



Providing Outstanding Service Since 1963

**Board of Directors**

Leon Shapiro, Chair

Jane Nye, Vice Chair

Janna Orkney, Director

Raymond Tjulander, Director

James Wall, Director

January 24, 2022

**TIME EXTENSION CONTRACT AMENDMENTS FOR ENGINEERING SERVICES:  
CONTRACT NO. T20-005 – KEH GROUP, INC.  
CONTRACT NO. T20-006 – MV ENGINEERING, LLC.**

**Summary**

In light of the fact that the Triunfo Water & Sanitation District (District) does not have in-house engineering design personnel, the District utilizes professional outside engineering services to assist staff with a variety of engineering issues. In an effort to streamline the process of soliciting and contracting with an appropriate company each time these services are needed, at the June 22, 2020, Board Meeting, following a solicitation process, your Board approved two (2) as-needed on-call engineering services contracts. The term of the initial contracts was to June 30, 2021. Given the continued need for these services from KEH Group, Inc., and MV Engineering, LLC., staff is recommending that the Board approve contract amendments for both contracts with a term ending June 30, 2023.

District Legal Counsel has drafted the respective amendments and has approved it as to form and content.

Please contact me at 805-658-4621 or email [marknorris@triumfowsd.com](mailto:marknorris@triumfowsd.com) if you have any questions or need additional information.

**Fiscal Impact**

No.

**Recommendation**

It is recommended that the Board authorize the Chair to sign the amended TWSD Contract Nos. T20-005-1 for KEH Group, Inc, and T20-006-1 for MV Engineering, LLC., to retain their professional services for as-needed engineering services with a term to June 30, 2023.

REVIEWED AND APPROVED:

  
\_\_\_\_\_  
Mark Norris - General Manager

Attachments: 1) TWSD Contract Nos. T20-005-1, T20-006-1

This page is intentionally blank.

**CONTRACT NO. T20-005-1**

**AMENDMENT NO. 1 TO CONTRACT NO. T20-005  
AGREEMENT FOR CONSULTING SERVICES  
BETWEEN  
TRIUNFO WATER & SANITATION DISTRICT  
AND  
KEH GROUP, INC.**

THIS AGREEMENT (“Agreement”) is made and entered into this 24th day of January, 2022, by and between the TRIUNFO WATER & SANITATION DISTRICT, a public agency formed pursuant to California Health & Safety Code Section 4700 et seq., (“DISTRICT”) and KEH GROUP, INC., a California Corporation, hereinafter (“CONSULTANT”). Together, DISTRICT and CONSULTANT shall be referred to herein as Parties.

**RECITALS**

A. DISTRICT and CONSULTANT entered into TWSD Contract No. T20-005 (Exhibit A), “Agreement for Consulting Services between Triunfo Water & Sanitation District and KEH Group, Inc.” (“Agreement”), wherein CONSULTANT agreed to provide DISTRICT with specialized services for on-call engineering services.

B. DISTRICT and CONSULTANT now desire to enter into this Amendment No. 1 to TWSD Contract No. T20-005 in order to change the term of the Agreement.

C. DISTRICT and CONSULTANT mutually desire to amend the Agreement, as provided below.

**AMENDMENT**

**NOW, THEREFORE**, it is mutually agreed by and between the undersigned parties as follows:

- 1. Recitals.** The above Recitals are hereby incorporated into this Amendment as if set forth fully herein
- 2. Term of Contract.** Article 2, is hereby amended and replaced as follows: “The term of this Agreement shall be from July 1, 2021 to June 30, 2023. This Agreement may be extended for additional one-year periods to a total of two at District’s sole option upon acceptance of the current terms, conditions, and price.”

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

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

TRIUNFO WATER & SANITATION DISTRICT    KEH GROUP, INC.

