

**MASTER AGREEMENT
FOR
CONSULTING SERVICES**

INSERT NAME OF FIRM

THIS AGREEMENT is made and entered into as of the ____ day of _____ by and between South Tahoe Public Utility District, hereinafter referred to as "DISTRICT" and **INSERT NAME OF FIRM**, hereinafter referred to as "CONSULTANT".

RECITALS

- A. DISTRICT periodically makes improvements to its water, wastewater and ancillary facilities, for which it may require the services of a consultant.
- B. DISTRICT proposes to provide a MASTER AGREEMENT for consulting services which will be required by DISTRICT in general support of projects under separate titles (Task Orders). The general scope of services outlined in this MASTER AGREEMENT will be further defined by a series of Task Orders which will set forth the services to be performed (detailed scope), costs, and time for completion.
- C. DISTRICT desires to secure professional consulting services for said projects and CONSULTANT represents that CONSULTANT possesses the professional qualifications to provide such consulting services.
- D. DISTRICT and CONSULTANT agree to enter into this MASTER AGREEMENT for the performance of consulting services on the terms and conditions stated in this MASTER AGREEMENT.

NOW THEREFORE, for and in consideration of their mutual promises and subject to the terms, provisions and conditions hereinafter set forth, the parties hereto do hereby agree as follows:

ARTICLE I. - CONSULTING SERVICES

- A. Upon execution of this agreement and subsequent Task Orders by both parties, and upon receipt of written authorization from DISTRICT, CONSULTANT at CONSULTANT's sole cost and expense (to be reimbursed as outlined in ARTICLE IV) and to the satisfaction of DISTRICT, shall perform the services (Services) set forth in each Task Order and represented by a separate proposal for each Task Order. The Services shall be assigned to CONSULTANT by DISTRICT for the various projects as planned and developed by DISTRICT. Each Task Order shall specify the Services to be performed, the time schedules for completion of the Task Order and for completion of all tasks (Tasks) within the Task Order, and the cost (Cost Ceiling) including all fees, costs and expenses, both direct and indirect, of the Task Order, but shall otherwise be governed by the terms and conditions of this Agreement, as modified by the individual Task Orders. Task Orders shall be in

writing, signed by both parties in advance, and shall be attached to this Agreement as consecutive exhibits beginning with Task Order 1.

- B. CONSULTANT agrees to comply with the schedule as set forth in each Task Order, and to provide Services in a timely manner to allow DISTRICT's project(s) to be constructed as planned by DISTRICT.

In the event CONSULTANT is not able to comply with the project schedule, a written statement from CONSULTANT will be required showing CONSULTANT's plan to bring schedule back into compliance to meet completion date. In the event of delays due to causes beyond the control of CONSULTANT, an extension to the schedule for performance shall be negotiated.

- C. CONSULTANT shall provide DISTRICT with a review of the budget amount when 75% of the Cost Ceiling of each Task Order has been expended. CONSULTANT shall be entitled to reallocate costs among subtasks within a Task. DISTRICT shall have the right to transfer Tasks and costs within the same or other Task Order(s).

CONSULTANT may request a revision in the Cost Ceiling for performance of the Task Order, and will relate the rationale for the revision to the specific basis of estimate. Such notification will be submitted to DISTRICT at the earliest possible date. The Cost Ceiling will not be exceeded without approval by DISTRICT and written amendment to the Task Order.

- D. In the case of changes affecting project scope resulting from new findings, unanticipated conditions, or other conflicts or discrepancies, CONSULTANT shall promptly notify the DISTRICT of the identified changes and advise the DISTRICT of a recommended solution. Additional Services shall not be performed without prior written authorization of DISTRICT.

DISTRICT may order, via a written amendment signed by each party's authorized representative, changes in scope or character of Services, either decreasing or increasing the amount of CONSULTANT'S services associated with a given Task Order. An order for additional services constitutes a change to the Task Order and shall be made in writing, dated, and appended to that Task Order.

Compensation for Additional Services shall be on the basis of Time and Materials or Lump Sum, to be agreed upon at the time of request for Additional Services. The estimated amount of compensation for Additional Services will be determined at the time the Additional Services are requested.

