

CONTRACT NO. T23-005

**AGREEMENT FOR SERVICES
BETWEEN
TRIUNFO WATER & SANITATION DISTRICT
AND
CONTRACTOR**

THIS AGREEMENT is made and entered into this 24th day of April, 2023, 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 YYYYYY, a California corporation, hereinafter "CONTRACTOR." Together, DISTRICT and CONTRACTOR shall be referred to herein as Parties.

RECITALS

A. DISTRICT has a need to engage a company for design and installation services for an audio-visual (AV) system for the District offices in Westlake Village, CA.

B. DISTRICT has selected CONTRACTOR, as best qualified, based on CONTRACTOR's response to the District's formal request for proposals. The District evaluated the firm's experience, qualifications of the project team, knowledge and experience with similar projects, and their understanding of the project.

C. CONTRACTOR 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. CONTRACTOR shall furnish to the Agency all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the professional services necessary for the design and installation of an AV System for the District offices, hereinafter referred to as the "Project," as described in the document entitled "Scope of Work" attached as Exhibit "A" and incorporated by reference herein. In the event of any conflict between the terms of this Agreement and those contained in Exhibit "A," the terms in this Agreement shall govern.

B. CONTRACTOR shall designate a representative who shall represent CONTRACTOR and be its sole contact and agent in all consultations with DISTRICT during fulfillment of the terms of this Agreement. CONTRACTOR's representative shall be XXXXX, President. In the event XXXXX becomes unavailable, CONTRACTOR shall immediately designate another representative satisfactory to DISTRICT. CONTRACTOR 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. Should one or more of such personnel become unavailable, CONTRACTOR may substitute other personnel of at least equal competence upon written approval of DISTRICT. The DISTRICT shall have the right to approve or disapprove the reassignment or substitution of CONTRACTOR key personnel

for any reason at its sole discretion.

C. DISTRICT and CONTRACTOR shall discuss Project prior to commencing work under this Agreement. DISTRICT will provide CONTRACTOR with a written authorization to proceed. CONTRACTOR shall indicate acceptance of the Project by signing and returning a copy of the authorization to DISTRICT within five (5) days.

D. CONTRACTOR warrants that its services shall be performed, within the limits prescribed by DISTRICT, in a manner consistent with the level of care and skill ordinarily exercised by other professionals under similar circumstances at the time its services are performed.

ARTICLE 2: TERM OF CONTRACT

Unless otherwise earlier terminated, this Agreement shall continue in force until the services specified herein have been fully performed. Upon execution of this Agreement by both parties, CONTRACTOR shall diligently pursue work to assure completion on a timely basis. Unless otherwise extended in writing by both parties, this contract shall automatically terminate on December 31, 2023.

ARTICLE 3: INDEPENDENT CONTRACTOR RELATIONSHIP

A. It is expressly understood between the parties that no employee/employer relationship is intended, the relationship of CONTRACTOR 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 or retirement benefits to CONTRACTOR.

B. CONTRACTOR 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 result will be satisfactory to the DISTRICT.

C. CONTRACTOR, pursuant to this Agreement, is rendering professional services only and any payments made to it are compensation solely for such services.

ARTICLE 4: COMPLIANCE WITH LAWS

CONTRACTOR shall give any notice to third parties required for CONTRACTOR's work. CONTRACTOR shall comply with all applicable laws, ordinances, rules, regulations, and lawful orders of any public authority in performing CONTRACTOR's work.

ARTICLE 5: CONFIDENTIAL RELATIONSHIP/TITLE TO DOCUMENTS

CONTRACTOR 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 CONTRACTOR under this Agreement, or any information made available to CONTRACTOR by DISTRICT, shall be revealed, disseminated or made available by CONTRACTOR to any person or entity other than DISTRICT without the prior written consent of DISTRICT. All data, calculations, drawings, reports, manuals, and other documents developed, prepared, completed or acquired by CONTRACTOR during the performance of its services hereunder shall be turned over to DISTRICT upon termination of this Agreement.

ARTICLE 6: PAYMENT TO CONTRACTOR

A. In consideration of CONTRACTOR's performance of services as described herein, DISTRICT shall pay CONTRACTOR fees for its services according to the schedule of rates set forth in Exhibit "A."

On or prior to the tenth day of each calendar month after actual work is started, CONTRACTOR shall submit an invoice in sufficient detail to show the total amount of work done and materials furnished by CONTRACTOR and incorporated into the work to the last day of the month preceding the one in which the invoice is submitted. 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 CONTRACTOR's invoice for accuracy and agree with CONTRACTOR on any adjustments that may be appropriate. Such approvals shall not be unreasonably withheld. DISTRICT shall pay CONTRACTOR for all approved work and materials within 30 days of agreement on the amount of the invoice. In the event of disagreement with CONTRACTOR 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 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 CONTRACTOR for CONTRACTOR's services described herein shall not exceed \$WWWWW without written amendment hereto.

