



**West Valley**  
Clean Water Authority

Campbell • Los Gatos • Monte Sereno • Saratoga



## **REQUEST FOR PROPOSALS**

**Public Opinion Polling**

**Public Outreach**

**Financial Engineering**

**Prop 218 Compliant Ballot Measures**

**Release Date: March 13, 2023**

**Proposals Due: April 5, 2023 at 5:00 pm**

# REQUEST FOR PROPOSAL FOR PROFESSIONAL SERVICES

## 1. INTRODUCTION

The West Valley Clean Water Authority (Authority) intends to retain a consultant(s) for services described in the SCOPE OF SERVICES outlined in Exhibit A. Consultant(s) will be expected to provide complete, professional, high-quality services and products; to advise Authority personnel, and its member agencies; and to provide the expertise, guidance, advice, and assistance in accomplishing the work. Consultants may submit proposals to provide services to implement Phase I, or Phase II of the scope of service, or both Phases. Consultants may also partner on proposals to provide the expertise needed to implement both Phases.

## 2. BACKGROUND AND PROJECT

The West Valley communities refers to the southwest portion of Santa Clara County and includes the cities of [Campbell](#), [Monte Sereno](#), [Saratoga](#) and the [Town of Los Gatos](#). Collectively, the cities/Town have a combined population of approximately 140,000. The West Valley communities are primarily suburban/residential, and Campbell, Los Gatos, and Saratoga have vibrant downtown retail districts.

The Authority serves as the Stormwater Pollution Prevention Authority for the West Valley communities. The Authority was created to maximize the effectiveness, efficiency, and cost-benefit of collective stormwater pollution prevention efforts of the four West Valley communities. The Authority is organized in accordance with a [Joint Powers Authority agreement](#) (with the legal authority to collect real property assessments, fees, and charges for stormwater implementation) and is governed by a four-member [Board of Directors](#), one member from each city/Town Council.

Since 1992, the cities of Campbell, Monte Sereno and the Town of Los Gatos have funded stormwater permit compliance activities through a storm sewer assessment on the county tax roll. The Authority collects the property fee on behalf of the Cities of Campbell and Monte Sereno and the Town of Los Gatos. Residential rates are a flat rate and range from approximately \$16 to \$20 per parcel. Rates for all other users are calculated individually based on acreage and a coefficient based on runoff characteristics for their category of land use. The assessments have not increased since 1994 and have not kept pace with the increased cost of stormwater permit compliance. Saratoga funds the Authority from its General Fund, and Monte Sereno funds a portion of Authority costs from its General Fund.

The Authority took the first step of evaluating revenue needs and evaluating funding options in late 2021 ([Stormwater Cost and Revenue Report](#)). Based on this financial analysis, a new user fee emerged as a potential option to fully fund stormwater program costs. In February 2023, the Authority Board directed staff to conduct a public opinion poll to measure community priorities and willingness to support a stormwater property-related fee, and return to the Board to provide completed survey findings for further discussion, and direction on completing a Proposition 218 compliant stormwater management fee study, and balloting process ([3-2023 Public Opinion Poll Staff Report](#)).

### 3. TENTATIVE SCHEDULE

Schedule for CONSULTANT Selection	Date
RFP issued	March 13, 2023
Deadline for questions, clarifications	March 24, 2023
Proposals due	April 5, 2023
Proposal evaluation	April 5-12, 2023
Oral interviews	April 12-14, 2023
Negotiate agreement	April 17-28, 2023
Board considers contract approval	May 5, 2023
Authority executes agreement	May 19, 2023

### 4. INSTRUCTIONS TO PROPOSERS

#### 4.1 Examination of Proposal Documents.

The submission of a proposal shall be deemed a representation and certification by the Proposer that they:

- 4.1.1. Have carefully read and fully understand the information that was provided by the Authority to serve as the basis for submission of this proposal.
- 4.1.2. Have the capability to successfully undertake and complete the responsibilities and obligations of the proposal being submitted.
- 4.1.3. Represent that all information contained in the proposal is true and correct.
- 4.1.4. Did not, in any way, collude, conspire to agree, directly or indirectly, with any person, firm, corporation or other Proposer in regard to the amount, terms or conditions of this proposal.
- 4.1.5. Acknowledge that the Authority has the right to make any inquiry it deems appropriate to substantiate or supplement information supplied by Proposer, and Proposer hereby grants the Authority permission to make these inquiries, and to provide any and all related documentation in a timely manner.

No request for modification of the proposal shall be considered after its submission on grounds that Proposer was not fully informed of any fact or condition.

#### 4.2 Questions

Any questions by the Proposer regarding this RFP or the project must be put in writing and received by the Authority no later than 5:00 pm on March 24, 2023. Correspondence shall be addressed to:

Sheila Tucker  
Executive Director  
West Valley Clean Water Program Authority  
1 West Campbell Avenue, #H-73  
Campbell, CA 95008  
EMAIL: [stucker@wvcwp.org](mailto:stucker@wvcwp.org)

The Authority shall not be responsible for nor be bound by any oral instructions, interpretations or explanations issued by the Authority or its representatives.