ARTICLE II. - RESPONSIBILITIES OF DISTRICT

- A. DISTRICT shall furnish to or make available for examination by CONSULTANT, as it may request, all data and information which DISTRICT may have available, and CONSULTANT may rely upon such data and information developed exclusively by DISTRICT in the performance of CONSULTANT's services.

- B. DISTRICT shall secure and pay for all permits and licenses (other than permits and licenses under any patent or invention) and furnish all deposits and bonds necessary in connection with the Projects, except licenses required to permit CONSULTANT to do business at the place where its services are to be performed. CONSULTANT will assist DISTRICT in procuring necessary licenses or permits if required by DISTRICT to do so.
- C. In order that DISTRICT may meet its obligations with respect to the technical quality of the services to be performed under this Master Agreement, the services performed by CONSULTANT under this Agreement shall be under the general supervision and direction of the DISTRICT's General Manager/Engineer (DISTRICT REPRESENTATIVE), who shall be Mr. Richard H. Solbrig. CONSULTANT and its officers, employees, agents, affiliates, and subcontractors shall act in complete harmony and coordination with the DISTRICT REPRESENTATIVE. The DISTRICT REPRESENTATIVE shall keep in touch with the CONSULTANT during the duration of the Task Orders and shall be the authorized medium of communication for and with District matters pertaining thereto. DISTRICT REPRESENTATIVE may from time to time delegate any or all of his supervisory responsibility to appropriate staff members, and the DISTRICT shall so inform CONSULTANT before the effective date of each such delegation.

ARTICLE III. - RESPONSIBILITIES OF CONSULTANT

- A. In rendering the professional services, CONSULTANT is an independent contractor, the DISTRICT being interested only in the result obtained, and the manner and means of conducting such professional services will be under the sole control of CONSULTANT, except that nothing herein shall be deemed to negate DISTRICT's right to direct the nature of the Services requested and to direct the work in terms of timing and coordination with the Projects.
- B. CONSULTANT shall secure approval of DISTRICT prior to executing contracts with subcontractors and prior to retaining subcontractors for any portion of services for DISTRICT.
- C. CONSULTANT shall be as fully responsible to DISTRICT for the negligent acts, errors, and/or omissions of its subcontractors, as it is for the negligent acts, errors and/or omissions of persons directly employed by it. CONSULTANT will be responsible for review and billing accuracy and for the direct payment for Services completed or equipment/materials supplied by all of its subcontractors.
- D. Nothing contained in the Agreement shall create any contractual relationship between any subcontractor and DISTRICT.
- E. Indemnification
 - 1. CONSULTANT shall perform Services in a manner commensurate with prevailing professional standards of qualified and experienced personnel in CONSULTANT'S field.

2. CONSULTANT agrees to defend, indemnify and hold DISTRICT and each of its officers, employees, agents and representatives harmless from any claims, damage, liability or costs (including reasonable attorney's fees and costs of defense) stemming from Services under this Agreement to the extent such claims, damage, liability or costs are caused by CONSULTANT'S negligence, recklessness or willful misconduct or by the negligence, recklessness or willful misconduct of CONSULTANT'S subconsultants, agents, or anyone acting on behalf of or at the direction of CONSULTANT.
3. DISTRICT agrees to defend, indemnify and hold CONSULTANT and each of its officers, employees, agents and representatives harmless from any claims, damage, liability or costs (including reasonable attorney's fees and costs of defense) stemming from Services under this Agreement to the extent such claims, damage, liability or costs are caused by DISTRICT'S negligence, recklessness or willful misconduct or by the negligence, recklessness or willful misconduct of the DISTRICT'S subconsultants, agents, or anyone acting on behalf of or at the direction of the DISTRICT.
4. The provisions of this section survive the completion of services under or the termination of this Agreement.

