence of the DISTRICT.

ARTICLE 12: INSURANCE

CONSULTANT shall procure and maintain for the duration of the AGREEMENT, *and for 5 years thereafter*, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the CONSULTANT, his agents, representatives, employees, or subconsultants.

Minimum Scope and limit of Insurance

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **\$5,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. **Automobile Liability:** Insurance Services Office Form Number CA 0001 covering Code 1 (any auto), with limits no less than **\$5,000,000** per accident for bodily injury and property damage.
3. **Workers' Compensation** insurance as required by the State of California, with Statutory Limits, and Employers' Liability insurance with a limit of no less than \$1,000,000 per accident for bodily injury or disease.
4. **Builder's Risk** (Course of Construction) insurance utilizing an "All Risk" (Special Perils) coverage form, with limits equal to the completed value of the project and no coinsurance penalty provisions.
5. **Surety Bonds** as described below.

6. **Professional Liability** (if Design/Build), with limits no less than \$1,000,000 per occurrence or claim, and \$2,000,000 policy aggregate.
7. **Contractors' Pollution Legal Liability** and/or Asbestos Legal Liability and/or Errors and Omissions (if project involves environmental hazards) with limits no less than \$1,000,000 per occurrence or claim, and \$2,000,000 policy aggregate.

If the CONSULTANT maintains higher limits than the minimums shown above, the DISTRICT requires and shall be entitled to coverage for the higher limits maintained by the CONSULTANT. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the DISTRICT.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the DISTRICT. At the option of the DISTRICT, either: the CONSULTANT shall cause the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the DISTRICT, its directors, officers, employees, agents, or authorized volunteers; or the CONSULTANT shall provide a financial guarantee satisfactory to the DISTRICT guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

1. **The DISTRICT, its directors, officers, employees, agents, or authorized volunteers are to be covered as additional insureds** on the CGL policy with respect to liability arising out of with respect to liability arising out of work or operations performed by or on behalf of the CONSULTANT including materials, parts, or equipment furnished in connection with such work or operations and automobiles owned, leased, hired, or borrowed by or on behalf of the CONSULTANT. General liability coverage can be provided in the form of an endorsement to the CONSULTANT's insurance (at least as broad as ISO Form CG 20 10, CG 11 85 or both CG 20 10 and CG 20 37 forms if later revisions used).
2. For any claims related to this project, the **CONSULTANT's insurance coverage shall be primary** insurance as respects the DISTRICT, its directors, officers, employees, agents, or authorized volunteers. Any insurance or self-insurance maintained by the DISTRICT, its directors, officers, employees, agents, or authorized volunteers shall be excess of the CONSULTANT's insurance and shall not contribute with it.
3. Each insurance policy required by this clause shall provide that coverage shall not be canceled, except with notice to the DISTRICT.

Builder's Risk (Course of Construction) Insurance

CONSULTANT may submit evidence of Builder's Risk insurance in the form of Course of Construction coverage. Such coverage shall **name the DISTRICT as a loss payee** as their interest may appear. If the project does not involve new or major reconstruction, at the option of the DISTRICT, an Installation Floater may be acceptable. For such projects, a Property Installation Floater shall be obtained that provides for the improvement, remodel, modification, alteration, conversion or adjustment to existing buildings, structures, processes, machinery and equipment. The Property Installation Floater shall provide property damage coverage for any building, structure, machinery or equipment damaged, impaired, broken, or destroyed during the performance of the Work, including during transit, installation, and testing at the DISTRICT's site.

Claims Made Policies

If any coverage required is written on a claims-made coverage form:

- 1.The retroactive date must be shown, and this date must be before the execution date of the AGREEMENT or the beginning of contract work.
- 2.Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of AGREEMENT work.
- 3.If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the AGREEMENT effective, or start of work date, the CONSULTANT must purchase extended reporting period coverage for a minimum of five (5) years after completion of AGREEMENT work.
- 4.A copy of the claims reporting requirements must be submitted to the DISTRICT for review.
- 5.If the services involve lead-based paint or asbestos identification/remediation, the CONSULTANT's Pollution Liability policy shall not contain lead-based paint or asbestos exclusions. If the services involve mold identification/remediation, the CONSULTANT's Pollution Liability policy shall not contain a mold exclusion, and the definition of Pollution shall include microbial matter, including mold.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best rating of no less than A: VII, unless otherwise acceptable to the DISTRICT.