Responses from the Authority to questions by any Proposer will be communicated in writing to all recipients of this RFP. Questions received after the date and time stated above will not be accepted and will be returned to senders without response.

4.3 Addenda

Any addenda issued by Authority shall be in writing, shall become a part of this RFP, and shall be acknowledged and responded to by Proposer.

4.4 Submission of Proposals

All proposals shall be submitted in electronic pdf files at [stucker@wvcwp.org](mailto:stucker@wvcwp.org) or via mail to the person and address indicated below.

Sheila Tucker  
Executive Director  
West Valley Clean Water Program Authority  
1 West Campbell Avenue, #H-73  
Campbell, CA 95008

Proposals must be delivered no later than 5:00 pm on April 5, 2023. All proposals received after that time will be returned to the Proposer unopened.

**5. WITHDRAWAL OF PROPOSALS**

A Proposer may withdraw its proposal at any time before the expiration of the time for submission of proposals as provided in the RFP by delivering a written request for withdrawal signed by, or on behalf of, the Proposer.

**6. RIGHTS OF THE AUTHORITY**

This RFP does not commit the Authority to enter into a contract, nor does it obligate the Authority to pay for any costs incurred in preparation and submission of proposals or in anticipation of a contract. The Authority reserves the right to:

- Make the selection based on its sole discretion.
- Reject any and all proposals.
- Award a contract for Phase 1, Phase 2 or both Phases.
- Issue subsequent Requests for Proposals.
- Postpone opening proposals for its own convenience.
- Remedy errors in the Request for Proposals process.
- Approve or disapprove the use of particular sub-consultants.
- Negotiate with any, all or none of the Proposers.
- Accept other than the lowest offer.
- Waive informalities and irregularities in the Proposals; and/or
- Enter into an agreement with another Proposer in the event the originally selected Proposer defaults or fails to execute an agreement with the Authority.

An agreement shall not be binding or valid with the Authority unless and until it is approved by the Authority Board of Directors and executed by authorized representatives of the Authority and of the Proposer.

**7. INFORMATION TO BE SUBMITTED**

The proposal should include the following information to be considered:

7.1. Cover Letter

Please state firm name, address of office submitting proposal (also include main firm office if proposal is submitted by a branch office), primary contact person telephone number, email and type of firm (e.g., corporation, partnership, proprietorship).

7.2 Profile on the Proposing Firm

This section shall include a brief firm history, including the current permanent staff size as well as local organization structure; and a discussion of the firm's financial stability, Authority and resources.

Additionally, this section shall include a listing of any claim, lawsuit or litigation and the result of that action resulting from (a) any public project undertaken by the Proposer either as a contractor or subcontractor or by its subcontractors where litigation is still pending or has occurred within the last five years, or (b) any type of project where claims or settlements were paid by the consultant or its insurers within the last five (5) years.

7.3 Qualifications of the Firm

This section shall include a brief description of the Proposer's qualifications and previous experience supplying like services to similar public agencies including projects that demonstrate experience in conducting public opinion polls to measure community support for stormwater property-related fees, relevant public outreach, financial engineering, and Prop 218 compliant balloting processes.

Include all areas of expertise, scope of services provided, and relevant experience, including description of each project, role of professional for that project and date completed. Include product provided, the total project cost, the period over which the project was completed, and the name, title, phone number and email address of clients to be contacted for references.

Five (5) references from clients with similar projects must be submitted along with the names and telephone numbers of contact persons.

7.4 Approach and Work Plan

- Written narrative plan based on the understanding of the project goals and objectives.
- Work plan and draft project schedule for the **two phases separately** identifying major project tasks, scope of work, meetings, Authority/City/Town responsibilities, and deliverables for each task.

7.5 Project Schedule

This section shall include a projected timeline for each Phase outlined in the scope of work (Phase I and II) for completing the project including the start date, key milestones and final delivery. It is anticipated that Phase I will be completed, and poll results and recommendations will be presented to the Authority Board at its September 7, 2023 meeting unless Proposer recommends an alternative schedule to optimize poll timing.

7.6 Project Staffing

This section shall discuss how the Proposer would staff this project. Key personnel will be an important factor considered by the review committee. Changes in key personnel may be cause for rejection of the proposal. Include proposed project management structure, including identification of the project consultant and individuals that will be

assigned to the project. Also make it known to the Authority if sub-consultants may be used in any part of this project.

#### 7.7 Proposal Exceptions

This Chapter shall discuss any exceptions or requested changes that Proposer has to the Authority's RFP conditions, requirements and agreement. If there are no exceptions noted, it is assumed the Proposer will accept all conditions and requirements identified in Exhibit B "Agreement for Services." Items not excepted will not be open to later negotiation.