By: \_\_\_\_\_  
LEON SHAPIRO, Chair  
Board of Directors

By: \_\_\_\_\_  
KEN HUME,  
Principal

ATTEST

By: \_\_\_\_\_  
FIDELA GARCIA,  
Clerk of the Board

APPROVED AS TO FORM:  
ARNOLD LAROCHELLE MATHEWS  
VANCONAS & ZIRBEL LLP

By: \_\_\_\_\_  
JOHN M. MATHEWS,  
Legal Counsel for District

APPROVED AS TO ADMINISTRATION

By: \_\_\_\_\_  
MARK S. NORRIS,  
General Manager

**EXHIBIT A**

This page is intentionally blank.

# EXHIBIT A

CONTRACT NO. T20-005

**AGREEMENT FOR CONSULTING SERVICES  
BETWEEN  
TRIUNFO WATER & SANITATION DISTRICT  
AND  
KEH GROUP, INC.  
FOR ON-CALL ENGINEERING SERVICES**

THIS AGREEMENT is made and entered into this 22nd day of June 2020, by and between the TRIUNFO WATER & SANITATION DISTRICT, a public agency formed pursuant to California Health & Safety Code Section 4700 et seq., hereinafter "DISTRICT," and KEH GROUP, INC., a California Corporation, hereinafter "CONSULTANT." Together, DISTRICT and CONSULTANT shall be referred to herein as Parties.

## RECITALS

A. DISTRICT has the need to engage the specialized services of a consultant to provide On-Call Engineering services.

B. DISTRICT has selected CONSULTANT, as most qualified, based on CONSULTANT's response to the DISTRICT'S Request for Qualifications. The responses were evaluated on criteria that included the firm's experience, the qualifications of the project team and their knowledge and experience with local water and wastewater projects.

C. CONSULTANT represents it possesses the necessary skills and experience to perform the required services 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: WORK STATEMENT**

A. CONSULTANT shall complete DISTRICT on-call engineering projects as requested during the term of this Agreement. The work will be assigned on an as-needed basis for various projects which may include discrete, short term assignments or may be part of larger capital projects including project planning.

B. CONSULTANT representative shall be Ken Hume, Principal. In the event Ken Hume 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 projects.

C. DISTRICT and CONSULTANT shall discuss each project prior to commencing work under this Agreement. DISTRICT will provide CONSULTANT with a written authorization to proceed, which shall include a brief project description, required completion date and the total amount to be paid for the work. CONSULTANT shall indicate acceptance of the project by signing and returning a copy of the authorization to DISTRICT within five (5) days.

D. It is expressly understood and agreed between the parties that this Agreement is not intended, nor shall it be used, for “public projects” as defined in the Uniform Public Construction Cost Account Act, Public Contract Code, Section 22000, et seq. Such projects shall be publicly bid and awarded as required thereby.

## **ARTICLE 2: TERM OF CONTRACT**

The term of this Agreement shall be from July 1, 2020 to June 30, 2021. This Agreement may be extended for additional one-year periods to a total of three at District’s sole option upon acceptance of the current terms, conditions, and price.

## **ARTICLE 3: 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. DISTRICT shall not be required to make any payroll deductions or provide Workers’ Compensation Insurance coverage or health benefits to CONSULTANT.

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, but shall not be responsible for the means, methods, and procedures of other consultants. 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.

## **ARTICLE 4: 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 grossly negligent violation of said laws, ordinances, rules, regulations, and orders in connection with work performed by CONSULTANT under this Agreement.

## **ARTICLE 5: 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.



## **ARTICLE 6: PAYMENT TO CONSULTANT**

A. In consideration of CONSULTANT's performance of services as described herein, DISTRICT shall pay CONSULTANT fees for its services according to the schedule of rates set forth in Exhibit "A" attached and incorporated by reference herein. On or prior to the tenth (10<sup>th</sup>) day of each calendar month after actual work is started, CONSULTANT shall submit an invoice in sufficient detail to show the total amount of work done and materials furnished by CONSULTANT and incorporated into the work to the last day of the month preceding the one in which the invoice is submitted. 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 thirty (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 thirty (30) days after deducting therefrom all previous payments and all sums to be retained under the terms of the agreement.

B. Total fees to be paid by DISTRICT to CONSULTANT for CONSULTANT's services described herein shall not exceed \$25,000 annually. Additional services requested outside the scope of this Agreement would require written amendment hereto.