Waiver of Subrogation

CONSULTANT hereby agrees to waive rights of subrogation which any insurer of CONSULTANT may acquire from CONSULTANT by virtue of the payment of any loss. CONSULTANT agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation. **The Workers' Compensation policy shall be endorsed with a waiver of subrogation** in favor of the DISTRICT for all work performed by the CONSULTANT, its directors, officers, employees, agents, or authorized volunteers.

Verification of Coverage

CONSULTANT shall furnish the DISTRICT with original certificates and amendatory endorsements, or copies of the applicable insurance language, effecting coverage required by this AGREEMENT. All certificates and endorsements are to be received and approved by the DISTRICT before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the CONSULTANT's obligation to provide them. The DISTRICT reserves the right to require complete, certified copies of all required insurance policies, including endorsements, required by these specifications, at any time.

Subconsultants

CONSULTANT shall require and verify that all subconsultants maintain insurance meeting all the requirements stated herein, and CONSULTANT shall ensure that DISTRICT is an additional insured on insurance required from subconsultants. For CGL coverage, subconsultants shall provide coverage with a format least as broad as CG 20 38 04 13.

Surety Bonds

CONSULTANT shall provide the following Surety Bonds:

1. Bid bond
2. Performance bond
3. Payment bond
4. Maintenance bond

The Payment Bond and the Performance Bond shall be in a sum equal to the AGREEMENT price. If the Performance Bond provides for a one-year warranty a separate Maintenance Bond is not necessary. If the warranty period specified in the AGREEMENT is for longer than one year, a Maintenance Bond equal to

10% of the AGREEMENT price is required. Bonds shall be duly executed by a responsible corporate surety, authorized to issue such bonds in the State of California and secured through an authorized agent with an office in California.

Special Risks or Circumstances

Entity reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other circumstances.

ARTICLE 13: SUBCONSULTANTS

No individuals or entities other than CONSULTANT, CONSULTANT's employees and CONSULTANT's authorized subconsultants as identified in Exhibit "C" shall undertake any work in connection with this AGREEMENT. Each authorized subconsultant is required to read this AGREEMENT and indicate its consent to abide by its terms by signing and dating where indicated below. Notwithstanding any agreements that may exist between CONSULTANT and its employees or authorized subconsultants, CONSULTANT and its authorized subconsultants hereby agree that CONSULTANT shall be solely responsible for the performance of all work under this AGREEMENT, and that DISTRICT shall have no obligations under this AGREEMENT other than to CONSULTANT.

ARTICLE 14: NOTICES

All notices or other official correspondence relating to contractual matters between the parties shall be made by depositing the same as first-class, postage paid mail addressed as follows:

To CONSULTANT: Ray H. Fakhoury, Vice President
GANNETT-FLEMING, INC.
570 Rancheros Drive, Suite 200
San Marcos, CA 92069

To DISTRICT: General Manager
TRIUNFO WATER & SANITATION DISTRICT
1001 Partridge Drive, Suite 150
Ventura, California 93003-0704

or to such other address as either party may designate hereinafter in writing delivered to the other party. All notices shall be deemed to have been received three (3) days after mailing.

ARTICLE 15: NO WAIVER

No failure or delay by DISTRICT in asserting any of DISTRICT's rights and remedies as to any default of CONSULTANT shall operate as a waiver of the default, of any subsequent or other default by CONSULTANT, or of any of DISTRICT's rights or remedies. No such delay shall deprive DISTRICT of its right to institute and maintain any action or proceeding which may be necessary to protect, assert, or enforce any rights or remedies arising out of this AGREEMENT or the performance of this AGREEMENT.

ARTICLE 16: PARTIAL INVALIDITY

If any term, covenant, condition, or provision of this AGREEMENT is found by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect, and shall in no way be affected, impaired, or invalidated thereby.

ARTICLE 17: INTEGRATION

This AGREEMENT constitutes the entire understanding of the parties, and revokes and supersedes all prior agreements between the parties and is intended as a final expression of their agreement. It shall not be modified or amended except in writing signed by the parties hereto and specifically referring to this AGREEMENT. This AGREEMENT shall take precedence over any other documents which may conflict with this AGREEMENT.