#### 7.8 Proposal Costs Sheet and Rates

- Fee proposal which includes a separate "not to exceed" fee for each Phase/Task as outlined in the scope of service and a total not to exceed for all work collectively to complete the project. The quoted fees shall include estimated reimbursable fees.
- Include hourly rate schedule for all personnel who will work on this project.
- An itemized table of estimated person-hours by professional classification (or team member) for each Phase/Task shall be identified, including, if applicable, subcontracted personnel.

### 8. **CONTRACT TYPE AND METHOD OF PAYMENT**

It is anticipated that the agreement resulting from this RFP, if awarded, will be an Agreement for Services. The method of payment to the successful Proposer shall be for services provided based on established rates for services with a maximum "not to exceed" fee as set by the Proposer in the proposal or as negotiated between the Proposer and the Authority as being the maximum cost to perform all work. This figure shall include direct costs and overhead, such as, but not limited to, materials, delivery, transportation, communications, and any subcontracted items of work.

### 9. **INSURANCE REQUIREMENTS**

The selected Proposer(s), at Proposer's sole cost and expense and for the full term of the agreement or any extension thereof, shall obtain and maintain, at a minimum, all of the insurance requirements outlined in Exhibit B.

All policies, endorsements, certificates and/or binders shall be subject to the approval of the Authority as to form and content. These requirements are subject to amendment or waiver, if so, approved in writing by the Authority. The selected Proposer agrees to provide the Authority with a copy of said policies, certificates and/or endorsement upon award of contract.

### 10. **REVIEW AND SELECTION PROCESS - EVALUATION CRITERIA**

Authority staff will evaluate the proposals provided in response to this RFP based on the following criteria:

- Demonstrated understanding of the requested work and responsiveness to the RFP.
- Demonstrated successful past performance of work for public agencies as verified by reference checks or other means.
- Professional qualifications and experience of firm individuals to be assigned to the project.
- Proposed cost.
- Oral presentation.

**11. PUBLIC NATURE OF PROPOSAL MATERIAL**

Responses to this RFP become the exclusive property of the Authority. At such time as the Authority awards a contract, all proposals received in response to this RFP become a matter of public record and shall be regarded as public records, with the exception of those elements in each proposal which are defined by the Proposer as business or trade secrets and plainly marked as "Confidential," "Trade Secret," or "Proprietary." The Authority shall not in any way be liable or responsible for the disclosure of any such proposal or portions thereof, if they are not plainly marked as "Confidential," "Trade Secret," or "Proprietary," or if disclosure, in the Authority's sole discretion, is required under the California Public Records Act as addressed below. Any proposal which contains language purporting to render all or significant portions of the proposal "Confidential," "Trade Secret," or "Proprietary" shall be regarded as non-responsive.

Although the California Public Records Act recognizes that certain confidential trade secret information may be protected from disclosure, the Authority may determine, in its sole discretion, that the information that a Proposer submits is not a trade secret. If a request is made for information marked "Confidential," "Trade Secret," or "Proprietary," the Authority shall provide the Proposer who submitted the information reasonable notice to allow the Proposer to seek protection from disclosure by a court of competent jurisdiction, at the Proposer's sole expense.

**12. DISQUALIFICATION**

Factors, such as, but not limited to, any of the following, may disqualify a proposal without further consideration:

- Evidence of collusion, directly or indirectly, among Proposers in regard to the amount, terms or conditions of this proposal.
- Any attempt to improperly influence any member of the evaluation team.
- Existence of any lawsuit, unresolved contractual claim or dispute between Proposer and the Authority.
- Evidence of incorrect information submitted as part of the proposal.
- Evidence of Proposer's inability to successfully complete the responsibilities and obligations of the proposal; and
- Proposer's default under any previous agreement with the Authority.

**13. NON-CONFORMING PROPOSAL**

A proposal shall be prepared and submitted in accordance with the provisions of these RFP instructions and specifications. Any alteration, omission, addition, variance, or limitation of, from or to a proposal may be sufficient grounds for non-acceptance of the proposal, at the sole discretion of the Authority.

**14. GRATUITIES**

No person shall offer, give or agree to give any Authority employee or Board Member any gratuity, discount or offer of employment in connection with the award of contract by the Authority. No Authority employee or Board Member shall solicit, demand, accept or agree to accept from any other person a gratuity, discount or offer of employment in connection with an Authority contract.

## **Exhibit A**

### **SCOPE OF SERVICES - Draft**

The Authority plans to implement Phase I of this project. Whether or not the Authority proceeds with Phase II will be dependent on the outcome of Phase I, and direction from the Authority Board.

#### **Phase I**

With a thorough understanding of the West Valley communities, the consultant team will develop an approach for the first phase of the work including the tasks outlined below following. The total process with tasks and costs should be detailed.

#### **Task 1. Pre-Polling Public Education (as recommended)**

Determine whether public outreach on the needs of the program will be necessary prior to initial polling. Consultants shall include any recommendations for conducting any pre-polling community outreach including scope, schedule, and timing. Education shall include providing information to member agencies City/Town Councils, City/Town managers and staff.