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 7: MODIFICATION**

No change to Exhibit "A" hereto, or to any other provision of this Agreement, may be made except by a written amendment signed by CONSULTANT and DISTRICT. DISTRICT General Manager or his designee shall be authorized to approve changes to this Agreement in a manner consistent with the provisions of District Resolution No. 89-13. Each amendment for additional services shall not exceed ten (10) percent or \$10,000, and the aggregate total of the original contract and all amendments shall not exceed \$25,000 without Board approval.

## **ARTICLE 8: SUSPENSION OR TERMINATION OF CONTRACT**

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 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 (10) 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 6.

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.

#### **ARTICLE 9: INDEMNIFICATION AND HOLD HARMLESS**

CONSULTANT agrees to defend, indemnify, and hold harmless DISTRICT and its officers, agents, and employees, from and against any and all liability, damages, costs, losses, claims, and expenses, however caused, resulting directly or indirectly from or connected with CONSULTANT's negligent performance of this Agreement (including, but not limited to, such liability, cost, damage, loss, claim, or expense arising from the death of or injury to, or damage to property of CONSULTANT, DISTRICT, or their respective employees or agents), except to the extent that such liability, damages, costs, losses, claims, or expenses are caused by the negligent or wrongful acts or omissions of DISTRICT or any of its agents or employees.

#### **ARTICLE 10: INSURANCE**

CONSULTANT shall provide and keep in effect during the term of this Agreement insurance as follows:

- A. Workers' Compensation and Employer's Liability in accordance with applicable laws.
- B. Comprehensive Commercial Liability policies with combined single limit coverage of not less than \$1,000,000 for any personal injury, death, or property damage.
- C. Comprehensive Automobile Liability policies with combined single limit coverage of not less than \$1,000,000 for personal injury, death, or property damage.
- D. Errors and Omissions coverage with minimum limits of \$1,000,000 in full force and effect during the life of this contract.

CONSULTANT shall provide certificates of such insurance to DISTRICT prior to the start of work. Said certificates shall specifically provide that: (1) DISTRICT is an additional insured for the coverage in Items B and C above; (2) any other insurance coverage applicable to the loss shall be deemed excess coverage and CONSULTANT's insurance shall be primary for the coverage in Items B and C above; (3) in the event of CONSULTANT's error or omission, CONSULTANT's insurance shall respond for the coverage in Item D above; and (4) such insurance shall not be terminated or canceled without thirty (30) days' prior written notice having been given DISTRICT at its address set forth in this Agreement, except that ten (10) days' written notice shall be acceptable in the case of cancellation for nonpayment.

#### **ARTICLE 11: SUBCONTRACTORS**

This Agreement is a personal service contract, and the consulting work hereunder shall not be delegated or assigned by CONSULTANT to any person or entity without the consent of DISTRICT. Breach of this provision shall be grounds for immediate termination of this Agreement.

#### **ARTICLE 12: AUTHORITY TO EXECUTE CONTRACT**

Both DISTRICT and CONSULTANT do covenant that each individual executing this Agreement is a person duly authorized and empowered to execute Agreements for such party.

**ARTICLE 13: DISPUTE RESOLUTION**

In the event that CONSULTANT and DISTRICT have a dispute concerning the payment of sums pursuant to their Contract, the parties agree to be governed by Public Contracts Code Section 20104 et seq. In the event of such dispute, CONSULTANT shall file a written claim with DISTRICT. DISTRICT shall respond in writing within forty-five (45) days, or, within thirty (30) days request additional documentation and respond within fifteen (15) days after said request.

**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: Ken Hume  
KEH Group, Inc.  
6435 Cayenne Lane  
Carlsbad, CA 92009

To DISTRICT: Finance & Administration  
TRIUNFO WATER & SANITATION DISTRICT  
1001 Partridge Drive, Suite 150  
Ventura, CA 93003-0704

With a copy to: ARNOLD LAROCHELLE MATHEWS VANCONAS & ZIRBEL LLP  
Attn: John Mathews  
300 E. Esplanade Drive, Suite 2100  
Oxnard, CA 93036

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: TERMS**

No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties. No oral understanding or agreement not incorporated herein shall be binding on any of the parties.