C. CONTRACTOR shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. CONTRACTOR shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

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

E. Contractor shall comply with the provisions of the California Labor Code pertaining to the payment of prevailing per diem wage rates (§1720 et. seq.). Pursuant to Labor Code §1773.2, a copy of the prevailing per diem wage rates in Ventura County is on file with the District Clerk of the Board. A copy of these rates will be furnished to any interested party upon request. The Contractor shall have copies of the prevailing wage schedule at the work site.

ARTICLE 7: CHANGE ORDERS

No change to Exhibit "A" hereto, or to any other provision of this Agreement, may be made except by a written amendment signed by CONTRACTOR 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's Purchasing Policies.

ARTICLE 8: SUSPENSION OR TERMINATION OF CONTRACT

All work shall be done in a diligent and professional manner to DISTRICT's satisfaction. CONTRACTOR specifically acknowledges and agrees that DISTRICT may suspend or terminate CONTRACTOR's services at any time with or without cause, regardless of whether CONTRACTOR'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, CONTRACTOR 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 CONTRACTOR's total compensation beyond the maximum stated in Article 6.

In the event suspension of services exceeds twelve (12) months in duration, CONTRACTOR 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 CONTRACTOR, all reports, specifications and appurtenant data shall be delivered by CONTRACTOR to DISTRICT and may be used by DISTRICT.

ARTICLE 9: INDEMNIFICATION AND HOLD HARMLESS

CONTRACTOR agrees to defend, indemnify and hold harmless DISTRICT, and their officers, agents and employees, from and against any and all liability, damages, costs, losses, claims and expenses asserted against or incurred by DISTRICT to the extent arising out of, pertaining to, or relating to the negligence, recklessness or willful misconduct of CONTRACTOR. CONTRACTOR's duty to indemnify, including the duty and cost to defend shall not exceed CONTRACTOR's proportionate percentage of fault. CONTRACTOR's obligations herein shall be construed in a manner consistent with California Civil Code Section 2782.8.

Submission of insurance certificates or other proof of compliance with the insurance requirements herein shall not relieve CONTRACTOR from liability under this indemnification and hold harmless section. The obligations of this section shall apply whether or not such insurance policies shall have been determined to be applicable to any of such liability, damages, costs, losses, claims or expenses.

ARTICLE 10: INSURANCE

CONTRACTOR 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 \$2,000,000 for any personal injury, death, or property damage.
- C. Comprehensive Automobile Liability policies with combined single limit coverage of \$1,000,000 for personal injury, death, or property damage.
- D. Employer's Liability: \$2,000,000 per accident for bodily injury or disease
- E. Errors and Omissions coverage with minimum limits of \$250,000 per claim in full force and effect for a period of 2 years following completion of the Project

CONTRACTOR 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, C, and D above; (2) any other insurance coverage applicable to the loss shall be deemed excess coverage and CONTRACTOR's insurance shall be primary for the coverage in Items B, C, and D above; (3) in the event of CONTRACTOR's error or omission, CONTRACTOR's insurance shall respond for the coverage in Item E 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 prime contract and the work hereunder shall not be delegated or assigned by

CONTRACTOR 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: 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 CONTRACTOR: XXXXXX, President
 YYYY INC.
 Address
 City, State

To DISTRICT: Finance & Administration
 TRIUNFO WATER & SANITATION DISTRICT
 370 N. Westlake Blvd, Suite 100
 Westlake Village, California 91362

With a copy to: ARNOLD LAROCHELLE MATHEWS VANCONAS & ZIRBEL LLP
 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 13: NO WAIVER

No failure or delay by DISTRICT in asserting any of DISTRICT's rights and remedies as to any default of CONTRACTOR shall operate as a waiver of the default, of any subsequent or other default by CONTRACTOR, 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 14: 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 15: 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 16: TERMINATION OF AGREEMENT

Agency may, by written notice to Consultant, terminate the whole or any part of this Agreement without liability to the Agency if Consultant fails to perform or commits a substantial breach of the terms hereof. Either Party may terminate this agreement on thirty (30) days' written notice for any reason. Upon termination, Consultant shall be compensated only for those Services which have been adequately rendered

to Agency, and Consultant shall be entitled to no further compensation. If the Agreement 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

ARTICLE 17: INCORPORATION OF RECITALS

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

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: ATTORNEYS' FEES

If either Party commences an action against the other Party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorneys' fees and all other costs of such action

ARTICLE 20: ADDITIONAL PROVISIONS

CONTRACTOR agrees that no regular employee of DISTRICT shall be employed by its firm during the period that this Agreement is in effect.

ARTICLE 21: 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

YYYYYY., a California corporation

By _____
JANE NYE, Chair
Board of Directors

By _____
XXXXXX, President

APPROVED AS TO FORM:

By _____
JOHN MATHEWS
Legal Counsel for DISTRICT

ATTEST:

By _____
FIDELA GARCIA
Clerk of the Board

This page is intentionally blank.