#### **Task 2. Polling**

The community opinion polling shall test public awareness, understanding, and receptiveness to finance the stormwater program. The consultant shall conduct a statistically valid survey of all aspects of citizens within each City and Town, and the West Valley communities collectively should be polled. A partial list of issues that should be tested in the poll includes:

- Do property owners understand mandated stormwater requirements and their costs to implement (including any misconceptions)?
- What do property owners think about financing stormwater pollution prevention programs and/or needed capital improvement projects and reasons for opposition?
- How will absentee property owners vote?
- Are property owners willing to pay for needed improvements and other stormwater program needs, and if so, how much?
- What are each community's financial threshold individually and collectively to fund stormwater needs?
- How does each City/Town and how does the four communities collectively, respond to paying for these improvements? Recommendation for City/Town based or West Valley area-based fee assessment.
- What messages are most compelling or resonate with property owners that may encourage support for stormwater pollution prevention program needs.

It is anticipated that the Consultant will present the poll findings and recommendations to the Authority Board at its September 7 Board meeting, unless another strategy on timing is proposed. Consultant shall make presentations to the City/Town Councils as needed.

#### **Phase II:**

The implementation of Phase II will depend on the outcome of Phase I, and direction from the Authority. Phase II includes assisting the Authority with additional public education and



outreach, conducting a financial engineering study, preparing a financial engineering report for the selected funding mechanism; and ballot measure implementation.

### **Task 1. Financial Engineering Study and Report**

The Consultant shall conduct a financial engineering study that thoroughly documents all City/Town costs and benefits associated with providing storm drain services including, environmental compliance, operations and maintenance, engineering services, administrative services and capital improvement needs (including Green Stormwater Infrastructure). The study shall work closely with the polling results and include the following:

- Review of all parcels, land uses and zoning within each City/Town.
- Options for choosing potential categories for assessment.
- Proposed assessment for each type of parcel.
- Propose clear program for the determination of assessments to simplify the appeal process.
- Assistance with the development of fee collection mechanism.

An Engineer's report shall be prepared to address the above-requested items in detail. The report shall include all methodology, rate analysis, and rate comparisons. Consultant shall make presentations to the Authority Board and City/Town Councils as needed.

### **Task 2. Community Education**

This outreach effort involves educating citizens about the funding mechanism and associated approval process. The Consultant shall develop a recommended community education program and implementation approach, including consideration of mailers, community workshops, social media, education of elected officials and other stakeholders. The Consultant must ensure that the materials and programs in Phase II do not constitute advocacy of the ballot measure.

### **Task 3. Ballot Measure Implementation**

The Consultant shall assist the Authority to conduct a Prop 218-compliant ballot measure process with the implementation of the selected funding measure. Consultant shall provide the necessary technical support for successful passage, including the development of ballot measures, authoring resolutions, public hearing information, and associated schedule, balloting design, printing and mailing, and tabulation. The Consultant shall be capable of providing strategic analysis, expert opinions, and recommended strategies for how best to ensure the successful passage of a recommended funding measure. An Engineer's report shall be prepared to address the above-requested items in detail. Consultant shall make presentations to the Authority Board and City/Town Councils as needed.

## Exhibit B

### AGREEMENT FOR SERVICES

#### AGREEMENT FOR PROFESSIONAL SERVICES

**THIS AGREEMENT FOR PROFESSIONAL SERVICES** ("Agreement") is made and entered into this \_\_\_ day of \_\_\_\_\_ 20\_\_ between the West Valley Clean Water Program Authority, a California Joint Powers Authority, (hereinafter "AUTHORITY") and \_\_\_\_\_, a California corporation, with its primary office located at [street, city, state, zip] (hereinafter "CONSULTANT") (collectively, "the Parties").

#### RECITALS

**WHEREAS**, AUTHORITY has determined it is necessary and desirable to secure certain [technical OR professional] services for \_\_\_\_\_. The scope of work for said service (hereinafter "Project") is attached hereto as Exhibit "A" and is hereby incorporated by reference;

**WHEREAS**, [AUTHORITY staff does not have the [expertise or capacity] to perform this work in-house.] OR [This work is for a limited time period and the hiring of an employee would be inefficient];

**WHEREAS**, CONSULTANT is specially trained, experienced and competent to perform the services required by this agreement; and

**WHEREAS**, CONSULTANT represents it is qualified and willing to provide such services pursuant to the terms and conditions of this Agreement.

**NOW, THEREFORE, IT IS AGREED** by and between AUTHORITY and CONSULTANT as follows:

#### AGREEMENT

1. INCORPORATION OF RECITALS

The recitals set forth above, and all defined terms set forth in such recitals and in the introductory paragraph preceding the recitals, are hereby incorporated into this Agreement as if set forth herein in full.

2. SCOPE OF SERVICE

(a) Services to be Furnished. Subject to such policy direction and approvals as AUTHORITY through its staff may determine from time to time, CONSULTANT shall perform the services set forth in the Scope of Services labeled Exhibit A, which is attached hereto and incorporated herein by reference.