**ARTICLE 18: INCORPORATION OF RECITALS**

The foregoing recitals are incorporated herein as though fully set forth.

**ARTICLE 19: 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 20: 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

KEH GROUP, INC.

By \_\_\_\_\_  
James Wall  
Chair, Board of Directors

By \_\_\_\_\_  
Ken Hume  
Principal

APPROVED AS TO FORM:  
ARNOLD, LaROCHELLE, MATHEWS,  
VANCONAS & ZIRBEL, LLP

By \_\_\_\_\_  
JOHN M. MATHEWS  
Legal Counsel for DISTRICT

ATTEST:

By \_\_\_\_\_  
JULIET RODRIGUEZ  
Clerk of the Board

**CONTRACT NO. T20-006-1**

**AMENDMENT NO. 1 TO CONTRACT NO. T20-006  
AGREEMENT FOR CONSULTING SERVICES  
BETWEEN  
TRIUNFO WATER & SANITATION DISTRICT  
AND  
MV ENGINEERING, LLC.**

THIS AGREEMENT (“Agreement”) is made and entered into this 24th day of January, 2022, by and between the TRIUNFO WATER & SANITATION DISTRICT, a public agency formed pursuant to California Health & Safety Code Section 4700 et seq., (“DISTRICT”) and MV ENGINEERING, LLC., a California Company, hereinafter (“CONSULTANT”). Together, DISTRICT and CONSULTANT shall be referred to herein as Parties.

**RECITALS**

A. DISTRICT and CONSULTANT entered into TWSD Contract No. T20-006 (Exhibit A), “Agreement for Consulting Services between Triunfo Water & Sanitation District and MV Engineering, LLC.” (“Agreement”), wherein CONSULTANT agreed to provide DISTRICT with specialized services for on-call engineering services.

B. DISTRICT and CONSULTANT now desire to enter into this Amendment No. 1 to TWSD Contract No. T20-006 in order to change the term of the Agreement.

C. DISTRICT and CONSULTANT mutually desire to amend the Agreement, as provided below.

**AMENDMENT**

**NOW, THEREFORE**, it is mutually agreed by and between the undersigned parties as follows:

- 1. Recitals.** The above Recitals are hereby incorporated into this Amendment as if set forth fully herein
- 2. Term of Contract.** Article 2, is hereby amended and replaced as follows: “The term of this Agreement shall be from July 1, 2021 to June 30, 2023. This Agreement may be extended for additional one-year periods to a total of two at District’s sole option upon acceptance of the current terms, conditions, and price.”

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

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

TRIUNFO WATER & SANITATION DISTRICT    MV ENGINEERING, LLC.

By: \_\_\_\_\_  
LEON SHAPIRO, Chair  
Board of Directors

By: \_\_\_\_\_  
MARY VORISSIS, PE,  
Principal

ATTEST

By: \_\_\_\_\_  
FIDELA GARCIA,  
Clerk of the Board

APPROVED AS TO FORM:  
ARNOLD LAROCHELLE MATHEWS  
VANCONAS & ZIRBEL LLP

By: \_\_\_\_\_  
JOHN M. MATHEWS,  
Legal Counsel for District

APPROVED AS TO ADMINISTRATION

By: \_\_\_\_\_  
MARK S. NORRIS,  
General Manager

**EXHIBIT A**

This page is intentionally blank.



# EXHIBIT A

**CONTRACT NO. T20-006**

**AGREEMENT FOR CONSULTING SERVICES  
BETWEEN  
TRIUNFO WATER & SANITATION DISTRICT  
AND  
MV ENGINEERING, LLC.  
FOR ON-CALL ENGINEERING SERVICES**

THIS AGREEMENT is made and entered into this 22nd day of June 2020, by and between the TRIUNFO WATER & SANITATION DISTRICT, a public agency formed pursuant to California Health & Safety Code Section 4700 et seq., hereinafter "DISTRICT," and MV ENGINEERING, LLC., a California Company, hereinafter "CONSULTANT." Together, DISTRICT and CONSULTANT shall be referred to herein as Parties.