ARTICLE 18: CALIFORNIA LAW

This AGREEMENT shall be interpreted and construed pursuant to the laws of the State of California. The parties agree that should litigation arising from this AGREEMENT be commenced within California, such litigation shall occur within a court of competent jurisdiction within the County of Ventura.

ARTICLE 19: ASSIGNABILITY

Neither party may assign this AGREEMENT or the rights and obligations hereunder to any third party without the prior express written approval of the other party.

ARTICLE 20: ATTORNEYS FEES

In the event of any proceeding, action, claim, dispute, or controversy arising out of or relating to this AGREEMENT, including an action for declaratory relief, the prevailing party in such action or proceeding shall be entitled to recover his or her court costs and reasonable out-of-pocket expenses not limited to taxable costs, including, but not limited to, phone calls, photocopies, expert witness, travel, etc., and reasonable attorneys' fees to be fixed by the court. Such recovery shall include court costs, out-of-pocket expenses, and attorneys' fees on appeal. The court shall determine who is the "prevailing party," whether or not the dispute or controversy proceeds to final judgment.

ARTICLE 21: HEADINGS

All headings of this AGREEMENT are inserted for convenience only and shall not affect any construction or interpretations of this AGREEMENT.

ARTICLE 22: AUTHORITY

The parties hereby represent that they have full power and authority to enter into and perform this AGREEMENT and the parties know of no contracts, agreements, promises, or undertakings which would prevent the full execution and performance of this AGREEMENT.

ARTICLE 23: ADDITIONAL PROVISIONS

CONSULTANT agrees that no regular employee of DISTRICT shall be employed by CONSULTANT.

ARTICLE 24: EXECUTION IN COUNTERPARTS

This Agreement and any amendments hereto may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed to be an original, but all such counterparts shall constitute one and the same Agreement, as may be amended from time to time. Delivery of an executed counterpart of a signature page to this Agreement by facsimile, PDF or other electronic means shall have the same impact and effect as original counterparts and shall be valid, enforceable and binding.

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT the day and year first above written.

TRIUNFO WATER & SANITATION DISTRICT

GANNETT-FLEMING, INC.

By _____
JANNA ORKNEY, CHAIR
Board of Directors

By _____
RAY H. FAKHOURY, Vice President

APPROVED AS TO FORM:

ARNOLD, LaROCHELLE, MATHEWS,
VANCONAS & ZIRBEL, LLP

By _____
JOHN MATHEWS
Legal Counsel for DISTRICT

ATTEST:

By _____
JULIET RODRIGUEZ, Clerk of the Board

EXHIBIT A

SCOPE OF WORK FOR LAKESIDE LIFT STATION AND NORTH SHORE VARIABLE GRADE GRAVITY SEWER DESIGN BUILD PROCUREMENT SUPPORT FEBRUARY 1, 2019

OVERVIEW / BACKGROUND

Gannett Fleming Inc (GF) is preparing this scope of work to combine two existing Capital Improvement projects, the Lakeside Lift Station Improvements and the North Shore Variable Grade Gravity Sewer (NSVGGS) Improvements, into a single Design-Build package. This scope of work outlines the methods and support for the design-build procurement. The two existing projects were issued as amendments to the original Contract T-14-002 dated July 7, 2014 and are briefly described below.

- 1) **Lakeside Lift Station Improvements** – Amendment 1 dated January 25, 2016
 - a) Design and construction support to replace / upsize existing pumps, reline the existing wet well, modify the electrical and control systems, and replace valves to optimize the reliability of the station and standardize the control system.
 - b) Work completed to date: Completion of the 75% design, which was submitted to the District for review in July 2017.