F. Insurance: The following are the basic requirements that CONSULTANT shall be responsible for at CONSULTANT's sole cost and expense, and for the full term of this Agreement and before commencement of services hereunder:

1. CONSULTANT shall carry or require that there be carried Worker's Compensation Insurance for all of its employees and those of its subcontractors in accordance with the laws of the State of California.
2. CONSULTANT shall carry or require that there be carried Commercial Liability Insurance, including Automobile Coverage, in an amount not less than \$5,000,000 for each person, in an amount not less than \$5,000,000 on account of one accident, and Property Damage Insurance in an amount not less than \$5,000,000 single limit Bodily Injury and Property Damage Insurance per occurrence.
3. CONSULTANT shall carry Errors and Omissions Insurance in an amount not less than \$5,000,000 with a deductible of not more than \$500,000 for the life of the Agreement which shall include one year beyond completion of Services.
4. Before commencing services, CONSULTANT shall submit evidence of the coverage required to DISTRICT for review and approval. All such coverage shall be subject to approval by DISTRICT; approval of which shall not be unreasonably withheld. Such insurance shall be carried with financially responsible insurance companies, licensed in the State of California, and approved by DISTRICT; approval of which shall not be unreasonably withheld. Evidence of coverage shall insure that such policies will not be canceled without 30 days prior written notice to DISTRICT. Commercial Liability policies,

including Automobile Coverage and Property Damage Insurance, shall name DISTRICT, its officers, officials, volunteers, and employees as Additional Insured and as such persons, shall be Primary coverage.

5. It is the responsibility of the CONSULTANT to provide to the DISTRICT updated insurance certificates within 30 days after renewal or changes to insurance policies.
 6. CONSULTANT shall grant to the DISTRICT a waiver of any right to subrogation which any insurer of said CONSULTANT may acquire against the DISTRICT by virtue of the payment of any loss under such insurance. CONSULTANT agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the DISTRICT has received a waiver of subrogation endorsement from the insurer.
 7. CONSULTANT shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and the DISTRICT shall be named as an additional insured on insurance required from subcontractors.
 8. The District reserves the right to modify insurance requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.
- G. CONSULTANT shall comply with all applicable laws, ordinances and codes of the Federal, State of California, and local governments. CONSULTANT shall hold DISTRICT harmless with respect to any damages to the extent arising from any tort committed in the performance of any of the services embraced by this AGREEMENT due to CONSULTANT's negligence.
- H. CONSULTANT is responsible for the health and safety of its employees, subconsultants, agents or anyone working on behalf or direction of Consultant in the course of Services. CONSULTANT shall ensure that its employees, subconsultants, agents or anyone working on behalf of or under the direction of Consultant shall have experience and knowledge of Federal, State and local Health and Safety regulations and requirements.
- I. CONSULTANT and its associates and employees involved in projects covered under this Master Agreement covenant that they presently have no interest and that they will not acquire any interest, direct or indirect, during the term of this Agreement which would conflict in any manner or degree with the performance of services required under this Agreement.
- J. CONSULTANT will name the supervisory and staffing levels in the performance of CONSULTANT's services for each Task Order. CONSULTANT shall not replace supervisory or staffing levels without the prior written consent of DISTRICT. In the event a change is required by reason of resignation or similar circumstance, DISTRICT shall not deny consent to a change, but shall have the right to review and approve or disapprove the particular person proposed as a replacement. Any proposed replacement shall have substantially the same experience and qualifications as the person being replaced.

- K. CONSULTANT shall furnish, at its own expense, all labor, materials, equipment, tools, transportation and services necessary for the successful completion of the services to be performed under this Agreement. CONSULTANT shall give its full attention and supervision to the fulfillment of the provisions of this Agreement and each Task Order by its employees and subcontractors and shall be responsible for the timely performance of the Services required by this Agreement.
- L. CONSULTANT shall furnish DISTRICT with reasonable opportunities from time to time to ascertain whether the Services of CONSULTANT are being performed in accordance with this Agreement. All work done and materials furnished shall be subject to final review and approval by DISTRICT. DISTRICT's review and approval of the Services shall not, however, relieve CONSULTANT of any of its obligations under this Agreement.
- M. The DISTRICT participates in the CalPERS retirement system. It is the responsibility of CONSULTANT to ensure that staff working on DISTRICT projects and receiving CalPERS pension benefits do so in accordance with CalPERS rules and regulations. DISTRICT shall incur no cost associated with pension benefits of a person receiving pension benefits from CalPERS.