## **RECITALS**

A. DISTRICT has the need to engage the specialized services of a consultant to provide On-Call Engineering services.

B. DISTRICT has selected CONSULTANT, as most qualified, based on CONSULTANT's response to the DISTRICT'S Request for Qualifications. The responses were evaluated on criteria that included the firm's experience, the qualifications of the project team and their knowledge and experience with local water and wastewater projects.

C. CONSULTANT represents it possesses the necessary skills and experience to perform the required services 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: WORK STATEMENT**

A. CONSULTANT shall complete DISTRICT on-call engineering projects as requested during the term of this Agreement. The work will be assigned on an as-needed basis for various projects which may include discrete, short term assignments or may be part of larger capital projects including project planning.

B. CONSULTANT representative shall be Mary L. Vorissis, Principal. In the event Mary Vorissis 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 projects.

C. DISTRICT and CONSULTANT shall discuss each project prior to commencing work under this Agreement. DISTRICT will provide CONSULTANT with a written authorization to proceed, which shall include a brief project description, required completion date and the total amount to be paid for the work. CONSULTANT shall indicate acceptance of the project by signing and returning a copy of the authorization to DISTRICT within five (5) days.

D. It is expressly understood and agreed between the parties that this Agreement is not intended, nor shall it be used, for “public projects” as defined in the Uniform Public Construction Cost Account Act, Public Contract Code, Section 22000, et seq. Such projects shall be publicly bid and awarded as required thereby.

## **ARTICLE 2: TERM OF CONTRACT**

The term of this Agreement shall be from July 1, 2020 to June 30, 2021. This Agreement may be extended for additional one-year periods to a total of three at District’s sole option upon acceptance of the current terms, conditions, and price.

## **ARTICLE 3: 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. DISTRICT shall not be required to make any payroll deductions or provide Workers’ Compensation Insurance coverage or health benefits to CONSULTANT.

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, but shall not be responsible for the means, methods, and procedures of other consultants. 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.

## **ARTICLE 4: 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 grossly negligent violation of said laws, ordinances, rules, regulations, and orders in connection with work performed by CONSULTANT under this Agreement.

## **ARTICLE 5: 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.

## **ARTICLE 6: PAYMENT TO CONSULTANT**

A. In consideration of CONSULTANT's performance of services as described herein, DISTRICT shall pay CONSULTANT fees for its services at the rate of \$200.00 per hour plus any reasonable expenses. On or prior to the tenth (10<sup>th</sup>) day of each calendar month after actual work is started, CONSULTANT shall submit an invoice in sufficient detail to show the total amount of work done and materials furnished by CONSULTANT and incorporated into the work to the last day of the month preceding the one in which the invoice is submitted. 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 thirty (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 thirty (30) days after deducting therefrom all previous payments and all sums to be retained under the terms of the agreement.

B. Total fees to be paid by DISTRICT to CONSULTANT for CONSULTANT's services described herein shall not exceed \$25,000 annually. Additional services requested outside the scope of this Agreement would require written amendment hereto.

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 7: MODIFICATION**

No change to CONSULTANT billing rate or the contract amount, or to any other provision of this Agreement, may be made except by a written amendment signed by CONSULTANT and DISTRICT. DISTRICT General Manager or his designee shall be authorized to approve changes to this Agreement in a manner consistent with the provisions of District Resolution No. 89-13. Each amendment for additional services shall not exceed ten (10) percent or \$10,000, and the aggregate total of the original contract and all amendments shall not exceed \$25,000 without Board approval.

## **ARTICLE 8: SUSPENSION OR TERMINATION OF CONTRACT**

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 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 (10) 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 6.

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.