- 2) **NSVGGS Improvements** – Amendment 3 dated May 22, 2017
 - a) Design and construction support to upgrade/replace approximately 2000 linear feet of 4-inch sewer main to install 1-foot lifts to accommodate the vacuum system, including demolition of existing sewer collection tanks and laterals, new vacuum laterals and vacuum valves at 16 parcels, and a skid mounted central vacuum tank system within the Lakeside Lift Station enclosure. Possible use of grinder pumps at four parcels, including electrical and reconnection to the existing 8-inch gravity sewer in Trentham Road.
 - b) Work completed to date: GF prepared alternative site layouts of the vacuum system and presented to the District in August 2017. Additional site layouts were prepared based on an alternate manufacturer and presented to the District in October 2017. Site visits were performed to identify the existing pipe alignment and evaluate laterals routing around the existing properties landscaping and hardscaping. Alternatives and cost evaluation for replacing the existing 4-inch sewer main was also performed and reviewed with the District. Based on the above preliminary design efforts and discussions with the District regarding the potential construction issues that could be encountered, GF recommended Design-Build approach for both the Lakeside Lift Station and the NSVGGS Improvements projects.
 - c) Design-Build Approach: GF presented the Design-Build concept to the Board on January 22, 2018. Upon District and Board approval, GF researched design-build entities to solicit interest in the project and prepared the Request for Expressions of Interest (REOI). Based on the responses to the REOI, a detailed Request for Qualifications (RFQ) package was prepared and submitted to the District on May 25, 2018.

Due to the change in scope, GF has prepared the below revised Scope of Work for the Design-Build procurement of the Lakeside Lift Station and the NSVGGS Improvements. The budget reallocation based on the revised tasks in the below scope of work is presented in the attached Table 1.

SCOPE OF WORK for DESIGN-BUILD PROCUREMENT PACKAGE

The following scope of work is for procurement and development of the Request for Qualifications (RFQ), Request for Proposals (RFP), and Design-Build contract support up to beginning of construction for the project outlined above.

Task 0 – Pre-Design (*Task Complete in January 2018*)

Prepare alternative site layouts, research alternate vacuum system vendors, site visits, meetings with the District, evaluation of sewer pipe materials, easement documents research, and presentation to the District Board.

Task completed in January 2018. Based on these preliminary design efforts and discussions with the District regarding the potential construction issues that could be encountered, GF recommended Design-Build approach for both the Lakeside Lift Station and the NSVGGS Improvements projects.

Task 1 – Project Management / Meetings / QA / QC

Manage the project consisting of record keeping, correspondence, meetings, and presentations. Conduct coordination and review meetings or conference calls with District staff. Perform Quality Assurance (QA) and Quality Control (QC) on each deliverable to the District.

Task 2 – RFQ Preparation, Issuance, and Evaluation of SOQs (*Task Complete in December 2018*)

Support will consist of draft RFQ and final RFQ, evaluation of the SOQs, responding to the District's comments and recommendation of shortlisted entities. Undertake outreach to potential DBEs through issuance of a Request for Expression of Interest (REOI). Document responses from potential DBEs and prepare outreach database for RFQ solicitation.

2.1 Draft RFQ and Review

Preparation of RFQ and project summary including selection criteria, communications framework, and project definition in support of receiving Statements of Qualifications (SOQs) from interested DBEs. A Communications Protocol shall also be developed under this task to be utilized by the District to control interaction between the District and DBEs during the solicitation period.

2.2 Respond to District Comments and Issue Final RFQ

Respond to any District questions and comments regarding RFQ outline and incorporate comments into final draft of RFQ. Issuance of RFQ will be to pre-selected and interested DBEs. It is noted that DBEs have been identified prior to the development of this scope as part of the outreach undertaken under this task.

2.3 Evaluation of SOQs

Assist in evaluation of SOQs received from DBEs. The evaluation will be based upon the selection criteria identified in the District approved RFQ.

2.4 Finalize Selection of Shortlisted DB Entities

Coordinate with the District to finalize selection and notify shortlisted DBE's.

Task 3 – Preparation and Issuance of RFP

Prepare and issue the RFP to shortlisted DBEs. This task will include baseline and background documentation, supplemental design documents, operational parameters and criteria, starting site layouts, and related site documentation pertaining to the project description. The documentation will be completed to a level that allows the DBE to progress their design within the design parameters and standards set in the baseline design documents attached as an appendix to the RFP.