ARTICLE IV. - CONSULTANT'S FEES

- A. CONSULTANT is employed to render professional services only, and any payments made to it are compensation only for such Services as it may render and recommendations it may make in carrying out the Services.

CONSULTANT shall submit to DISTRICT an estimate of costs for the authorized Task Order. Said estimate shall include a breakdown of estimated job classification with corresponding man hours, hourly rate, and estimated fee, together with estimated expenses. Upon approval by DISTRICT, said total estimate shall become a Cost Ceiling, and total compensation for said Services shall not exceed said amount without further authorization by DISTRICT. DISTRICT shall be obligated to pay only such hourly rates and expenses as are actually incurred by CONSULTANT subject to the Cost Ceiling.

The rates of compensation in the Task Order are agreed to in anticipation of the orderly and continuous progress of the Project through completion of the Services contained therein. CONSULTANT'S obligation to render services thereunder will extend for the period set forth in the associated schedule, and required extensions thereto. If such dates are exceeded through no fault of CONSULTANT, then all rates, measures and amounts of compensation provided in the Task Order shall be subject to equitable, negotiated adjustment, but not otherwise.

- B. DISTRICT agrees to pay CONSULTANT for and in consideration of the faithful performance of all services and duties set forth in this Master Agreement and subsequent Task Orders, and agreed to be performed by CONSULTANT. CONSULTANT agrees to accept payment from DISTRICT as and for full compensation for the faithful performance of all said services and duties as the amount

set forth for consulting services for each Task Order.

- C. The DISTRICT will not approve any additional compensation unless a change in the scope of the Services has occurred due to conditions that the parties could not have reasonably anticipated at the time entering into this Agreement. CONSULTANT shall notify DISTRICT immediately if the scope of services under the lump sum Task Order is changed substantially, as required in Article I, Paragraph D.
- D. CONSULTANT shall submit to DISTRICT a monthly, itemized invoice for services completed during the preceding month. The invoice should also include the purchase order number and task order number for each Task Order. Payment by DISTRICT to CONSULTANT shall be made within 45 days after receipt and approval by DISTRICT of CONSULTANT's hereinabove described invoice.
- E. Should the DISTRICT dispute any portion of any bill, the DISTRICT shall pay the undisputed portion within the time frame stated above and, at the same time, advise the CONSULTANT in writing of the disputed portion. The DISTRICT shall promptly notify CONSULTANT of the dispute and request clarification and/or remedial action. After any dispute has been settled, CONSULTANT shall provide a special invoice that accounts for the resolution of the disputed item.
- F. The costs for professional services and direct expenses shall be in accordance with the rates and amounts set forth in the applicable Task Order. In addition, the DISTRICT reserves the right to request from the CONSULTANT a breakdown of costs associated with the rates for professional services, including but not limited to direct salary, total overhead, and profit.
- G. CONSULTANT shall be solely responsible for the payment of all federal, state or local income tax, social security tax, worker's compensation insurance, state disability insurance and any other taxes or insurance which CONSULTANT is responsible for paying as an independent contractor under federal, state or local law. CONSULTANT shall procure and maintain all licenses necessary for the performance of the Services, all at the sole cost of CONSULTANT. All of the above shall not be reimbursable under the Agreement.