#### **ARTICLE 9: INDEMNIFICATION AND HOLD HARMLESS**

CONSULTANT agrees to defend, indemnify, and hold harmless DISTRICT and its officers, agents, and employees, from and against any and all liability, damages, costs, losses, claims, and expenses, however caused, resulting directly or indirectly from or connected with CONSULTANT's negligent performance of this Agreement (including, but not limited to, such liability, cost, damage, loss, claim, or expense arising from the death of or injury to, or damage to property of CONSULTANT, DISTRICT, or their respective employees or agents), except to the extent that such liability, damages, costs, losses, claims, or expenses are caused by the negligent or wrongful acts or omissions of DISTRICT or any of its agents or employees.

#### **ARTICLE 10: INSURANCE**

CONSULTANT shall provide and keep in effect during the term of this Agreement insurance as follows:

- A. Workers' Compensation and Employer's Liability in accordance with applicable laws.
- B. Comprehensive Commercial Liability policies with combined single limit coverage of not less than \$1,000,000 for any personal injury, death, or property damage.
- C. Comprehensive Automobile Liability policies with combined single limit coverage of not less than \$1,000,000 for personal injury, death, or property damage.
- D. Errors and Omissions coverage with minimum limits of \$1,000,000 in full force and effect during the life of this contract.

CONSULTANT shall provide certificates of such insurance to DISTRICT prior to the start of work. Said certificates shall specifically provide that: (1) DISTRICT is an additional insured for the coverage in Items B and C above; (2) any other insurance coverage applicable to the loss shall be deemed excess coverage and CONSULTANT's insurance shall be primary for the coverage in Items B and C above; (3) in the event of CONSULTANT's error or omission, CONSULTANT's insurance shall respond for the coverage in Item D above; and (4) such insurance shall not be terminated or canceled without thirty (30) days' prior written notice having been given DISTRICT at its address set forth in this Agreement, except that ten (10) days' written notice shall be acceptable in the case of cancellation for nonpayment.

#### **ARTICLE 11: SUBCONTRACTORS**

This Agreement is a personal service contract, and the consulting work hereunder shall not be delegated or assigned by CONSULTANT to any person or entity without the consent of DISTRICT. Breach of this provision shall be grounds for immediate termination of this Agreement.

#### **ARTICLE 12: AUTHORITY TO EXECUTE CONTRACT**

Both DISTRICT and CONSULTANT do covenant that each individual executing this Agreement is a person duly authorized and empowered to execute Agreements for such party.

**ARTICLE 13: DISPUTE RESOLUTION**

In the event that CONSULTANT and DISTRICT have a dispute concerning the payment of sums pursuant to their Contract, the parties agree to be governed by Public Contracts Code Section 20104 et seq. In the event of such dispute, CONSULTANT shall file a written claim with DISTRICT. DISTRICT shall respond in writing within forty-five (45) days, or, within thirty (30) days request additional documentation and respond within fifteen (15) days after said request.

**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: Mary L. Vorissis, PE  
MV ENGINEERING, LLC.  
2025 Rikkard Drive  
Thousand Oaks, CA 91362

To DISTRICT: Finance & Administration  
TRIUNFO WATER & SANITATION DISTRICT  
1001 Partridge Drive, Suite 150  
Ventura, CA 93003-0704

With a copy to: ARNOLD LAROCHELLE MATHEWS VANCONAS & ZIRBEL LLP  
Attn: John Mathews  
300 E. Esplanade Drive, Suite 2100  
Oxnard, CA 93036

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: TERMS**

No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties. No oral understanding or agreement not incorporated herein shall be binding on any of the parties.

**ARTICLE 18: INCORPORATION OF RECITALS**

The foregoing recitals are incorporated herein as though fully set forth.

**ARTICLE 19: 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 20: 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

MV ENGINEERING, LLC.

By \_\_\_\_\_  
James Wall  
Chair, Board of Directors

By \_\_\_\_\_  
Mary Vorissis, PE  
Principal

APPROVED AS TO FORM:  
ARNOLD, LaROCHELLE, MATHEWS,  
VANCONAS & ZIRBEL, LLP

By \_\_\_\_\_  
JOHN M. MATHEWS  
Legal Counsel for DISTRICT

ATTEST:

By \_\_\_\_\_  
JULIET RODRIGUEZ  
Clerk of the Board