(b) Schedule for Performance. CONSULTANT shall perform the services identified in Exhibit A according to the completion schedule included in Exhibit A and as expeditiously as is consistent with generally accepted standards of professional skill and care, and the orderly progress of work.

(i) CONSULTANT and AUTHORITY agree that the completion schedule in Exhibit A represents the best estimate of the schedule. CONSULTANT shall comply with completion dates noted in Exhibit A unless a written waiver is granted by the AUTHORITY's project manager.

(ii) CONSULTANT shall not be responsible for performance delays caused by others, or delays beyond CONSULTANT's control, and such delays shall extend the times for performance of the work by CONSULTANT.

(c) Standard of Quality. All work performed by CONSULTANT under this Agreement shall be in accordance with all applicable legal requirements and shall meet the standard of quality ordinarily to be expected of competent professionals in CONSULTANT's field of expertise at the time CONSULTANT's work is performed. CONSULTANT shall function as a technical advisor to AUTHORITY, and all of CONSULTANT's activities under this Agreement shall be performed to the full satisfaction and approval of the Executive Director or his/her designee.

(d) Compliance with Laws. CONSULTANT shall comply with all applicable federal, state, and local laws, codes, ordinances, regulations, orders, and decrees. CONSULTANT represents and warrants to AUTHORITY that CONSULTANT shall, at its own cost and expense, keep in effect or obtain at all times during the term of this Agreement any licenses, permits, insurance and approvals which are legally required for CONSULTANT to practice its profession or are necessary and incident to the due and lawful prosecution of the services it performs under this Agreement. CONSULTANT shall maintain a business license from \_\_\_\_\_ (needs to be one of the cities/Town). CONSULTANT shall at all times during the term of this Agreement provide written proof of such licenses, permits, insurance, and approvals upon request by AUTHORITY. AUTHORITY is not responsible or liable for CONSULTANT's failure to comply with any or all of the requirements contained in this paragraph.

### 3. COMPENSATION

(a) Schedule of Payment. The compensation to be paid by AUTHORITY to CONSULTANT for the services rendered hereunder shall be on a time and materials basis based upon the rate schedule in Exhibit B attached hereto and hereby incorporated by reference not to exceed \$ \_\_\_\_\_ dollars. The rate schedule in Exhibit B itemizes those standard and expected expenses for which CONSULTANT shall receive compensation. If CONSULTANT obtains AUTHORITY's prior written approval from the Executive Director, CONSULTANT may be reimbursed for extraordinary costs incurred on the Project.

(b) Additional Services. AUTHORITY shall make no payment to CONSULTANT for any additional services unless such services and payment have been mutually agreed to and this Agreement has been formally amended in accordance with Section 7.

(i) Only the Executive Director of AUTHORITY can act on behalf of AUTHORITY to authorize CONSULTANT to perform additional services.

(ii) CONSULTANT shall not commence any work or services exceeding the Scope of Services in Section 2 without prior written authorization from AUTHORITY in accordance with Section 7. CONSULTANT's failure to obtain a formal amendment to this Agreement authorizing additional services shall constitute a waiver of any and all right to compensation for such work or services.

(iii) If CONSULTANT believes that any work AUTHORITY has directed CONSULTANT to perform is beyond the scope of this Agreement and constitutes additional services, CONSULTANT shall promptly notify AUTHORITY of this fact before commencing the work. AUTHORITY shall make a determination as to whether such work is beyond the scope of this Agreement and constitutes additional services. If AUTHORITY finds that such work does constitute additional services, AUTHORITY and CONSULTANT shall execute a formal amendment to this Agreement, in accordance with Section 7, authorizing the additional services and stating the amount of any additional compensation to be paid.

(c) Invoicing and Payment. CONSULTANT shall submit monthly invoices for the services performed under this Agreement during the preceding period. AUTHORITY shall approve or disapprove said invoice or billing within thirty (30) days following receipt thereof and shall pay all approved invoices and billings within thirty (30) days. Interest at the rate of one and one-half (1.5) percent per month will be charged on all past due amounts starting thirty (30) days after the invoice date, unless not permitted by law, in which case interest will be charged at the highest amount permitted by law. Payments will be credited first to interest, and then to principal.

4. PRODUCT REVIEW AND COMMENT

CONSULTANT shall provide AUTHORITY with at least two (2) copies of each product described in Exhibit A. Upon the completion of each product, CONSULTANT shall be available to meet with AUTHORITY. If additional review and/or revision is required by AUTHORITY, AUTHORITY shall conduct reviews in a timely manner.

5. TERM OF AGREEMENT

This Agreement shall be effective immediately upon the signatures of both Parties and shall remain in effect until \_\_\_\_\_, 2020, unless amended pursuant to Section 7, or terminated pursuant to Section 6.

6. TERMINATION

(a) AUTHORITY shall have the right to terminate this Agreement for any reason whatsoever at any time by serving upon CONSULTANT written notice of termination. The Agreement shall terminate three (3) business days after notice of termination is given. The notice shall be deemed given on the date it is deposited in the U.S. mail, certified, postage prepaid, and addressed to CONSULTANT at the address indicated in Section 11.