ARTICLE V. - MISCELLANEOUS PROVISIONS

- A. Any Services subcontracted hereunder shall be specified by written contract or agreement and shall be subject to each provision of this Agreement.
- B. Notice to Proceed - CONSULTANT will not begin services on any Task Order until DISTRICT directs it in writing to proceed.
- C. Submittal of Work Product and Written Notice - All reports and documents which CONSULTANT is required to furnish to DISTRICT (Work Product) and any other writing which CONSULTANT desires to give DISTRICT shall be delivered to DISTRICT or by depositing same in the United States mail, postage prepaid, addressed to:
General Manager

South Tahoe Public Utility District
1275 Meadow Crest Drive
South Lake Tahoe, CA 96150

Any legally operative documents shall be copied to:
Brownstein Hyatt Farber Schreck, LLC
21 E. Carrillo Street
Santa Barbara, CA 93101-2782

Any notices or other writing which DISTRICT desires or is required to give or furnish to CONSULTANT shall be delivered to CONSULTANT by delivering in person or by depositing same in the United States mail, postage prepaid, addressed to:

The effective date of such written notice shall be the date of personal delivery of such notice or the receipt of same in the United States mail. The address to which any notice or other writing may be delivered may be changed upon written notice by such party as above provided.

- D. Ownership of Documents - All documents prepared by CONSULTANT and required to be furnished to DISTRICT in electronic and hard copy format, shall be the property of DISTRICT after payment to CONSULTANT. All electronic documents shall be provided to the District in an editable format. Any use of Work Product for other projects and/or any use of uncompleted documents without specific written authorization from CONSULTANT will be at DISTRICT's sole risk and without liability or legal exposure to CONSULTANT and DISTRICT shall indemnify and hold harmless CONSULTANT from all claims, damages, losses and expenses, including attorney's fees arising out of or resulting therefrom.
- E. Audit of CONSULTANT's Records - The books, papers, records, and accounts of CONSULTANT or any other consultants retained by CONSULTANT insofar as they relate to charges for services, or are in any way connected with the work herein contemplated, shall be open at all reasonable times to inspection and audit by the agents and authorized representatives of DISTRICT. Said records shall be retained for a minimum of five (5) years after completion of services on the individual Task Orders.
- F. Discrimination - During the term of this Agreement, CONSULTANT agrees in accordance with Section 1735 of the Labor Code of the State of California not to discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical handicap, medical condition, sex, or marital status. CONSULTANT will take affirmative action to the limits prescribed by law to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, religious creed, color, national origin, ancestry, physical handicap, medical condition, sex, or marital status.

- G. Assignment - Neither party shall assign any interest in this Agreement, nor transfer any interest in the same (whether by assignment or novation), without the prior written consent of the other party; provided, however, that claims for money due or to become due CONSULTANT from DISTRICT under this Agreement may be assigned to a bank, trust company or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to DISTRICT.
- H. Attorney's Fees - If any legal proceeding is brought to enforce or interpret the provisions of the Agreement, the prevailing party shall be entitled to recover actual attorneys' fees and costs, which may be determined by the court in the same action or in a separate action brought for that purpose. The attorneys' fees award shall be made as to fully reimburse for all attorneys', paralegal and experts' fees, costs and expenses actually incurred in good faith, regardless of the size of the judgment, it being the intention of the parties to fully compensate for all attorneys', paralegal and experts' fees, costs and expenses paid or incurred in good faith.
- I. Confidential Information - During and after the term of this Agreement, CONSULTANT shall not, directly or indirectly, use, exploit, disclose or divulge to anyone, except appropriate representatives of DISTRICT, any of CONSULTANT'S engineering Work Product, except as otherwise authorized with DISTRICT's express consent.
- J. Authorization - All officers and individuals executing this and other documents on behalf of the respective parties certify and warrant that they have the capacity and have been duly authorized to execute said documents on behalf of the entities indicated.
- K. Time of the Essence. Time is of the essence in the performance of this Agreement and each Task Order. Any breach of any time deadline or schedule by CONSULTANT is agreed by the parties to be a material breach of this Agreement, providing DISTRICT with termination rights under this Agreement, in addition to its rights to recover damages, regular, consequential or otherwise. The failure on the part of CONSULTANT to perform the Services within such time deadline or schedule when such failure is caused by acts beyond the control of CONSULTANT shall not be considered a breach of this Agreement and CONSULTANT shall be entitled to an extension of such time deadline or schedule accordingly.