3.1 Prepare Baseline Design Documents

Prepare baseline design documentation, including sufficient information to properly identify the design build scope and relay the intent of the design and the minimum requirements for the project. The deliverables for the RFP Submittal are as follows:

- Supplemental Design criteria documents to be included as an appendix to the RFP (1 copy to each shortlisted DBE and 2 copies to District).
- RFP (1 copy to each shortlisted DBE and 2 copies to District)

3.2 Prepare Draft RFP

Prepare a draft RFP for review by the District. In general, the RFP will include the following:

- Project Background and description
- Detailed Scope of Work
- Bid/Construction Phase Outlines
- Tentative Project Schedule and Selection Process Outline
- Evaluation/Selection Attachments
- District Requirements
- Legal Requirements/Special Provisions/Budget
- Technical Documents/Information Appendix

3.3 Respond to District Comments and Issue Final RFP

Incorporate any questions or comments received by the District into a final version of the RFP and submit to the shortlisted DBEs.

3.4 Support District Counsel for Design-Build Agreement Development

Support the District's Legal Counsel in developing the agreement between the District and the DBE ultimately selected. Prepare and provide a draft agreement for District counsel review. Up to two meetings with the District Counsel and District staff is included in this task. GF will not be responsible for providing any legal services related to the Project.

Task 4 – Proposal Evaluation, Selection Criteria, and Contract Support

Provide support in reviewing proposals submitted by the DBEs. An evaluation memorandum will be prepared by GF summarizing the results of the submittal reviews and the District's Selection Criteria. The evaluations will be based on the selection criteria identified in the RFP. Contract support will involve assisting the District's Legal Counsel in addressing questions and comments to the Draft Design Build Agreement, which would be attached as an appendix to the RFP.

4.1 Assistance with Proposer Inquiries

Assist with responses to questions issued by the DBEs during the solicitation period.

4.2 Reviewing and Commenting on Proposals/Evaluation Support

Assist the District in communicating the results of the RFP evaluation and the selection of a respondent based on the criteria outlined in the RFP. The selected DBE will be recommended to the District Board for final approval.

4.3 Board Presentation

Prepare up to 5 slides and attend one Board Presentation for the selection of proposal and DBE for this project prior to Contract Award/Negotiations.

4.4 Contract Negotiations

Support the District and their Legal counsel during the negotiation of the final contract to be awarded to the selected DBE. It is understood that all negotiations will be led by District Legal Counsel and GF will not be responsible for providing any legal services to the District.

The attached **Table 2** provides the anticipated effort for the remaining tasks described herein for the Design-Build effort up to the Contract Negotiations phase. The budget provided in Table 2 does not include the scope for any support services for design review and construction phase oversight. A scope and budget for post procurement support services for design review and construction phase services can be provided upon District request.

Attachments:

Table 2 – Fee Estimate for Design-Build Procurement of Lakeside Lift Station and NSVGGs Improvements

EXHIBIT B 2019 RATE SCHEDULE

Classification / Billing Title	Hourly Billing Rates
Principal	\$205.00
Managing Engineer	\$205.00
Senior Project Manager	\$200.00
Project Manager	\$175.00
Senior Engineer	\$175.00
Senior Operator	\$175.00
Project Engineer	\$155.00
Engineer	\$155.00
Associate Engineer	\$145.00
CADD Designer	\$135.00
Senior Drafter	\$135.00
Drafter	\$130.00
Field Inspector	\$120.00
Project Accountant	\$108.00
Project Coordinator	\$95.00

Professional Reimbursement

The hourly billing rates include the cost of salaries of the KEH employees, plus sick leave, vacation, holiday and other fringe benefits. The percentage added to salary costs includes indirect overhead costs and fee. All employees classified as "non-exempt" by the U.S. Department of Labor will be compensated at 1½ times salary, as per State and Federal wage and hour laws. Billing rates will be calculated according for these overtime hours.

Direct Expenses

Reimbursement for direct expenses, as listed below, incurred in connection with the work, will be at cost plus five percent for items such as:

- a. Maps, photographs, reproductions, printing, equipment rental and special supplies related to the work.
- b. Consultants, soils engineers, surveyors, contractors, and other outside services.
- c. Rented vehicles, local public transportation and taxis, travel and subsistence.
- d. Specific telecommunications and delivery charges.
- e. Special fees, insurance, permits, and licenses applicable to the work.
- f. Outside computer processing, computation, and proprietary programs purchased for the work.