(b) If AUTHORITY issues a notice of termination,

(i) CONSULTANT shall immediately cease rendering services pursuant to this Agreement;

(ii) CONSULTANT shall deliver to AUTHORITY copies of all writings, whether or not completed, which were prepared by CONSULTANT, its employees, or its subcontractors, if any, pursuant to this Agreement. For purposes of this Agreement, the term "writings" shall include, but not be limited to, handwriting, typewriting, computer files and records, drawings, blueprints, printing, photographs, and every other means of recording upon any tangible thing, any form of communication or representation, including letters, words, pictures, sounds, symbols, or combinations thereof;

(iii) AUTHORITY shall pay CONSULTANT for work actually performed up to the effective date of the notice of termination, subject to the limitations prescribed by Section 3 of this Agreement, less any compensation to AUTHORITY for damages suffered as a result of CONSULTANT's failure to comply with the terms of this Agreement. Such payment shall be in accordance with Exhibit B. However, if this Agreement is terminated for fault of CONSULTANT, AUTHORITY shall be obligated to compensate CONSULTANT only for that portion of CONSULTANT's services which are of benefit to AUTHORITY.

7. AMENDMENTS

Modifications or amendments to the terms of this Agreement shall be in writing and executed by both Parties.

8. NONDISCLOSURE OF CONFIDENTIAL INFORMATION

CONSULTANT shall not, either during or after the term of this Agreement, disclose to any third party any confidential information relative to the work of AUTHORITY without the prior written consent of AUTHORITY.

9. INSPECTION

AUTHORITY representatives shall, with reasonable notice, have access to the work and work records, including time records, for purposes of inspecting same and determining that the work is being performed in accordance with the terms of this Agreement. Inspections by AUTHORITY do not in any way relieve or minimize the responsibility of CONSULTANT to comply with this Agreement and all applicable laws.

10. INDEPENDENT CONTRACTOR

In the performance of the services in this Agreement, CONSULTANT is an independent contractor and is not an agent or employee of AUTHORITY. CONSULTANT, its officers, employees, agents, and subcontractors, if any, shall have no power to bind or commit AUTHORITY to any decision or course of action, and shall not represent to any person or business that they have such power. CONSULTANT has and shall retain the right to exercise full control of the supervision of the services and over the employment, direction, compensation, and discharge of all persons assisting CONSULTANT in the performance of said service. CONSULTANT shall be solely responsible for all matters relating to the payment of its employees, including compliance with social security and income tax withholding, workers' compensation insurance, and all other regulations governing such matters.

11. NOTICES

Any notices or other communications to be given to either party pursuant to this Agreement shall be in writing and delivered personally or by certified U.S. mail, postage prepaid, addressed to the party at the address set forth below. Either party may change its address for notices by complying with the notice procedures in this Section. Notice so mailed shall be deemed delivered three (3) business days after deposit in the U.S. mail. Nothing shall preclude the giving of notice by facsimile machine provided, however, that notice by facsimile machine shall be followed by notice deposited in the U.S. mail as discussed above.

To AUTHORITY: West Valley Clean Water Program Authority  
1 West Campbell Avenue #H73  
Campbell, CA 95008-1039

To CONSULTANT: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

12. OWNERSHIP OF MATERIALS

AUTHORITY is the owner of all records and information created, produced, or generated as part of the services performed under this Agreement. At any time during the term of this Agreement, at the request of AUTHORITY, CONSULTANT shall deliver to AUTHORITY all writings, records, and information created or maintained pursuant to this Agreement. In addition, CONSULTANT shall not use any of the writing, records, or information generated for the Project under this Agreement for any other work without AUTHORITY's consent.

13. EMPLOYEES; ASSIGNMENT; SUBCONTRACTING

(a) Employees. CONSULTANT shall provide properly skilled professional and technical personnel to perform all services required by this Agreement. CONSULTANT shall not engage the services of any person(s) now employed by AUTHORITY without AUTHORITY's prior express written consent.

(b) Assignment. CONSULTANT shall not assign, delegate, or transfer its duties, responsibilities, or interests in this Agreement without the prior express written consent of AUTHORITY. Any attempted assignment without such approval shall be void and, at AUTHORITY's option, shall terminate this Agreement and any license or privilege granted herein.

(c) Subcontracting. CONSULTANT shall not subcontract any portion of the work to be performed under this Agreement without the prior express written consent of AUTHORITY. If AUTHORITY consents to CONSULTANT's hiring of subcontractors, CONSULTANT shall provide to AUTHORITY copies of each and every subcontract prior to its execution. All subcontractors are deemed to be employees of CONSULTANT, and CONSULTANT agrees to be responsible for their performance. CONSULTANT shall give its personal attention to the fulfillment of the provisions of this Agreement by all of its employees and subcontractors, if any, and shall keep the work under its control.