ARTICLE VI. - CANCELLATION OF AGREEMENT OR SUSPENSION OF WORK

- A. This Master Agreement and/or subsequent Task Orders may be terminated in whole or in part in writing by either party for any reason, providing that no such termination may be effected unless the other party is given not less than thirty (30) calendar days written notice (delivered by certified mail, return receipt requested) of intent to terminate.
- B. This Master Agreement and/or subsequent Task Orders may be terminated in whole or in part in writing by DISTRICT for cause, effective immediately upon written notice of such termination to CONSULTANT, based upon the occurrence of any of the following events:

- 1) Material breach of this Agreement, Task Order or Task by CONSULTANT;
 - 2) Cessation of CONSULTANT to be licensed, as required by law;
 - 3) Failure of CONSULTANT to substantially comply with any applicable federal, state or local law or regulation;
 - 4) Filing by or against CONSULTANT of any petition under any law for the relief of debtors; and,
 - 5) Conviction of CONSULTANT's principal representative or personnel of any crime other than minor traffic offenses.
- C. In the event the Master Agreement or subsequent Task Order(s) are terminated in whole or in part, CONSULTANT is to be fairly compensated for all approved Services performed under the terminated Task Order as of the termination date, provided that the total amount of compensation paid to CONSULTANT does not exceed the Cost Ceiling set forth in the Task Order, and provided that the CONSULTANT delivers to the District all Work Product due for the Services completed through the termination date.
- D. Upon receipt of a Termination Notice by CONSULTANT from DISTRICT, an equitable adjustment shall be negotiated to provide payment to CONSULTANT for termination settlement costs reasonably incurred by CONSULTANT relating to obligations and commitments as a result of entering into this Master Agreement and the affected Task Order.
- E. Upon receipt of a Termination Notice, CONSULTANT shall (1) promptly discontinue all services affected (unless the Notice directs otherwise), and (2) deliver or otherwise make available to DISTRICT, copies of data, design calculations, drawings, specifications, reports, estimates, summaries, and such other information and materials as may have been accumulated by CONSULTANT in performing the services under the affected Task Order.

ARTICLE VII. - DISPUTES

- A. All disputes arising out of or relating to this Agreement or subsequent Task Orders, or the professional services rendered hereunder, shall be determined by arbitration in El Dorado County, California, before a sole arbitrator, in accordance with the laws of the State of California.
- B. The arbitration shall be administered by JAMS® pursuant to its Comprehensive Arbitration Rules and Procedures. Judgment on the Award may be entered in any court having jurisdiction.
- C. Costs and attorneys fees in said arbitration shall be borne in accordance with the terms set forth in Article V.H., above.

ARTICLE VIII. – SEVERABILITY AND WAIVER

- A. If any provision of this Agreement is held to be invalid and unenforceable, the remainder of this Agreement shall be valid and binding upon the parties, provided that the remainder of the Agreement can be interpreted to give effect to the intentions of the parties.
- B. Any waiver at any time by either party hereto of its rights with respect to a breach or default, or any other matter arising in connection with this Agreement, shall not invalidate this Agreement or be deemed to be a waiver with respect to any subsequent breach, default or matter.

ARTICLE IX. - ENTIRE AGREEMENT

- A. This Master Agreement and the subsequent Task Orders contain the entire understanding between the parties with respect to the subject matter herein. This Agreement may not be amended except pursuant to a written instrument signed by all parties.
- B. This Master Agreement is to be binding on the heirs, successors, and assigns of the parties hereto and is not to be assigned by either party without first obtaining the written consent of the other party, subject to the terms of Article V.G.
- C. The term of this Agreement shall commence upon the date first written above and shall continue in full force and effect for a period no longer than 10 years, unless sooner terminated as provided herein. Any subsequent Task Orders that are scheduled to exceed the aforementioned duration shall require that this Agreement be renegotiated and executed prior to adoption of the Task Order.

ARTICLE X. – EXECUTION OF AGREEMENT.

IN WITNESS WHEREOF, the parties hereto each herewith subscribe the same in duplicate on the effective date first written above.

Richard H. Solbrig, General Manager/Engineer
South Tahoe Public Utility District

ATTEST: _____
Clerk of Board

By _____

TEMPLATE