Reimbursement for employee-owned vehicles used in connection with the work will be at the rate per mile equal to the Privately Owned Vehicle (POV) Mileage Reimbursement Rate as established by the United States General Services Administration for the dates the POV is in use.

The foregoing Schedule of Charges is effective through December 31, 2019.

EXHIBIT C

Triunfo Sanitation District
 Fee Estimate
 Lakeside Lift Station/North Shore Variable Grade Gravity Sewer (NSVGGs)
 Design-Build Procurement Support
 TABLE 2

February 4, 2019

LABOR HOUR BREAKDOWN										
Task Description	Principal Hourly Rates \$205	Project Manager \$175	Project Engineer \$155	Associate Engineer \$145	Designer \$135	Admin Project Coordinator \$95	Labor Hours	Labor Cost	Sub- Consultant	Total Cost Original 8/21/2018
Task 0 - Pre-Design of North Shore VGGs (Complete Jan 2018)										
0.1 - Review Design Layout Alternatives	8	16	24		70	5	123	\$18,077		\$18,077
0.2 - Evaluate alternate vacuum systems and Easement Documents	8	16	24		44	4	96	\$14,480	\$21,500	\$35,980
0.3 - Meetings and Site Visits	8	16	24			4	52	\$8,540		\$8,540
0.4 - Evaluate Design build concept and Present to Board	16	16	24			4	60	\$10,180		\$10,180
Subtotal Task 1	40	64	96	0	114	17	331	\$61,277		\$72,777
Task 1 - Procurement Management / Meetings / QA/QC										
1.1 - Procurement Management	8	12	16			4	40	\$6,600		\$6,600
1.2 - Meetings	12	12	16				40	\$7,040		\$7,040
1.3 - QA/QC	12	4					16	\$3,160		\$3,160
Subtotal Task 1	32	28	32	0	0	4	96	\$16,800		\$16,800
Task 2 - RFQ Preparation, Issuance, and Evaluation of SOQs (Complete Dec 2018)										
2.1 - Draft RFQ and Review	45	16	58			0	119	\$21,015		\$21,015
2.2 - Respond to District Comments and Issue Final RFQ	16	6	16			2	40	\$7,000		\$7,000
2.3 - Evaluation of SOQs	20	6		24			50	\$8,630		\$8,630
2.4 - Finalize selection of Proposed Shortlisted Entities	2	6				4	12	\$1,840		\$1,840
Subtotal Task 2	83	34	74	24	0	6	221	\$38,485		\$38,485
Task 3 - Preparation and Issuance of RFP										
3.1 - Prepare Baseline Design Documents		12	60		80	4	156	\$22,580	\$7,000	\$29,580
3.2 - Prepare Draft RFP	40	30	4	40		4	118	\$20,250		\$20,250
3.3 - Respond to District Comments and Issue Final RFP	24	32	16		30	4	106	\$17,430		\$17,430
3.4 - Prepare Draft Legal Documents & Two Meetings	66	8		12		4	90	\$17,050		\$17,050
Subtotal Task 3	130	82	80	62	110	16	470	\$77,310	\$7,000	\$84,310
Task 4 - Proposal Evaluation, Selection Criteria, and Contract Support										
4.1 - Assistance with Proposer Inquiries and Project Agreement Support	8	4	20	4		1	37	\$6,115		\$6,115
4.2 - Reviewing and Commenting on Proposals/Evaluation Support	20	4		18		3	45	\$7,695		\$7,695
4.3 - Board Presentation	14	10		4		3	31	\$5,485		\$5,485
4.4 - Contract Negotiations	24	24		8		3	59.02	\$10,567		\$10,567
Subtotal Task 4	66	42	20	34	0	10	172.02	\$29,862		\$29,862
Subtotal Tasks 1 to 4	311	186	206	110	110	36	959	\$162,457	\$7,000	\$242,234
Direct Costs:										\$1,720
* TOTAL COSTS:										\$243,954
Amendment #3 Approved Budget (May 2017):										\$158,550
Additional Budget Request for Design Build Effort:										\$85,404
* TOTAL COST for DESIGN-BUILD PROCUREMENT:										\$243,954
* Note: Post award support services are not included in this scope.										

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