14. BINDING AGREEMENT

This Agreement shall bind the successors in interest, legal representatives, and permitted assigns of AUTHORITY and CONSULTANT in the same manner as if they were expressly named herein.

15. WAIVER

(a) Effect of Waiver. Waiver by either party of any default, breach, or condition precedent shall not be construed as a waiver of any other default, breach, or condition precedent or any other right under this Agreement.

(b) No Implied Waivers. The failure of either party at any time to require performance by the other party of any provision hereof shall not affect in any way the right to require such performance at a later time.

16. NONDISCRIMINATION

CONSULTANT shall not discriminate in the conduct of the work under this Agreement against any employee, applicant for employment, or volunteer on the basis of race, religious creed, color, national origin, ancestry, physical or mental disability, marital status, pregnancy, sex, age, sexual orientation or other prohibited basis.

17. INDEMNITY

(a) To the fullest extent allowed by law, CONSULTANT specifically agrees to indemnify, defend, and hold harmless AUTHORITY, its officers, agents, and employees from and against any and all actions, claims, demands, losses, expenses including attorneys' fees, damages, and liabilities resulting from injury or death of a person or injury to property, arising out of or in any way connected with the performance of this Agreement, however caused, regardless of any negligence of the AUTHORITY, whether active or passive, excepting only such injury or death as may be caused by the sole negligence or willful misconduct of the AUTHORITY. The CONSULTANT shall pay all costs that may be incurred by AUTHORITY in enforcing this indemnity, including reasonable attorneys' fees. The defense and indemnification obligations of this agreement are undertaken in addition to, and shall not in any way be limited by the insurance obligations contained in this agreement.

(b) Further, CONSULTANT will indemnify AUTHORITY, and hold it harmless, from an assertion that as a result of providing services to AUTHORITY, CONSULTANT or any of its employees or persons performing work pursuant to this Agreement is entitled to benefits from, or is covered by, the Social Security retirement system or the California Public Employees Retirement Systems. Notwithstanding the foregoing, however, CONSULTANT's obligations for any payments to such claimant shall be limited to those payments which AUTHORITY may be required to pay.

18. INSURANCE

(a) Required Coverage. Without limiting CONSULTANT's indemnification, it is agreed that CONSULTANT shall maintain in force at all times during the term of this Agreement the following types of insurance providing coverage on an "occurrence" basis. Said insurance, with the exception of Worker's Compensation and Errors & Omissions Liability, shall name the AUTHORITY as additional insureds and evidence of said insurance shall be delivered to AUTHORITY in certificate and endorsement forms acceptable to the AUTHORITY prior to execution of this Agreement.

Automobile insurance for the vehicle(s) CONSULTANT uses in connection with the performance of this Agreement. Coverage: \$1,000,000 per occurrence for bodily injury and property damage.

Commercial general liability and property damage insurance. Coverage: \$1,000,000 per occurrence. The general aggregate limit shall be twice the required occurrence limit.



Worker's Compensation insurance to cover its employees as required by the Labor Code of the State of California. CONSULTANT's worker's compensation insurance shall include the following language: "All rights of subrogation are hereby waived against the AUTHORITY, its officers and employees when acting within the scope of their appointment or employment." In the event any class of employees engaged in hazardous work under this Agreement is not protected under Workers' Compensation Statutes, the CONSULTANT shall provide adequate and suitable insurance for the protection of its employees not otherwise protected.

E&O/ Professional's Liability, errors and omissions liability insurance appropriate to the CONSULTANT's profession. Coverage: \$1,000,000 per Claim.

(b) General Provisions.

(i) CONSULTANT shall obtain insurance acceptable to the AUTHORITY in a company or companies admitted in California and with a Best rating of no less than A VII or as acceptable to the AUTHORITY. The endorsements, naming the AUTHORITY as an additional insured, are to be signed by a person authorized by CONSULTANT's insurer to bind coverage on its behalf.

(ii) It shall be a requirement under this contract that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits shall be available to the Additional Insured. Furthermore, the requirements for coverage and limits shall be (1) the broader coverage and maximum limits specified in this contract; or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured; whichever is greater.

(iii) The limits of insurance required in the Agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of the AUTHORITY (if agreed to in a written contract) before the AUTHORITY's own insurance or self-insurance shall be called upon to protect it as a named insured.

(iv) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the AUTHORITY, its elected or appointed officers, officials, employees, agents or volunteers.

(v) The insurance provided by these policies shall not be suspended, voided, canceled, or reduced in coverage or in limits except after thirty days written notice has been received by the AUTHORITY.

(c) Additional Insured. The AUTHORITY will be named as an additional insured for all liability arising out of the operations by or on behalf of the named insured, and this policy protects the additional insured, its officers, agents and employees against liability for personal and bodily injuries, deaths or property damage or destruction arising in any respect, directly or indirectly, in the performance of the contract.

(i) Each such policy shall be endorsed with the following language:  
*The AUTHORITY of Benicia, its elected or appointed officers, officials, employees and volunteers are included as insureds with regard to damages and defense of claims arising from: (a) activities performed by or on behalf of the Named Insured, including the insured's general supervision of the Named Insured, (b) products and completed operations of the Named Insured, or (c) premises owned, leased or used by the Named Insured.*

(ii) This policy shall be considered primary insurance as respects the AUTHORITY, its elected or appointed officers, officials, employees, agents and volunteers. Any insurance maintained by the AUTHORITY, including any self-insured retention the AUTHORITY may have, shall be considered excess insurance only and shall not contribute with it.

(iii) The inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, and the coverages afforded shall apply as though separate policies had been issued to each insured.

(iv) The Additional Insured coverage under the CONSULTANT's policy shall be primary and non-contributory and will not seek contribution from the AUTHORITY's insurance or self-insurance and shall be at least as broad as CG 20 01 04 13.

(d) Deductibles and Self-Insured Retentions. All self-insured retentions (SIR) must be disclosed to the AUTHORITY's Executive Director for approval and shall not reduce the limits of liability. At the option of AUTHORITY, either: the insurer shall reduce or eliminate such deductibles or self-insurance retention as respects the AUTHORITY, its officers, officials, agents, employees and volunteers; or CONSULTANT shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

Policies containing any self-insured (SIR) provision shall provide or be endorsed to provide that the SIR may be satisfied by either the named insured or the AUTHORITY. The AUTHORITY reserves the right to obtain a full certified copy of any insurance policy and endorsements. Failure to exercise this right shall not constitute a waiver of the right to exercise later.

## 19. WORKERS' COMPENSATION

(a) Covenant to Provide. CONSULTANT warrants that it is aware of the provisions of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that

code. CONSULTANT further agrees that it will comply with such provisions before commencing the performance of the work under this Agreement.

(b) Waiver of Subrogation. CONSULTANT and CONSULTANT's insurance company agree to waive all rights of subrogation against AUTHORITY, its elected or appointed officials, agents, and employees for losses paid under CONSULTANT's workers' compensation insurance policy which arise from the work performed by CONSULTANT for AUTHORITY.

20. FINANCIAL RECORDS

CONSULTANT shall retain all financial records including, but not limited to, documents, reports, books and accounting records which pertain to any work or transaction performed pursuant to this Agreement for four (4) years after the expiration of this Agreement. AUTHORITY or any of its duly authorized representatives shall, with reasonable notice, have access to and the right to examine, audit, and copy such records.

21. CONFLICT OF INTEREST

CONSULTANT shall exercise reasonable care and diligence to prevent any actions or conditions which could result in a conflict with AUTHORITY's interest. During the term of this Agreement, CONSULTANT shall not accept any employment or engage in any consulting work which creates a conflict of interest with AUTHORITY or in any way compromises the services to be performed under this Agreement. CONSULTANT shall immediately notify AUTHORITY of any and all violations of this Section upon becoming aware of such violation. CONSULTANT shall file FPPC form 700 the AUTHORITY Clerk if required by AUTHORITY's Conflict of Interest Code.

22. TIME OF THE ESSENCE

CONSULTANT understands and agrees that time is of the essence in the completion of the work and services described in Section 2.

23. SEVERABILITY

If any court of competent jurisdiction or subsequent preemptive legislation holds or renders any of the provisions of this Agreement unenforceable or invalid, the validity and enforceability of the remaining provisions, or portions thereof, shall not be affected.

24. GOVERNING LAW AND CHOICE OF FORUM

This Agreement shall be administered and interpreted under California law as if written by both parties. If any provision in this Agreement is held by any court to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force. **If any action is brought to interpret or enforce any term of this Agreement, the action shall be brought in a state court situated in the County of Santa Clara, State of California or, if necessary, in a federal court situated in the AUTHORITY and County of Santa Clara, California.**

25. COSTS AND ATTORNEYS' FEES

If either party commences any legal action against the other party arising out of this Agreement or the performance thereof, the prevailing party in such action may recover its reasonable litigation expenses, including court costs, expert witness fees, discovery expenses, and attorneys'

fees. In any action seeking recovery of monetary damages, the plaintiff shall not be considered to be the prevailing party unless it recovers at least 66% of the dollar amount requested in the complaint's prayer for relief.

26. INTEGRATION

This Agreement represents the entire understanding of AUTHORITY and CONSULTANT as to those matters contained herein and supersedes all prior negotiations, representations, or agreements, both written and oral. This Agreement may not be modified or altered except in accordance with Section 7. The effective date of this Agreement shall be the date of execution by the AUTHORITY as shown below.

**IN WITNESS WHEREOF**, the undersigned execute this Agreement on the date shown below their respective signatures.

CONSULTANT

AUTHORITY

West Valley Clean Water Program Authority

BY: \_\_\_\_\_

\_\_\_\_\_  
Sheila Tucker

Title: \_\_\_\_\_

EXECUTIVE DIRECTOR

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Attachment: Exhibit A – Scope of Work/Proposal

EXHIBIT A  
Scope of Work/Proposal

EXHIBIT B  
Rate Schedule